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Legal Aspects of United States—Republic of China Trade and Investment
(A Regional Meeting of the American Society of International Law)

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* With preface, selected bibliography and index added by the editors.
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PREFACE

In 1973-74, a group of law students at the University of Maryland School of Law organized the Maryland International Law Society; third-year student S. Jacob Scherr was elected its President. Under the able guidance of Faculty Advisor James P. Chandler and with the encouragement and support of the late Dean William P. Cunningham, the Society soon became the focal point for international activities in the Law School. Early activities of the Society included participation in the Jessup International Moot Court competition and the establishment of a Speakers' Program at the Law School under which the student body had an opportunity to hear talks by a number of leading scholars.

Two years later, the Society began to engage in more ambitious projects when David Simon, then a third-year student and now an Associate at Bregman, Abell, Solter & Kay in Washington, D.C., was elected to the Presidency. Two series publications were launched in 1977: the first is the Occasional Papers/Reprints Series in Contemporary Asian Studies, under my editorship, with the cooperation of Mr. Simon as Executive Editor and of the staff of the Society. The second one is the International Law Society Occasional Papers Series, which complements the Law School's International Trade Law Journal. Both series have been enthusiastically received by the academic and business communities. Today, these series have received individual and institutional orders and subscriptions not only from within the United States, but also from the Federal Republic of Germany, Denmark, United Kingdom, Saudi Arabia, Israel, the Republic of China, France, Switzerland, Singapore and others. Courses at some universities have adopted publications in these series as required reading for their students.

In the “great” year of 1977 of the Society, in addition to the activities outlined above, the Society organized the first international conference to be held at the Law School, on April 15-16, 1977: the Conference on Legal Aspects of United States — Republic of China (ROC) Trade and Investment. The Conference was designated a Regional Meeting of the American Society of International Law and was attended by some one hundred scholars, businesspersons, lawyers, government officials and diplomats from here and abroad.

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Despite the disparity of size and population, the Republic of China is among the top twelve trading partners of the United States. At present, there are over 220 U.S. firms with direct investments in Taiwan, accounting for over US$500 million in investments. In 1976, US-ROC trade reached a record level of almost US$5 billion. The International Law Society's Conference was organized to present an overall review and projection of US-ROC trade and investment relations, with a special emphasis on the role of the U.S. and ROC legal systems in those relations. The Conference was divided into three sessions: (1) Trends and prospects of US-ROC economic relations; (2) practical and legal aspects of US-ROC trade and investment interactions; and (3) a prospective look at US-ROC economic relations in light of the changing nature of U.S. relations with the People's Republic of China.

The Conference Proceedings, as reproduced here, in my view, did produce a high-quality symposium aimed at both business and academic groups, and at the lawyers within each group.

It is my great pleasure to serve as a Faculty Advisor to the Society and co-editor of the Conference Proceedings. I am deeply impressed by Mr. David Simon's leadership and administrative skill in organizing the Conference and seeing the work of publication through to its consummation. I should also like to thank other members of the Society — particularly Joyce Seunarine, William Helfand, Gilbert Genn and Arthur Webster — who helped organize the Conference and were of invaluable assistance in preparing these Proceedings for publication. Dean Michael J. Kelly afforded me the benefit of his excellent advice and positive support throughout, and I am indebted to him.

Finally, I wish to express my sincere thanks to Assistant Dean George Regan and his staff, LuAnn Young and Shirley A. Selin, for their administrative support; and Judith Hall, Administrative Director of the American Society of International Law, for her advice in organizing an international conference.

Hungdah Chiu

December 15, 1977
FOREWORD

Any serious reflection concerning the Republic of China raises some of the most perplexing issues facing the United States, and the world, today. The issue of the legal status of Taiwan, for example, has given rise to considerable controversy, and not just in the international-legal literature. The political question of United States relations with the Republic of China, of course, has been with us for a considerable time, and — as of this writing — remains unresolved. These issues are reflected in the many paradoxes that characterize the Republic of China. It is a country that is well along on the path from "developing" to "developed," while at the same time, it has few internal material resources. Or, again, it is the second-largest trading nation in Southeast Asia, yet has lost diplomatic recognition from many of its most significant trading partners.

When we at the University of Maryland International Law Society decided to stage a Regional Meeting of the American Society of International Law on United States-Republic of China relations, we considered what analytic tools were best suited for laying bare some of the principal facets of that relationship. Ultimately, we chose three principal frameworks: economics, law, especially the ways in which the ROC's legal regime has aided its development, and political-economic prognostication. In the presentation of each of these, history and hopes played as much a part as descriptions of the present; in none of them can a consideration of the others be left out. The conference, then, was divided into three sessions: trends and prospects of US-ROC economic relations, practical and legal aspects of US-ROC trade and investment, and the future of US-ROC economic relations.

The proceedings of the University of Maryland International Law Society Conference on Legal Aspects of US-ROC Trade and Investment speak for themselves. The panelists — Chinese, American and European scholars and practitioners — were an informed, passionately engaged group of men and women. The audience was lively, its questions provocative. From the mass of data presented at the first session, a picture of the ROC's extraordinary economic vitality emerged. The second session afforded a view of the ways in which the ROC's legal structure has nurtured that vitality, frequently with a sense of experimentation, as in the case of the creation of Export Processing Zones. A somewhat contrapuntal theme, the legal resolution of trade
disputes under the United States Trade Act of 1974, reminded us that the economic progress of the ROC cannot be considered *in vacuo*: the ROC is, indeed, a member of the community of nations, and its actions must be considered as interactions, not merely internal shufflings of resources. The third session wove these economic and legal strands together in attempts to provide answers to some of the short- and long-term questions presently plaguing American and Chinese political and business leaders. A paper on the West German trading experience with the Republic of China provided further insight into the options available in US-ROC relations.

Throughout the conference, the strength of the ROC was argued with great skill and force; the familiar story of the ROC’s economic rise unfolded in many guises. Equally important were some of the novel ideas and even “heresies” that were aired: for example, that the ROC should now turn from acting as “junior” partner in trade with developed nations to acting as “senior” partner and seek to expand its trade with less developed nations.

It was truly a pleasure for me to act as Chairman for the conference whose proceedings are presented in this volume. I would particularly like to thank Judith Hall, Administrative Director of the American Society of International Law, for her encouragement and cooperation throughout the planning stages. The Asia Foundation, whose partial financial support was instrumental throughout, also deserves a warm acknowledgment for its contributions. I was gratified by the extent to which the community of the University of Maryland School of Law supported this first international conference at the Law School. My sincerest thanks go to Dean Michael Kelly for his support, to the faculty and student committees that assisted in preparations for the conference, to all the participants, and most especially to Professor Hungdah Chiu of the Law School faculty. As Faculty Advisor to the International Law Society, Professor Chiu was truly the guiding light behind the conference; his attention to detail in the midst of an exceptionally demanding schedule was extraordinary, and his patience and calm were a bedrock to rely on whenever problems seemed insurmountable.

*David Simon*
Left to right: David Simon, William Morell, Oliver Oldman, Hungdah Chiu, Jane Brandt, Gaston Sigur.

Left to right: Chun Li, Hungdah Chiu, Oliver Oldman, Yung Wei.
Left to right: R. Dan Webster, Edward Laing, Oliver Oldman, Myron Solter, Chun Li, Norman Littell.

Left to right: Ralph N. Clough, Talbot Linstrom, Gaston Sigur, Robert Heuser.

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I. TRENDS AND PROSPECTS OF US-ROC ECONOMIC RELATIONS
(10:00 a.m. — 12:30 p.m.)
April 15, 1977

The session opened at 10 a.m. with announcements made by Jane Brandt, Secretary of the Conference. Dean Michael Kelly of the University of Maryland School of Law extended greetings, thanked the Conference Committee, and acknowledged the contributions of Professors Chiu and Chandler in international law to the University of Maryland. David Simon, Conference Chairperson, extended greetings and turned the meeting over to Dr. Chiu, Chairperson for the first session.

Dr. Chiu stated that U.S. trade relations with China date back 100 years, and includes the use of the Port of Baltimore for the past century. Dr. Chiu then related some highlights of the history of U.S. relations with the Republic of China (ROC).

Dr. Chiu pointed out that when the ROC was established in 1912, the United States was the first country to extend recognition. The United States and the ROC share the additional common heritage of being the first democratic republics established on their respective continents. Since 1912, Dr. Chiu said, the two countries have maintained close relations in all aspects of international life. During the Second World War, both countries fought side by side against the aggressor and both were among the five major sponsoring powers that established the United Nations in 1945.

In 1946, the United States and the ROC concluded a friendship, commerce and navigation treaty which created the basis for further development of economic and trade relations between the two countries. In 1954, both countries concluded a mutual defense treaty.

After making the above brief remarks, Dr. Chiu introduced the first speaker, Dr. Yung Wei, to present his paper on “The Republic of China in the 1970s.” Dr. Wei stated that the Republic of China is striving in the 1970s for future growth, equity and security. He reviewed the economic growth and social progress of the ROC from 1952 to 1972. In economic growth, the ROC has experienced a rapid increase in national income, industrial production, exports and imports. The accompanying social development resulted in increases in literacy, nutritional intake
and education at all levels. Dr. Wei stated that the ROC has experienced increases in trade despite the severance of diplomatic ties with many countries. However, the ROC, he said, wishes to strengthen and renew its ties with other nations. Dr. Wei added that the ROC regrets the current trend toward "normalization" of US-People's Republic of China (PRC) relations. Dr. Wei said that the present policy of the ROC is threefold: (1) The ROC will remain in the democratic camp; (2) The ROC will not negotiate with the Chinese Communists; (3) The ROC will not develop nuclear weapons for defense.

[The following is the text of Dr. Yung Wei's paper.]

THE REPUBLIC OF CHINA IN THE 1970s:
STRIVING FOR A FUTURE OF GROWTH,
EQUITY, AND SECURITY

YUNG WEI*

This paper presents a general survey of the social, economic and political development in the Republic of China since 1970. The basic approach is that of modernization research and international-relations analysis. In the first part of the paper, the pace of economic growth and social progress are reviewed. In the second part of the paper, the problems and progress in the distribution of income, land ownership, educational opportunities and political participation are examined. Finally, in the last part of the paper, the external environment of the Republic of China and the question of security are discussed.

The rapid economic growth in Taiwan, Republic of China (ROC), has been fully discussed by many social scientists in the western world and does not need further elaboration. To sum up, between the years 1952 and 1972, real national income has increased 484.3 percent; industrial production, 1,700.6 percent; export, 2,605.4 percent; and import, 1,373.7 percent. This rapid

* Chairman of Research, Development, and Evaluation Commission, Executive Yuan (Cabinet), Taipei, ROC; Professor of Political Science, National Taiwan University.
economic growth has made the ROC, which has under its effective control a territory comparable in size to Switzerland, one of the major trading nations of the world. What needs to be stressed here is that the rapid economic growth on Taiwan has been accompanied by notable progress in the areas of education, health, communication and transportation.

As a result of accelerated growth, significant changes have occurred in the Taiwanese economy (Table 1). Agricultural production decreased from 35.51 percent of the total economy in 1951 to 15.66 percent in 1972. In the same period, industry increased from 19.42 percent to 36.56 percent; and commerce, from 19.50 to 23.78 percent. A drastic increase of population, from 8.1 million in 1952 to 15.3 million in 1972, provided the needed manpower for agriculture and industry; yet at the same time enlarged the ratio of dependent population and prevented a more substantive gain in per capita income. Rapid population growth has quickened the pace of urbanization in Taiwan: Urban population swelled from 47.6 percent of the total population of the island in 1952 to 61.1 percent in 1972. This urbanization process brought much needed labor to the various industrial and commercial establishments in urban areas; at the same time, however, it also created a heavy demand on housing, transportation and other public services and facilities in the bigger cities.

Along with the overall economic growth, substantive gains were also shown on most social and cultural indicators. For instance, the average life expectancy of the people of Taiwan achieved an increment of more than ten years between 1952 and 1972; that of male from 56.5 to 66.8 and that of female from 60.7 to 72. Daily calorie intake increased from 2,078 to 2,738; and daily protein intake (in grams), from 49 to 74.6. The percentage of school age children attending primary schools climbed from 84 percent to 98.13 percent; and the percentage of college age youth enrolled in institutions of higher learning jumped from 1.4 percent to 12.5 percent. All these figures testify to the dramatic improvement of the quality of life on Taiwan as a result of sustained social and economic progress.

It must be pointed out, however, that starting from 1971, the Republic of China has experienced a series of challenges to her international position and economic development. The Nixon trip to Mainland China and the withdrawal of the ROC from the United Nations brought considerable difficulties to the diplomatic front of the ROC, but a significant growth of trade continued after 1971. It was not until 1973, when the world economy was hit by
serious inflation and a drastic increase of the price of oil, that
Taiwan’s economy began experiencing the process of stagflation.
During the 1973-74 period, many of the problems inherent in the
ROC economy became apparent. Among the more obvious
problems were: a lack of large-scale firms and factories as well as
trading companies; inadequate basic supporting facilities such as
large seaports, power, transportation, and communication
networks keeping up with Taiwan’s rapid economic growth; labor
shortage and wage increase, which have cut down the competi­
tiveness of the products of the ROC in the international market;
an outflow of farm population to urban centers, which reduced the
productivity of the rural areas and increased the price of farm
products.
To cope with these problems, the government of the ROC (GRC) shelved the Sixth Four-Year Plan, which no longer suited the new economic situation, and devised a new Six-Year Plan for economic development. The more important goals and measures in the new Six-Year Plan include: (1) transforming Taiwan's economy from labor intensive to capital and technology intensive; (2) increasing and diversifying energy supplies by completing the nuclear power plants, exploring for oil and gas, seeking multiple sources of crude oil importation, and expanding oil distilling facilities; (3) promoting farm mechanization, improving the living conditions in rural areas, and developing high-value farm products for export; (4) completing the major construction projects in transportation and communication, including the electrification of the railroad system, the north-south superhighway, the international airport at Tao-yuan, the new Taichung and Suao harbors, and the northern railroad; (5) completing the building of the large steel factory and expanding the facilities for processing aluminum and copper ores; and (6) establishing a large export network, bringing in new technology and management methods, and encouraging the export of more advanced industrial products and high-precision instruments. In addition to these measures dealing with economic development, the Six-Year Plan also includes programs for social development such as family planning, public housing and urban renewal, pollution control, health insurance, an antipoverty program, and a manpower plan. It also calls for the establishment of an industrial park at Hsin-chu, where National Tsing-hua University is located.

It is still too early to determine the effect of this new plan for economic development. Judging by the performance of the Taiwan economy in 1976, the Six-Year Plan has made moderate progress. For example, according to the report made by the premier to the Legislative Yuan in September 1976, the price increase of both wholesale and retail goods during the period of January-June 1976 has been rather limited: the former registered an increase of 2.06 percent and the latter 3.43 percent in comparison with the previous year. During the same period, exports increased to US$7.1 billion, which is 38.8 percent higher than that of the same months in 1975. Exports exceeded imports by US$125 million, which compares quite favorably with the trade deficit of US$277 million between January and June in 1975. The newest estimation of real economic growth during 1976 is somewhere between 10 and 11 percent. Judging by these records, we may conclude that the
The economy of Taiwan has been able to achieve significant growth with price stability in the past year. It ought to be pointed out, however, that the increment of the capability of the Taiwanese economy and society is not the only concern of the GRC. While growth has been an important goal, distribution or allocation of values also has been a primary concern. The concern can be traced back to the teaching of Dr. Sun Yat-sen, who advocated land reform as a prerequisite for economic development and social justice. Moreover, this emphasis on distribution by the GRC also reflects its determination in building Taiwan into a model province having an appeal to the people of Mainland China where the Chinese Communists preach an egalitarian philosophy yet have not yet been able to deliver anything more than one of the lowest living standards of the world.

Owing to its conscientious efforts toward a more equal society, the government of the Republic of China has achieved significant progress toward equality in land ownership, income distribution, educational opportunities and political participation. First, let us examine the case of land ownership. It has often been asserted that one of the major reasons for the Nationalist defeat on Mainland China was the failure to carry out the land reform program envisaged by Dr. Sun Yat-sen. Since the Chinese Nationalists retreated to Taiwan, a successful and peaceful land reform has been realized on the island. Through a series of policy measures such as the reduction of land rent, sale of public land to the peasants, and ownership of the land by the former tenants, the GRC has by and large achieved its goal of equalization of land ownership on Taiwan.

The effectiveness of the land reform can be measured by the ratio of tenant farmers, semi-self-tilling farmers, and self-tilling farmers. In 1949, the ratio was 39 percent for the tenant farmers, 25 percent for semi-self-tilling farmers, and 36 percent for the self-tilling farmers. After the land reform, the proportion became 10, 12, and 78 percent respectively in 1971. The effect of the redistribution of land can be further illustrated by using a widely used measurement of inequality, the Gini index. As the data in Table 2 indicate, the Gini index for land distribution for Taiwan in 1952 was 0.618. In 1960, the figure was reduced to 0.457, which indicates a much lower level of inequality in land ownership in Taiwan. In comparison to Columbia, India, Mexico, the Philippines, and the U.A.R., Taiwan has the highest equity in the distribution of land in rural areas.
Table 2
Gini Index of Land Concentration in Selected Countries*

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Gini Index (C)</th>
<th>Year</th>
<th>Gini Index (E)</th>
<th>Decline in Gini Index, in Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colombia</td>
<td>1960</td>
<td>0.864</td>
<td>1969</td>
<td>0.818</td>
<td>5.32%</td>
</tr>
<tr>
<td>India</td>
<td>1953-54</td>
<td>0.628</td>
<td>1960-61</td>
<td>0.589</td>
<td>6.14%</td>
</tr>
<tr>
<td>Mexico</td>
<td>1930</td>
<td>0.959</td>
<td>1960</td>
<td>0.694</td>
<td>27.64%</td>
</tr>
<tr>
<td>Philippines</td>
<td>1948</td>
<td>0.578</td>
<td>1960</td>
<td>0.534</td>
<td>7.26%</td>
</tr>
<tr>
<td>Taiwan</td>
<td>1952</td>
<td>0.618</td>
<td>1960</td>
<td>0.457</td>
<td>26.08%</td>
</tr>
<tr>
<td>U.A.R.</td>
<td>1952</td>
<td>0.810</td>
<td>1964</td>
<td>0.674</td>
<td>16.74%</td>
</tr>
</tbody>
</table>


Concomitant with the more equal distribution of land ownership in Taiwan is the increase of educational opportunities and a more equal distribution of those opportunities among different sectors of the population in Taiwan. In 1946 when Taiwan was restored to China, there were only four colleges, 215 middle schools, and 1,130 primary schools on the island. Since then, a phenomenal growth has occurred at all levels of education. The 1972 educational data showed that there were 81 universities and colleges, 842 middle schools, and 2,193 primary schools on Taiwan. The ratio of school-age children and youths in educational institutions at various levels has also witnessed a dramatic increase, with the colleges registering the highest rate of increase.

In addition to the numerical increase in educational opportunities, there are further indications that the opportunities for education have increased substantially for the tenant farmers. According to data released by the Land Institute of Taiwan, the number of former tenant farmer's children attending primary schools has increased 257 percent between 1948 and 1971; those attending middle schools, 2,827 percent; and those enrolling in colleges, 16,820 percent. These facts are made more significant when one realizes that between 1952 and 1971, the population employed in agricultural activities in Taiwan has increased only 128.45 percent.

In addition to land ownership, income distribution is another important measurement of social and economic equality. Simon
Kuznets, a leading economist, has theorized that inequality of income distribution tends to be wide in the earlier phases of growth and then to narrow in the later phases of growth. The Taiwan experience does not conform to this theory. According to data recently released by the Statistical Bureau, DGBAS, of the GRC, the Gini index on income distribution in Taiwan has declined from 0.36 in 1964 to 0.31 in 1975. This compares quite favorably with the records on the Republic of Korea (0.40), India (0.41), Thailand (0.48), and the Philippines (0.45). The same source also reveals, however, that the rural population has a lower income but a more equal distribution. The urban population, on the other hand, has a higher income but a more uneven distribution. In order to rectify the unequal distribution between the urban and rural population, the government of the ROC has made great efforts to raise the income of farmers, for example, by setting guaranteed prices for farm products and by offering large amount loans and grants to stimulate agricultural activities. The government has also tried to reduce the size of the poor sector of the population by launching a series of anti-poverty programs. Reports recently released by Bureau of Social Affairs of the Taiwan Provincial Government show that through various programs, the size of poorest section of the population has been significantly reduced.

Now let us turn to the opportunities for political participation. It should be said at the outset that several factors have complicated the distribution of political power on Taiwan. First, there is the existence of two major provincial groups among the population of Taiwan: the Taiwanese, who constitute about 84.4 percent of the total population of Taiwan, and the Mainlanders, who make up about 13.6 percent. The Taiwanese are further divided into two subgroups: the Min-nan group, originally from Fukien, and the Hakka group, originally from Kwangtung. The former constitutes about 73.72 percent of the total population, and the latter constitutes 12.68 percent.

A second factor that has made distribution of political power in Taiwan more complex was the transplantation of a national elite from Mainland China to Taiwan in 1950. The third factor has been the continuing claim of the GRC to be the government of all China, thus having to maintain a national elite structure on the island. Finally, the existence of a notable disparity in political representation among different provincial groups also poses a problem with respect to distribution of political power on the island.
During the Japanese occupation of Taiwan, from 1895 to 1945, the Chinese on Taiwan had a very limited opportunity for anything remotely related to political activities. The Japanese monopolized all administrative positions, from the Governor-General of the colonial government down to head master of village schools. After the departure of 480,000 Japanese, their political and occupational positions were largely taken over by the Taiwanese, especially those in the smaller cities and villages. Since 1951, provincial elections have been held in Taiwan. Many Taiwanese found an avenue into politics by participating in political activities at the provincial level. Today the overwhelming majority of the provincial assemblymen and women are Taiwanese; and almost all the city mayors and county magistrates are Taiwanese. The governorship of Taiwan is now occupied by Mr. Hsieh Tung-ming, an elder Taiwanese statesman who commands much respect among the local population.

Since 1969, the deadlock of political participation at the national level has been broken. With the holding of supplementary elections in 1969, 1972, and 1975, a sizable number of new members has been added to the three branches of the representative bodies at the national level: the Legislative Yuan, the National Assembly, and the Control Yuan. Looking to the future, the GRC is committed to the enlargement of political participation in Taiwan, particularly for the local Taiwanese and the young. As many governments in Asia have altered their constitutional government after the “Nixon shock,” the determination of the GRC to maintain a constitutional democracy under very trying conditions deserves due credit.

After the examination of problems of growth and equity in the Republic of China, we may now turn to problems of national security. It goes without saying that since 1971 the ROC has experienced increasing difficulties in its external relations. But it is equally true that through various practical measures, the GRC has effectively defeated the attempt of Mainland China to isolate the ROC. In many places where official ties have been broken, alternative mechanisms have been set up to carry out consular and other intersystem relations. Trade between the ROC and states with which the ROC has no formal ties often has increased after the severance of relations. Canada, for instance, stands out as a district example. It must be made perfectly clear that the ROC takes no pride in having only semiofficial or paradiplomatic relations with the majority of the states of the world. Efforts have
been made to restore our ties with the nations of the world or at least to elevate the level of existing relations.

Of all the diplomatic ties with countries of the world, those between the ROC and the United States are considered by the people of Taiwan as the most important, for the United States has been an ally for more than thirty years and has provided the ROC with the generous economic assistance that made the Taiwan "miracle" a reality. Trade between the ROC and the United States exceeds 4.8 billion dollars and is crucial for the continuing growth of Taiwan's economy. It is most disturbing, therefore, for the government and the people of the Republic of China to see a long-time friend and ally moving toward the so-called "normalization" with the Mainland. Today the ROC has an embassy in Washington, D.C. and the Chinese Communists have a Liaison Office there. It is not a situation in which the people of the ROC feel comfortable. But because the ROC treasures so much the close ties built over many decades and considers these ties so important to our security and prosperity, the situation is reluctantly tolerated.

With Mainland China in constant turmoil and its leaders humiliated one after another in successive purges, it is very difficult for the people of the ROC to understand why some people in the United States are so eager to push for further "normalization" with the Chinese Communists who are busy trying to put their internal affairs back to normal. One may point to the Soviet factor. It should be remembered, however, that the Russians themselves have tried to control Mainland China through military and economic aid, only to be chased out of China and to become the primary target of Chinese Communist verbal assaults. Without thousands of miles of common boundaries and a common ideological base similar to that between the Soviet Union and Communist China, how can the United States develop any kind of influence over the communist political system, which still produces huge amounts of propaganda attacking the United States?

Still others point out that only Japan is important to the United States policy in Asia. As a frequent traveller to Japan, this author can testify that not all the Japanese leaders and scholars of international relations enjoy the "honor" of being the nation singled out by the United States as the latter's only important ally in Asia. Without the smaller trilateral relations between the Republic of Korea, Japan and the Republic of China, the larger trilateral relations between Europe, United States and Japan may soon become devoid of substantive meaning, for without South
Korea and the Republic of China as its two fronts, Japan will have to reassess its international relations and defense postures.

The Republic of China has adopted a very cautious and straightforward policy to safeguard its security. The ROC government has repeatedly declared that under no circumstance will it enter into any negotiation with the Chinese Communists, that the ROC will stay in the democratic camp, and that it will not make nuclear weapons. It is a policy of principles, prudence and pragmatism, for doing any of the three things could create immediate danger in the ROC's external and internal environments. According to the assessments of most military specialists, the ROC is fully able to defend herself against the Chinese Communists. But logistic support in terms of advanced weaponry from the United States is important. Furthermore, the likelihood of a hot war in the Taiwan Straits is not high in the near future. Nevertheless, the government and the people of the ROC do not like to take chances. For this reason, substantial efforts have been made to achieve self-sufficiency and self-reliance in the production of weapons and weapon systems. To the extent that it will not deter further economic growth, funds have been allocated to further strengthen the ROC's defense capability and to develop new military equipment.

In the final analysis, a country's security lies in the faith, confidence and determination of its own people. The people of the Republic of China believe that they have a model of development and modernization that is much more effective and much more humane than the one used by the Chinese Communists on Mainland China. They believe that, given the opportunity of free choice, the people of Mainland China will choose the system successfully tried out in Taiwan. Thus, the security in the minds of the people of the ROC grows out of their conviction of the superiority of their model of modernization which has brought to them prosperity, equality, and the maintenance of their cultural heritage in an industrial society. It was with this conviction that the people of the ROC have succeeded in weathering many storms since 1971. They are determined to prove to the world that in an international system beset with power politics, their course of action will prove to be not only morally right but politically wise.1

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Dr. Chiu thanked Dr. Wei for presenting the paper and then invited Mr. M. T. Wu, Director of Chinese Investment and Trade Office in New York City, to present his paper on "Investment and Trade Climate in the ROC." Mr. Wu cited the factors contributing to the ROC's growth and discussed investment incentives and prospects of trade. He said the new emphasis now will be on upgrading technology.

[The following is the text of Mr. M. T. Wu's paper.]

INVESTMENT AND TRADE CLIMATE IN THE REPUBLIC OF CHINA

MEI-TSUN Wu*

Taiwan is a roughly oval-shaped island, about 240 miles long from north to south and 98 miles wide at its broadest point. Its total area is 14,000 square miles, which is a little less than that of Connecticut (10,577 square miles) combined with Maryland (5,099 square miles). Its population is approximately 16.5 million.

The achievement in economic development in the past two decades is a record of which the Republic of China (ROC) can justly be proud. Taiwan's living standard is presently one of the highest in Asia, second only to Japan.

The factors which brought about this successful economic development include the Land Reform Program carried out in the early 1950s, the consecutive Four-Year Economic Development Plans, the effective utilization of U. S. aid from 1950 to 1965, the rapid expansion of international trade, and the annual inflow of foreign and overseas Chinese capitals for industrial development.

I. INVESTMENT

To welcome foreign investment has been and will continue to be the policy of the government of the Republic of China. Promulgation of the Statute for Encouragement of Investment in 1960 marked a concrete advance in giving incentives to such investment. Since this law came into force, the annual inflow of foreign private capital has risen sharply. For the nine years from

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1952 through 1960, the total amount of foreign investment approved was US$35.6 million, averaging less than US$4 million per year. Since the promulgation of this statute, coupled with the continuous improvement of the investment climate, not only has the influx of foreign capital increased rapidly, but the formation of domestic capital has also increased, at an even faster rate.

For the ten years between 1961 and 1970, approved foreign investments averaged US$52.4 million per year, 13 times that of the initial nine-year period. During the latest six years from 1970 to 1976, the average reached US$164.5 million per year, 41 times that of the initial nine-year period.

The total amount of foreign investment approved in the past 25 years was US$1,547 million, of which 29% was from overseas Chinese and 71% from foreign nationals. Of this 71%, direct investment from the United States accounted for 31.8%; from Japan, 16%; from Europe, 12.6%; and 10.6% from other areas. Nearly half of the investments from Europe and other areas were made by subsidiaries or affiliates of American corporations in those areas. Hence, the United States is not only the ROC's largest trading partner but also the biggest source of the foreign investment capital that has gone into the ROC's industrial development.

A. Foreign Sources of Investment Capital in Support of Economic Development

In the process of Taiwan's economic development, domestic capital has come mainly from the private sector, followed by the government and public enterprises. Foreign capital is largely composed of U.S. aid, loans from international institutions and foreign private organizations, and investments by foreigners and overseas Chinese. Common to almost all developing countries, the supply of domestic capital at the initial stage of economic development was very limited, and had to be supplemented by foreign capital. Not until a country's economy has reached a certain level of development will domestic capital play a predominant role. The case is the same with Taiwan.

1. U.S. Aid

In the fifteen-year period between 1950 and 1965, the United States injected into Taiwan's economy an average of US$100 million a year. These funds were used to import large quantities of daily necessities, agricultural and industrial raw materials, and
industrial plants and equipment. At the same time, the local currency proceeds generated from the sale of U.S. aid commodities were used for the financing of various social and educational projects.

The U.S. aid during that period made up more than 90% of the deficits in Taiwan’s international balance of payments, and provided one-third of its capital investments.

**a. The Initial Phase.** U.S. aid was the main source of Taiwan’s investment capital in this period because of the limited supply of domestic capital resulting from low income, meager savings and a lack of motivation and ability on the part of the private sector to make investments. Although the ratio of fixed investment to the GDP (gross domestic products) averaged only 16% from 1953 to 1960, Taiwan still had to rely heavily on U.S. aid. The amount of U.S. aid to Taiwan ranged from US$80 million to US$120 million per year in the ten years from mid-1950 to 1960. It accounted for as much as 40% of Taiwan’s gross domestic capital formation. It was also instrumental in stimulating the flow of domestic capital to economic development projects. In the initial phase of Taiwan’s economic development, therefore, U.S. aid made immense contributions to increasing the commodity supply, stabilizing the economy, and laying the foundation for further economic progress in subsequent years.

**b. The 1960s.** The 1960s were years of rapid growth for Taiwan’s economy. Gross capital formation went up sharply and reached 26% of the GDP in 1970. The share of U.S. aid as a source of investment capital declined and that of domestic capital increased. Moreover, prior to its termination in 1965, U.S. aid had not only been reduced but also shifted increasingly from grants to loans.

**c. The Termination of U.S. Aid.** Since the termination of U.S. aid in 1965, there has been a marked change in the sources of investment capital, and the importance of domestic capital has greatly increased. Furthermore, an increasing amount of investment capital has been obtained from abroad in the form of foreign and overseas Chinese investment as well as loans from international financing institutions and private organizations.

The Taiwan public was once apprehensive that the termination of U.S. aid would be a blow to Taiwan’s economic growth. In fact, however, the government of the Republic of China had
realized long before the termination of U.S. aid that this source of financing could not remain available indefinitely. Therefore, timely efforts were made to improve the investment climate for a self-sustaining economy.

2. Foreign Loans

Since the 1960s, Taiwan has secured foreign loans from various international organizations and foreign countries. Up to June 1976, the total amount of loans stands at US$2 billion from:

1. International Bank for Reconstruction and Development (IBRD or the World Bank)
2. International Development Association
3. Asian Development Bank
4. U.S. Export-Import Bank

These loans are used mostly to help develop Taiwan's infrastructure projects; a small portion is passed on as loans to private industrial enterprises. For years, Taiwan has had a reputation in the international money market for its consistent ability to make repayments on schedule.

B. Investment Environment

When investors search for investment opportunities, first of all, they look for places having political, social and economic stability so as to ensure the security of their capital. These requirements are abundantly met in the Republic of China. There are a number of factors contributing to Taiwan’s investment environment.

1. Political and Social Stability

Political stability is one of the Republic of China’s attractive features. The government is doing everything possible to improve the standard of living of the people through further development of its economy, and at the same time to provide a more equitable distribution of wealth.

2. Significant Economic Development

Economic policies adopted by the government of Republic of China brought about significant results in economic development. From 1951 to 1960, emphasis was placed primarily on development of agriculture and establishment of import-substituting light
industries. From 1961 to 1970, stress was laid on industrialization, along with diversification of agricultural production and promotion of agricultural and industrial exports. From 1971 to the present, attention has been devoted to expansion of foreign trade, promotion of agricultural modernization and industrial sophistication.

3. **High Quality of Labor**

Out of Republic of China’s current population of about 16.5 million, the existing labor force totals over 6 million. In addition, there is a potential labor force of over 3 million, consisting of such people as students and housewives who may or may not work as they wish. There is also a supply of 180,000 to 200,000 new workers entering the labor market every year, mainly young people reaching the age of 15 who wish to seek employment.

Workers in the Republic of China are intelligent, hard-working, well-disciplined and highly adaptable. No labor strike has ever taken place, and the unions are encouraged to cooperate with the management in promoting the welfare of their members.

In recent years, more emphasis has been put on vocational and occupational training rather than academic studies. Furthermore, education in colleges and universities has lately become more closely geared to the needs of economic development.

4. **Improvement in Infrastructure**

Because of Taiwan's rapid economic development, the existing facilities, though improved from year to year, are inadequate to meet the ever-increasing demands of growing industry and expanding trade. To improve the situation, the government is implementing the following projects.

A modern freeway, linking the principal cities of Keelung, Taipei and Kaohsiung now under construction and to be completed in 1978. This new freeway, together with the existing highway network, will provide fast door-to-door transportation.

A new railroad connecting the relatively less developed eastern part of the island to the more developed western part, for the purpose of accelerating the development of the eastern coast area.

Electrification of the existing railway trunkline on the west coast for more efficient rail service.

Construction of a new international harbor near Taichung in central Taiwan.
Building of a new harbor in the north to serve as an auxiliary to the congested Keelung harbor.
Opening up a new modern international airport near Taipei.

5. Electricity and Water Supply
Public water and electricity are supplied almost everywhere in Taiwan. The rates for such public utilities are relatively low.

6. Industrial Districts
In order to facilitate the acquisition of land by investors for industrial purpose, the government of the Republic of China has designated land at about 80 sites throughout Taiwan as industrial districts. These sites are all easily accessible by rail and highway, and are located in areas with adequate labor supply. Such new sites are constantly being designated. At the present, Taiwan has 40 developed industrial estates.

7. Export Processing Zones
There are three export processing zones, namely, the Kaohsiung Export Processing Zone, the Nantze Export Processing Zone and the Taichung Export Processing Zone, established in Taiwan for the purpose of facilitating investments in industrial production for export.

In addition to the industrial park facilities such as roads, water and power supply, and sewage systems, the export processing zones contain ready-built standard factory buildings which can be purchased on installment payments. Investors may also construct their own factory buildings in the zones. Land in such zones is owned by the government and leased to export manufacturers according to the provisions of the land law.

In addition to the public utilities generally provided in an industrial estate, the export processing zones have extra facilities such as the services provided by the Export Processing Zone Administration, branch offices of customs, tax collection offices, banks, post offices, business offices of the telecommunications administration, service stations of the Taiwan Power Company, airline business offices, and service stations of the public employment center.

By locating plants in export processing zones, manufacturers can be exempted from payment of import duties, commodity taxes and business taxes. Furthermore, the procedures concerning
imports and exports, settlement of foreign exchange, customs inspection and investment application are all handled within the zones, with minimal time and effort.

C. Investment Incentives

Substantial investment incentives are incorporated in the investment laws of the Republic of China. The Statute for Investment by Foreign Nationals, promulgated in July 1954, was enacted specifically for enhancing the inflow of foreign capital and protecting the interests of foreign investors. Its major features are:

1. The right to repatriate capital as well as dividends and interest is guaranteed.

The foreign investor may each year apply for foreign exchange settlement against 15% of the total amount of his invested principal two years after the completion of the investment project.

He may also apply for foreign exchange settlement yearly against dividend and interest income from his investment.

2. Protection against government expropriation or requisition is also guaranteed.

As long as the foreign investor continuously holds more than 51% of the total capital of the invested enterprise, the enterprise shall not be subject to government requisition or expropriation for 20 years after commencement of business.

If the investor holds and maintains less than 51% of the total capital of the invested enterprise, he shall be reasonably compensated if the government, for reasons of defense needs, requisitions or expropriates the enterprise.

3. The enterprise invested in by foreign nationals shall be accorded the same treatment as is accorded to the same type of enterprise operated by Chinese nationals. In other words, there is no discrimination between enterprises invested in by foreign nationals and those invested in by Chinese nationals.

4. Full ownership by foreign nationals is permitted under the statute. Only when the enterprise is local-market oriented or poses a threat to established local producers will the domestic capital participation be deemed in order. However, the extent of such participation is negotiable.
The Statute for Encouragement of Investment was first promulgated in 1960 and has since been amended several times. Among the incentives granted by the statute, potential investors are perhaps concerned most with the exemption of import duty and income tax.

1. **Import Duty**

Exemption of deferred payment of import duty is made available to foreign and domestic investors alike for importation of capital equipment. The benefit is offered in three alternative forms:

a. For the setting up or expansion of an encouraged industry, customs duty on imported capital equipment is completely waived under specific categories and criteria as prescribed by the government.

b. A new investment or an investment in an existing enterprise belonging to one of the nine essential industries with production wholly for export is entitled for a five-year deferment for payment of import duty on capital equipment. The nine essential industries are (1) basic metals, (2) electrical manufacturing, (3) electronics, (4) machinery manufacturing, (5) shipbuilding, (6) chemicals, (7) textile dying and finishing, (8) mining and (9) organic fertilizers.

c. For an investment not belonging to any of the industries under government encouragement and not exporting all of its products, import duty on capital equipment may be paid by installments if the amount of duty involved exceeds NT$500,000 (equivalent to US$13,200).

2. **Income Tax Benefits**

Regarding income tax benefits, the recently amended Statute for Encouragement of Investment offers the following:

a. **Profit-Seeking Enterprise (Corporate) Income Tax.** The normal rate for all profit-seeking enterprises is levied at 35% of net profit. For productive enterprises, the rate is lowered to 30%. To encourage the setting up of new capital-intensive or technology-intensive industries, the rate is further reduced to not more than 22%.

All newly established productive enterprises eligible for government encouragement are given the choice of either a five year tax holiday or accelerated depreciation of fixed assets.
For expansion of existing government-encouraged productive enterprises, the investor may enjoy either a four year tax holiday or accelerated depreciation of fixed assets with respect to the new investment.

**b. Withholding Tax.** The standard rate of consolidated personal income tax for local residents starts at 6% and progresses up to 60% when the consolidated personal income exceeds NT$2 million (equivalent to US$52,600). For nonresidents, a withholding tax of 35% is levied on the amount payable or distributable.

For nonresident foreign investors whose investment has been approved by the Chinese government, the withholding tax is reduced to 20% on dividends distributed. However, if the taxpayer is required to declare and pay income tax on his income from Chinese sources to his home government, then the withholding tax rate is further reduced to 15%.

**c. Special Encouragement for Reinvestment.** Reinvestment with undistributed earnings for expansion of production facilities is specially encouraged. The withholding tax on share dividends can be deferred until the transfer of the shares obtained through reinvestment. This measure has been most effective in the development of industry in the Republic of China and is also most welcome by all investors, both foreign and domestic.

**3. Other Tax Benefits**

a. Deed tax is reduced by 50% when acquiring fixed assets for productive use.

b. House tax is also reduced by 50% for buildings used for productive purposes.

c. For stimulating exports, export transactions are exempted from business tax. Stamp tax for export invoices is reduced by 75%.

**D. Investment Opportunities**

The Republic of China is a developing country engaged in industrialization. Investment opportunities in the ROC cover a wide range. Local demands for new products, raw materials and intermediates are steadily on the increase. These growing demands justify the setting up of new ventures for local production. The demands range from basic metals, machinery, electronic and electric products to petrochemicals. It is not feasible
to itemize them here. In a word, all investment projects conducive to further development of industry and commerce are welcome.

For the inducement of technology transfer to promote industrial development, the Statute for Technical Cooperation was promulgated in 1962, providing guidelines for the payment of expenses and royalties for technical expertise.

Technical know-how and patent rights can also be used to invest at 15% and 20% of total equity, respectively.

Needless to say, the study of investment opportunities constitutes an important prelude to investment promotion. The Industrial Development and Investment Center of the Ministry of Economic Affairs of the Republic of China has compiled a booklet entitled "Industrial Investment Opportunities in Taiwan, Republic of China" in which there are enumerated more than 120 branches respectively under 10 major industries for reference of prospective investors.

There are, of course, numerous other investment opportunities stemming from the continued development process. In many cases, certain industries viewed yesterday as not feasible do become feasible in the course of economic development.

E. Investment Services

Because overseas Chinese and foreign investors are frequently unfamiliar with Chinese investment laws and other pertinent laws and regulations, and with the required investment procedures, the government of the Republic of China has established the Industrial Development and Investment Center (IDIC) under the Ministry of Economic Affairs to provide all necessary services to overseas investors.

Another governmental body, the Investment Commission, is primarily a screening body that handles all investment applications. The commission, composed of ten members of vice-ministerial level from various government organizations, also issues duty-free or tax-holiday certificates and import licenses, and serves the investors in a number of other ways as a one-step service agency.

The Export Processing Zone Administration provides services for investors and screens investment applications intended for the export processing zones. All relevant government agencies, including customs and banks, have branches in the zones for the convenience of the investors located in the zones.
American investors who are interested in obtaining detailed information on making investments in the Republic of China are welcome to contact any of the following agencies:

Chinese Investment & Trade Office  
515 Madison Avenue  
New York, N.Y. 10022  
Tel: 212-752-2340

Trade Representative Office  
Consulate General of the Republic of China  
222 North Dearborn Street  
Chicago, Ill. 60601  
Tel: 312-332-2535

Office of Trade Representative  
Consulate General of the Republic of China  
Suite 1060  
3660 Wilshire Blvd.  
Los Angeles, Ca. 90010  
Tel: 213-380-3644

F. Future Prospects

Over the 24 years since 1953, six Four-Year Plans have been launched by the government of the Republic of China. Under these plans, Taiwan has experienced a sustained and rapid economic growth. The worldwide economic recession drastically altered the basic economic conditions of the Republic of China, to such an extent that the Sixth Four-Year Plan was no longer practical. At the same time, ten major construction projects have been vigorously pushed forward and their completion will automatically have a profound impact on the economic development in the Republic of China. Because of these facts, the Chinese Government decided to drop the Sixth Four-Year Plan, which was in its third year of implementation in 1975, and replaced it with a new Six-Year Plan starting from 1976. Initially, the plan will focus on the implementation of the on-going projects. In a later stage, it will spell out the guidelines and programs to be pursued after the completion of the ten major projects in order to usher the economy into a higher stage of development.

The new Six-Year Plan envisions an average annual rate of growth of 7.5% in terms of gross domestic product, and stresses the need for modernization of the economic structure through the
development of heavy and chemical industries, such as petrochemicals, steel, electrical and nonelectrical machinery, and precision products, as well as sophisticated labor-intensive industries. These undertakings will require massive inputs of capital and know-how. For the Six-Year Plan period, an estimated US$36.6 billion is needed for investment. Most of this amount will come from domestic savings. The remainder, amounting to US$330 million a year or 5.4% of the total, will have to come from external sources, ideally together with the latest managerial and technological know-how which are also essential to the modernization of the ROC economy. Foreign capital will therefore continue to play a very important role in the years ahead.

To encourage the inflow of foreign capital, the ROC government will continue to provide incentives and to improve investment climate including such infrastructural facilities as electric power and transportation.

In attracting the inflow of foreign investment capital, the following areas deserve priority consideration:

1. Where investment creates greater value-added through the introduction of modern methods of production.
2. Where the investment significantly improves the quality of local products or reduces their manufacturing costs.
3. Where the investment is made for significant import-substitution.
4. Where the investment has a strong linkage effect; and finally,
5. Where the investment contributes significantly to the expansion of exports.

II. FOREIGN TRADE

The major force behind the rapid economic growth in the Republic of China has been the expansion of international trade. Of all the sectors of the economy of the Republic of China, foreign trade has shown the most dramatic growth. While total trade was still in the neighborhood of one-third of a billion US dollars throughout the 1950s, it amounted, in 1976, to as much as US$15.67 billion, 8.08 billion for exports and 7.59 billion for imports. The Republic of China has enjoyed a consistent trade surplus since 1974.

In the decade between 1964 and 1973, the Republic of China's export increased from US$860 million to US$8.3 billion.
From 1970 to 1974, the Republic of China had enjoyed a steadily growing trade surplus. On the basis of customs clearance, the Republic of China’s total imports in 1974 amounted to US$7 billion and total exports US$5.64 billion. The substantial deficit registered in 1974 was largely due to the worldwide recession and sharply increased cost of such essential imports as crude oil, grains and industrial raw materials.

The Republic of China’s progress in industrialization in recent years could be reflected in export and import compositions; industrial products now account for almost 85% of the total exports, while in 1952, they made up only 8%.

In 1974, textile products remained as Republic of China’s top dollar earner. The second major export item was electrical machinery and appliances. Machinery and metal products came next. The other principal export items were plywood, lumber products, and plastics and plastic products.

The Republic of China, with its economy characterized as a typical island economy, has to import large quantities of raw materials and capital goods to sustain a steady economic growth. Machinery and tools, most of these imported to meet the needs of the ten on-going construction projects, topped the import list of 1974, followed by basic metals, electrical machinery and supplies, crude oil, chemical products and transportation equipment.

A. Recovery from the Recession

The big recession of the free world economy that came in 1974 also hit the Republic of China hard. The Republic of China’s difficulty is that its trade pattern is similar to that of a developed country although the Republic of China is still a developing nation.

Like all other petroleum-importing countries, both trade and the balance of payment of the Republic of China suffered severe blows in the year of 1974. On January 26 of that year, the government of the Republic of China lifted all subsidies on grain imports, etc. Prices jumped from 25% to 60% in the ensuing weeks but have held that line ever since.

Since May 1974, the government of the Republic of China has taken various steps to stimulate the export trade. Among the important steps are the Fourteen-point Fiscal and Economic Program launched on November 14, 1974 and the Ten-point Financial and Economic Plan announced on December 9, 1974. Through adjustment in taxation and reforms in economic
regulations, these remedial steps helped set the stage for a slow but steady revival of export trade.

However, it must be pointed out that the huge trade deficit of US$1.33 billion in 1974 was largely the result of policy implementation. In order to stabilize prices in the country, the government had to purposely suspend or curtail the export of many essential commodities to ensure an adequate supply for domestic market. On the other hand, for facilitating rural reconstruction and expediting the ongoing infrastructure projects, the importation of agricultural and industrial raw materials and capital equipment was substantially increased.

The export slump also led to a decline of the economic activities of the Republic of China as a whole. Therefore, there appeared on the economic scene typical signs of recession: sharp drop of purchasing power, rise of unemployment, accumulation of inventories, the simultaneous increase of interest rates and commodity prices.

Fortunately, the steps for countering the recession paid off. The economy of the Republic of China started to pick up from 1975. In February 1975, both trade and the balance of payments of the Republic of China began to climb and by May of that year, the Republic of China successfully left the recession behind.

In 1975, the Republic of China exported US$5.31 billion in goods and services, but imported US$5.95 billion, thereby suffering a small deficit of US$640 million. In 1974, the figure was US$1.33 billion.

B. The 1976 Trade Performance

The Republic of China’s foreign trade volume in 1976 totaled US$15.67 billion, representing an increase of US$4,409.5 million or 39.2% over 1975. According to customs statistics, in 1976, exports totaled US$8,080 million, up 52.2%, against imports, US$7,590 million, up 27%, resulting in a surplus of US$490 million. During 1976, the Republic of China registered trade surpluses with 13 of 20 major trade partners and deficits with seven others. A breakdown of the 13 countries and areas with which the nation registered surpluses is given in Table 1. A breakdown of the seven countries and areas with which the nation suffered trade deficits is given in Table 2.
Table 1. 1976 Trade Surpluses

<table>
<thead>
<tr>
<th>Country</th>
<th>Exports</th>
<th>Imports</th>
<th>Surpluses</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. U. S. A.</td>
<td>3,010</td>
<td>1,802</td>
<td>1,208</td>
</tr>
<tr>
<td>2. Hong Kong</td>
<td>607.6</td>
<td>100.6</td>
<td>507</td>
</tr>
<tr>
<td>3. Canada</td>
<td>312.1</td>
<td>56</td>
<td>256.1</td>
</tr>
<tr>
<td>4. Singapore</td>
<td>207.2</td>
<td>38</td>
<td>169.2</td>
</tr>
<tr>
<td>5. West Germany</td>
<td>416.1</td>
<td>253.7</td>
<td>162.4</td>
</tr>
<tr>
<td>6. The Netherlands</td>
<td>159.3</td>
<td>55.1</td>
<td>104.2</td>
</tr>
<tr>
<td>7. Panama</td>
<td>61.7</td>
<td>5.5</td>
<td>56.2</td>
</tr>
<tr>
<td>8. Philippines</td>
<td>76.8</td>
<td>31.2</td>
<td>45.6</td>
</tr>
<tr>
<td>9. Australia</td>
<td>223.9</td>
<td>181</td>
<td>42.9</td>
</tr>
<tr>
<td>10. Belgium</td>
<td>56.1</td>
<td>34.6</td>
<td>21.5</td>
</tr>
<tr>
<td>11. Indonesia</td>
<td>220.1</td>
<td>199</td>
<td>21.1</td>
</tr>
<tr>
<td>12. Italy</td>
<td>61.4</td>
<td>54.1</td>
<td>7.3</td>
</tr>
<tr>
<td>13. France</td>
<td>63.3</td>
<td>58.3</td>
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</tr>
</tbody>
</table>

Unit: US$1 million.

Table 2. 1976 Trade Deficits

<table>
<thead>
<tr>
<th>Country</th>
<th>Exports</th>
<th>Imports</th>
<th>Surpluses</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Japan</td>
<td>1,090.3</td>
<td>2,442.4</td>
<td>1,352.1</td>
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<tr>
<td>2. Kuwait</td>
<td>108</td>
<td>682.3</td>
<td>574.3</td>
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<td>3. Saudi Arabia</td>
<td>124.7</td>
<td>410.6</td>
<td>285.9</td>
</tr>
<tr>
<td>4. Malaysia</td>
<td>53.5</td>
<td>105.5</td>
<td>52</td>
</tr>
<tr>
<td>5. Thailand</td>
<td>75.7</td>
<td>90.3</td>
<td>14.6</td>
</tr>
<tr>
<td>6. Korea</td>
<td>72.8</td>
<td>83.5</td>
<td>10.7</td>
</tr>
<tr>
<td>7. United Kingdom</td>
<td>159.2</td>
<td>165.8</td>
<td>6.6</td>
</tr>
</tbody>
</table>

Unit: US$1 million.

The Republic of China's two-way trade with other areas totaled US$1,659.7 million with a surplus of US$179.3 million in 1976.

An Analysis of foreign trade of the Republic of China in 1976 is as follows:

1. Export Composition

With the transformation of the economic structure, the composition of the Republic of China's exports and imports has shown a marked change. Agricultural products such as rice and sugar accounted for an overwhelming 86% of the total exports in 1952. In 1976, the main exports were textiles, electronics, electrical appliances, machinery and metal products.
In 1976, industrial products were still the leading export of the Republic of China, accounting for 87.7% of the total export. The export of processed agricultural products was the next, being 7.4% of the total export, and the agricultural products accounted for only 4.9% of the total.

Industrial products exported from the Republic of China in 1976 included 53 sets of complete machinery plants, of which 10 sets were for manufacturing PVC products, 13 for paper making, and three for cement manufacture.

Industrial goods exported from the Republic of China with higher export volumes in 1976 were: Textile products, worth US$2,475.8 million, accounting for 30.6% of the nation's total exports and representing an increase of 53% over the previous year. Exports of electrical machinery amounted to US$1,269.6 million, accounting for 15.7% of the export total, up 71.3%. Plastics and plastic products amounted to US$571.8 million, representing 7.1% of the export total, up 55.1%. Machinery and total products were worth US$566.8 million, 7% of total exports, up 53.7%. Wooden products and furniture valued at US$534.8 million, 6.6% of the total, up 61.8%. Exports of transportation equipment totaled US$194.3 million, 2% of the total, up 65.6%. Exports of refined petroleum products totaled US$122.4 million, 1.5% of the total, up 125.4%.

2. Import Composition

In the early 1950s, textiles, agricultural products, and fertilizer made up over half of total imports of the Republic of China, while in 1976, agricultural and industrial raw materials constituted 63% of total imports of the Republic of China, while capital goods made up 30.7% and consumer goods 6.3%.

To meet the domestic production and construction requirements, machine tools have been imported in large quantities in recent years. In 1976, the import value of major manufacturing equipment totaled US$4,614.9 million, topping all other items. This amount was 60.8% of total import value. Next were major primary products. The import value of this item was US$1,860.8 million or 24.5% of the total import value. Machine tools and crude petroleum came next with total import value at US$1,187.8 million and US$1,050.9 million, respectively. Still next in the descending order of their values were electrical machinery and apparatus, chemicals, basic metals and transportation equipment.

For such agricultural and forestry items as soybean, corn, wheat, lumber and raw cotton, their import values either
increased or decreased much depending on the price fluctuations in the world market and the level of the stockpiled inventories carried over from 1975.

C. Trade with the United States

Close friendship and strengthened bilateral economic ties have fostered rapid growth in the trade volumes between the United States and the Republic of China in recent years. In 1964, the two-way trade volume was only US$220 million. After approaching the US$1 billion mark in 1970, it hit a record high of US$3,716 million in 1974. In spite of the world recession, the total trade between the two countries in 1975 still reached US$3,474 million, or 30.9% of the aggregate value of the Republic of China’s foreign trade.

The United States retained its position as the largest market for the Republic of China’s products, taking US$3,010.7 million or 37.3% of the Republic of China’s total exports for the year. The Republic of China’s imports from the United States in 1976 amounted to US$1,802.3 million, or 23.3% of the total imports.

The Republic of China is now the eleventh largest supplier and the fifteenth largest customer of the United States. And the Republic of China is the largest trade partner of the United States in the Far East after Japan.

During the last few years, the Republic of China’s leading exports to the United States were:

1. Electrical and electronic products, including TV sets and radios
2. Textile products
3. Manufactured products
4. Plastic articles
5. Plywood and rattan products
6. Metal products
7. Machinery

The Republic of China’s imports from the United States were:

1. Agricultural products
2. Electronic parts
3. Machinery
4. Cotton goods
5. Iron and steel
In this overall picture of the trade relations between the Republic of China and the United States, however, there is one problem which has been causing careful reflection and thoughtful scrutiny in both the Republic of China and the United States. The problem is one of imbalance.

The Republic of China has in recent years taken a series of steps to enhance the reciprocity of trade and is doing its utmost to improve its trade relations with the United States.

One of the most important remedial measures the Republic of China instituted in 1973 was a “Buy American” program. A special trade mission was sent to the United States from Taiwan in that year. The mission, after scouting the various industrial and agricultural centers, signed a series of long-term contracts to buy US$750 million worth of American products, including 5.5 million metric tons of grain, over the next three years.

Again in 1976, another grain purchase mission from Taiwan successfully concluded negotiations and signed an agreement with nine American suppliers for the supply of soybeans, wheat, corn and barley totaling 10.2 metric tons for the next five years starting July 1, 1976 and worth US$1.5 billion at current prices.

On the other hand, the government of the United States has also taken steps to further United States trade with the Republic of China. For the express purpose of promoting the sale of American goods in Taiwan, the United States Trade Center, the third in Asia and fourteenth in the world, was officially dedicated on March 18, 1974.

The trade between the United States and the Republic of China is bound to keep rising for the following reasons:

1. The plants and equipment needed in the development of capital- and technology-intensive industries in Taiwan will most probably have to be purchased from a few highly industrialized nations, and the United States is surely among them. Such sophisticated plants and equipment can not as yet be produced in Taiwan locally, nor could they be readily imported from other countries. For such items as nuclear power generators, aircraft and computers, Taiwan will have to rely on countries like the United States.

2. As the standard of living rises rapidly in Taiwan, the demand for luxury goods in all aspects of daily living from home.
decoration to recreational facilities will certainly increase rapidly. This can be a growing and attractive market for the U.S. products, especially consumer durables.

3. For the same reason, the Republic of China will need more American agricultural products. The United States, as the leading food grower and cotton exporter in the world, will be the first country the Republic of China will turn to for these commodities.

4. Another certainty in US-ROC trade is the latter's growing dependence on the United States for industrial know-how. The modernization of the economic structure and infrastructural facilities in Taiwan calls for large outlays of capital. Advanced technology in such areas as electronics and petrochemical industries will be a crucial factor in the next stage of the industrial development in Taiwan. Thus, the Republic of China will become a good customer of the American industrial equipment and technology.

D. Trade Environment in Taiwan

1. Foreign Trade Administration

a. The International Trade Commission acts on the following matters:

1. Approval of and amendment to trade regulations;
2. Approval of measures for import of essential and staple commodities;
3. Approval and planning of the use of funds for the promotion of exports;
4. Approval of regulations governing essential imports and exports not involving exchange settlement;
5. Approval of regulations governing imports and exports by processing industries;
6. Approval of export program and promotional measures;
7. Approval of and amendment to the classification of import and export commodities;
8. Other important matters related to trade.

b. Board of Foreign Trade. The functions of the Board of Foreign Trade are:

1. Screening of applications for export of agricultural, forestry, livestock, mining and industrial products and issuance of export licenses;
2. Screening of applications for import of various kinds of commodities and issuance of import licenses;
3. Screening and supervision of imports approved for overseas and foreign investment projects;
4. Formulation of an “Annual Import and Export Program”;
5. Studying and making recommendations for improvement in packaging and quality of export products;
6. Studying and making recommendations regarding export standards and inspection;
7. Regulation of the trading activities of traders (importers and exporters), local agents of foreign suppliers and other exporters/importers (e.g., manufacturing plants);
8. Research and development relating to international trade;
9. Other matters relating to international trade.

c. Semi-official or Private Organizations for Export Promotion.

1. China External Trade Development Council
2. China Productivity Center
3. Taiwan Handicraft Promotion Center
4. Chinese Display Center
5. Chinese Products Promotion Center

d. Government Trading Agencies.

1. Central Trust of China
2. Taiwan Supply Bureau

e. Overseas Agencies concerned with Trade Promotion.

1. Economic Offices and Trade Missions:

Office of Economic Counselor
Embassy of the Republic of China
4301 Connecticut Ave. N.W. Suite 420
Washington, D.C. 20008 U.S.A.

Office of Economic Counselor
Embassy of the Republic of China
83, 2-Ka, Myong-dong, Chung-Ku
Seoul, Korea

Office of Economic Counselor
Embassy of the Republic of China
No. 503/504 Maghrabi New Building
New Street
Jeddah, Kingdom of Saudi Arabia

Bureau de Conseiller Economique
Ambassade de la Republique de
China
Imm. S.M.G.L. BLD-11, AV. BARTHE
Abidjan, Ivory Coast
Contemporary Asian Studies Series

Office of Commercial Attache
Consulate-General of the
Republic of China
Suite 605, The Trust Bank Center
56, Eloff Street, Johannesburg
Republic of South Africa

Office of Commercial Attache
Embassy of the Republic of China
Between the First and Second Circle
of Jabal Amman, Amman, Jordan
P.O. Box 2719 Amman, Jordan

Oficina del Agregado Comercial
Embajada de la Republica de China
Edificio Pan America
2 Piso, 6 Av., 11-43, Zona 1,
Guatemala City, Guatemala, C.A.

Oficina del Agregado Comercial
Embajada de la Republica de China
Edificio Corecol.
Calle 71 No. 11-10 5° Piso
Bogota, Colombia

Office of Trade Representative
Consulate General of the
Republic of China in Los Angeles
3660 Wilshire Blvd., Suite 1060
Los Angeles, California 90010
U.S.A.

Trade Representative
Chinese Consulate-General
222 N. Dearborn Street
Chicago Ill., 60601 U.S.A.

Chinese Investment & Trade Office
515 Madison Avenue
New York, N.Y. 10022 U.S.A.

2. Overseas Representatives of China External Trade Development Council:

CETDC Representative's Office in San Francisco
604 Commercial St., San Francisco, Calif. 94111, U.S.A.

Officina Comercial de Taiwan
Av. R. S. PENA 636, 8
Buenos Aires, Argentina

CETDC Representative's Office in Indonesia
C/O Chinese Chamber of Commerce to Jakarta, P.O. Box 2922, Jakarta, Indonesia

CETDC — Officio Di Rappresentanza in Italy
Via Fabio Filzi, 2, 20124, Milan, Italy

CETDC Representative's Office in Singapore
Rm. 310, Industrial & Commercial
Bank Bldg., No. 2,
Shenton Way, Singapore

CETDC Correspondent in Chicago
9302 N. Tripp
Skokie, Ill. 60076 U.S.A.

CETDC Correspondent in Melbourne
P.O. Box 4823, Melbourne, Vic. 3001
Australia

Far Eastern Trading Co., Ltd.
P.O. Box 349, Place Bonaventure
Montreal 114, P.Q., Canada

CETDC Branch Office in New York
14th Floor New York Merchandise Mart
41 Madison Avenue
New York, N.Y. 10010, U.S.A.

CETDC Representative's Office in West Africa
P.O. Box 20872, Abidjan, Ivory Coast

CETDC Representative's Office in Korea
C/O Embassy of the Republic of China
Seoul, Korea
3. Others:

Far East Trade Service, Inc.
Switzerland Office
Seefeld Strasse 35 (3 Stock)
8034 Zurich 8, Switzerland

Far East Trade Service, Inc.
Suceursale en Belgique
World Trade Center 1
16 E Etage, Boulevard Encile Jacqmain 162, 1000 Bruxelles Belgique

Far East Trade Service Center
West Germany Office
Alfred-Brehm-Platz 19
6 Frankfurt/main West Germany

Far East Trade Service, Inc.
Toronto Branch Office
2 Bloor Street, East, Suite 2624
Toronto, Ontario, M4W 1A8 Canada

A.S.P.E.C.T.
17, Ave. Matignon (Time-Life Bld.)
75008 Paris, France

Majestic Trading Company Ltd.
5th Fl., Bewlay House
2 Swallow Place
London W1R 7AA England

Investment Liaison Office
415 Central Building Pedder Street
Hong Kong

Centro Commerciale per L'estremo Oriente
Via-Fabio Fizi 2-20124 Milan, Italy

Chinese Chamber of Commerce to Djakarta
JL Banyumas No. 4
P.O. Box 2922
Jakarta, Indonesia

Trade Mission of the Republic of China
Room 310, Industrial & Commercial Bank Bldg., No. 2, Shenton Way
Singapore 1

Tokyo Office, Association of East Asian Relations (Economic Department)
2–4th Floor, Heiwado Booki Honsha Bldg., No. 8, 1-Chome, Higashi Azabu Minato-Ku, Tokyo, Japan

Pacific Economic and Cultural Center, Manila Office (Economic Division)
8th Flr., B.F. Homes Building, Aduana St.
Intramuros, Manila, Philippines

Economic Section, Office of Representative China Airlines Ltd.
10th Fl., Shell House, 140 Wireless Road
Bangkok, Thailand

Oficina Comercial Del Lejano Oriente
Huerfanos 886-Oficina 714,
Santiago, Chile

East Asia Trade Centre Fiji, Ltd.
4th Fl., Air Pacific House,
CNR. McArthur & Butt Streets,
Suva, Fiji

Oficina Comercial de Taiwan
Av. Pte. Roque Saenz Pena 636
Piso 8, Buenos Aires
Republica Argentina

Far East Trading Co., Pty. Ltd.
Suite G, 5th Fl. 582 St. Kilda Rd.
Melbourne, Vic., 3004 Australia

Taiwan Trade Office
5, Argyokastron St.
Strovolos, Nicosia
Cyprus
2. **Control Over International Trade**

*a. General Description.* With a view to promoting the wholesome growth of domestic productive enterprises and as a necessary measure in economic development, the Board of Foreign Trade is exercising certain control over the nation’s international trade. Thus, exports of goods which are either living necessities not produced in adequate quantities locally or commodities needed for national defense have been put under a ban or under restrictions; and so are the imports of weapons, narcotics, precious stones and goods which can be supplied locally.

The control is subject to adjustment in accordance with the developments in the particular fields of production at home and also with the changes in the international market. Hence, there have been constant changes and modifications in the classification of import or export commodities.

According to the provisions of the Regulations for Classification and Control of Imports and Exports, imports and exports are classified as follows:

1. Permissible imports
2. Permissible exports
3. Controlled imports
4. Controlled exports
5. Prohibited imports
6. Prohibited exports

*b. Various Restrictions on Imports.*

*i. Restrictions on Procurement Area.* For political, diplomatic and economic reasons, restrictions have been placed on sources of import of certain commodities. At present, areas designated as the sources of their supply are:

1. Free world countries and areas other than Hong Kong and Macao;
2. Areas other than Hong Kong, Macao, Australia, Singapore and Malaysia;
3. Areas other than Hong Kong, Macao, Singapore, Malaysia and Japan;
4. Europe and America;
5. Europe, America, New Zealand and Australia;
6. North America;
7. Countries specified. (Commodities to be imported from specified countries are mostly Chinese medicines, e.g., medicines from South Korea, Japan, etc. Details are shown in the Commodity Classification Table.)

ii. Eligibility of Applicants. Certain commodities, while being permissible imports, are not to be imported by traders. For these imports, BOFT has limited the eligibility for application to the following:

1. Industrial plants
2. Processing plants for export
3. Public trading agencies
4. Tobacco & Wine Monopoly Bureau
5. Public enterprises

The above provisions show that sometimes there are not only restrictions in regard to applicants but also on area of procurement. For example, waste paper can be imported only by paper manufacturing plants and must be procured from free world countries and areas other than Hong Kong and Macao. This dual restrictive measure is adopted in accordance with the actual necessity.

c. General Provisions for Import and Export Applications

i. "Permissible" imports. Applications for import or items on the "Permissible" list may be submitted by traders directly to the responsible departments of BOFT. They may also be submitted to the responsible department of a government bank if the bank has been authorized for import licensing for the particular commodities provided, however, that there is a record of such imports in the past.

However, if the article to be imported is not specified in the "Permissible" list and there is no record of such import in the past (e.g., an item to be imported for the first time, as discussed in Section 3), applications may be made only after the importation of that item is considered and approved by the Committee on Commodity Classification.

ii. "Controlled" imports. Applications for import of items on the "Controlled" list may not be made by traders. Only
industrial plants and direct end-users may apply for import of such items according to existing regulations.

iii. "Prohibited" imports. Import of commodities under this category is prohibited mainly for security, health or economic reasons. Neither traders nor manufacturers nor productive enterprises are permitted to apply for such imports.

iv. "Controlled" exports. Export of such products is not absolutely prohibited; approval for export of such products should be based on the regulations for Application for Export by Productive Enterprises which provide:

1. that the export may not affect the people's livelihood or economic development needs;
2. that for strategic goods, there should be no possibility of their being transhipped for supply to the communists;
3. that all applications for export of "Controlled" items should be submitted to the 1st and 2nd Departments of BOFT for approval.

v. "Permissible" exports. For export of "Permissible" items, the exporter may file an "Application for Export Permit" directly with one of the authorized licensing banks.

vi. "Prohibited" exports. Application may not be made for export of goods of this category.

3. Procedures for Application for Export

Unless otherwise provided for by the Board of Foreign Trade, to apply for a license for export of goods on the "Permissible" list, an exporter manufacturer/trader registered with and approved by BOFT may file an "Application for Export Permit" directly with one of the licensing banks appointed by the Foreign Exchange Department of the Central Bank of China.

An export manufacturer or trader may collect his foreign exchange earnings through export transactions by one of the following methods:

1. Letter of Credit (L/C);
2. Advance settlement of Export Foreign Exchange (T/T);
3. On collection basis:
   a. Document Against Payment (D/P)
   b. Document Against Acceptance (D/A);
4. Export sales on consignment basis;
5. Payment made by installment or in other ways.

4. Export Loans

There are two kinds of export loans, viz., industrial export loans and general export loans.

1. Industrial export loans are conducted by the International Commercial Bank of China to help finance export capital goods and important industrial products in keeping with the government policy of promoting export;
2. All appointed foreign exchange banks may engage in the activity of extending general export loans for the purpose of promoting foreign trade.

5. Import Financing

For the import of necessary consumer goods and important raw materials for industrial production, if the importer is unable to obtain the consent of the foreign supplier to import on D/A basis, he may submit application to the BOFT for issuing the import license thus enabling him to apply for financing at the appointed bank.

6. Foreign Exchange

The government of the Republic of China permits unlimited conversion from authorized currencies into New Taiwan Dollars. But this function and foreign currency financing of imports and exports is limited to appointed foreign exchange banks.

7. Air and Sea Connections with the Outside World

a. Shipping. The shipping industry in Taiwan has kept pace with the demand from the rapid growth of foreign trade and other sectors of the national economy. Shipping companies operate liner services all over the world. The opening of new routes are always under planning. New ships including containers, refrigerator-ships and super tankers have been obtained for special purposes.
At the end of 1975, the Republic of China had a merchant fleet of 168 ships, totaling 2.1 million DWT. If Chinese vessels flying foreign flags of convenience were counted, the Republic of China’s fleet would be one of the biggest in the world.

Foreign shipping lines serving ports in Taiwan include the American President Lines, the Barber Blue Sea Line, the United States Lines, the Sealand Service Inc., etc.

b. Airlines. Taiwan is on the main route between Tokyo and Hong Kong, the most heavily traveled air line in Asia. Apart from domestic airlines, there are twelve international airlines serving Taiwan. Foreign airlines serving Taiwan include the Cathay Pacific Airway, Japan Asia Airway, Korean Air Lines, Northwest Orient Airlines, Pan American World Airways, Philippine Air Lines, Singapore Airlines, Thai Airways, etc.

c. Harbors and Airports

i. Harbors. There are three international harbors in Taiwan, located at Keelung in the North, Kaoshiung in the South and Hualien in the East. With the expansion of international trade and ever-increasing demands for navigation services, harbor authorities have taken steps to increase facilities such as warehouses, loading-unloading equipment, container wharves, terminals and expanded entrances.

With a view to easing the congestion at Keelung and Kaohsiung and to stimulate the development of business and industry in central Taiwan, a decision was made in 1969 to build an international port at Taichung. The project will be carried out in three phases. Full completion is scheduled for 1982, when the new harbor will have an annual cargo handling capacity of 12 million tons.

At the same time, the Suao Harbor, originally a fishing port which serves as an auxiliary for Keelung, will be expanded into an international seaport in eight years. When it is completed in June 1979, cargoes bound for and originating from Suao and its surrounding areas are expected initially to reach 2 million tons.

ii. Airports. There are two international airports in Taiwan, at Taipei and Kaohsiung. A third, eventually to replace the Taipei International Airport, is being built at Taoyuan in northern Taiwan.
E. Future Trade Prospects

The worst and longest recession since the 1930s has now bottomed out. While the world trade is making an upturn, the Republic of China will certainly grasp every opportunity to explore sales outlets for its products in the foreign markets, for it is only through export that the Republic of China can induce an acceleration of economic growth and impart renewed vigor to its national economy.

The Republic of China is about to enter a new era of technological expansion. Despite the phenomenal increase of her industrial capacity and trade volume over the past years, the fact remains that the progress has been more quantitative expansion than qualitative improvement. In other words, the expansion of industrial capacity was much more impressive than the advance of industrial capability. The result of this is that the Republic of China continues to depend on simple industrial products for export.

However, both the government and the people of the Republic of China are keenly aware that the time to rely on labor-intensive and low-technology industries as the foreign exchange earners is definitely over. The new emphasis is on upgrading industrial technology. Progress is being made in this regard, particularly in the machinery and the petrochemical industries. Certainly, however, the technical level in the Republic of China is still way below that of the advanced countries.

The Republic of China can not, of course, afford to remain in this stage very long. For one thing, the market for simple industrial products is limited, and for many items, already saturated. Furthermore, the rising wage scale in the Republic of China is beginning to reduce her competitiveness in simple industrial products while new competitors continue to arise from among other developing countries.

To maintain the high growth rate of the Republic of China’s foreign trade, it is absolutely necessary for her to upgrade the quality of its products, selling them at higher prices, rather than exporting them in greater quantities; and the Republic of China has to develop more sophisticated products in order to make labor more valuable. Only then can the Republic of China solve the problems of limited labor supply, rising wages and growing competition from other developing nations and keep foreign trade expanding. Therefore, in the Republic of China, upgrading of
industrial technology will be the first priority within the next 10 to 20 years.

As I have said before, the economy of the Republic of China is in a period of rapid expansion. It will not be long before the Republic of China could attain the status of a developed country. With rising income will come greater purchasing power and a keener desire for the things that make life more pleasant. Under such circumstances, the Republic of China will become a very large open market in Asia and also one of the most effective suppliers of industrial products in international markets in the years ahead.

Dr. Chiu thanked Mr. Wu for preparing such an excellent paper for the conference and then invited Ms. Norma Schroder, a Ph.D. candidate at Stanford University, to present her paper on "The American Economic Stake in Taiwan." Ms. Schroder compared the current status of Taiwan with respect to import and export trade with the U.S. and Japan. She stated that Taiwan is attempting to reduce its dependency on Japan and that the ROC wishes the U.S. and Europe to have the largest share in capital goods, despite certain advantages of using the Japanese. She characterized the U.S. growth in direct investment as accelerating faster than elsewhere in the world.

[The following is Ms. Norma Schroder's paper.]

AMERICA'S ECONOMIC STAKE IN TAIWAN

NORMA SCHRODER*

Whether directly involved in the business of foreign trading or not, most members of the U.S. business community are at least dimly aware that U.S. economic interdependence with the Far East and Taiwan has increased dramatically since the early

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The fuzziness of their perception of the Asian trade situation may be attributed to the fact that the bulk of published international business reporting remains devoted to U.S.-European affairs. Thus, this audience, as well as the broader audience of all American voters, would surely be surprised to learn the true degree of U.S.-Far Eastern trade interdependence. As of 1973, Taiwan was the seventh largest source of U.S. imports — more important than France. It was the fifteenth largest purchaser of U.S. exports, outranking countries such as Switzerland and Israel. The most recent assessment, 1976, places Taiwan thirteenth in two-way trade with the U.S. It is widely reported that multinational corporations regard developing countries as attractive investment sites, but seldom has Taiwan been able to attract new U.S. direct investment at the rate of 28% per annum, which is more than double the average rate for all developing countries.

These figures are bound to grab the attention of the general business audience, and although they are suggestive, they are not adequate to relate the magnitude of America's economic stake in Taiwan. Before embarking on that exigesis, it is helpful to review the question, "What is America's stake in participating in world trade at all?" The answer is, of course, that the U.S. can increase its level of consumption by specializing in the productions of those goods in which it enjoys a comparative advantage — cereals and sophisticated manufactures — and can trade some of these for foreign-made consumer goods. Thus, the U.S. gains from trade, but the American stake in this worldwide exchange is, in the following sense, less than that of virtually any other free world nation. Because it has such a huge domestic economy, the U.S. level of economic activity and consumption is comparatively less subject to the vagaries of world supply and demand than that of many of our allies. When one examines the list of those commodities of which at least 10% of the value of total U.S. supply originated abroad in 1971, one sees that the list consists predominantly of raw materials and consumer goods — generally non-strategic items in nonessential amounts. Our sole fear of unhealthy dependence, a newly emerged one, is the case of crude oil. Accordingly, the U.S. has embraced a policy of "import-substitution."

Just as imports seem insignificant in relation to domestic supply, so too do export markets for U.S. output seem piddling in relation to the domestic market. Historically, the U.S. has had one of the lowest exports to GNP ratio's in the world — in the past, 3
or 4%, recently a bit higher. However, for some classes of U.S. producers the foreign buyer is of somewhat greater significance; in excess of 10% of the output of chemicals, equipment and grain are exported.

**U.S. IMPORTS**

Having placed the U.S. stake in the international economy in perspective, let us return to the examination of the American stake in the Far East and Taiwan in terms of imports, exports and direct investment. Between 1960 and 1973 the annual growth rate of U.S. imports from East and South Asia (excluding Japan) was 16%. This is a couple of points faster than from the developing nations group as a whole and faster than the world average. Over that period our imports from Taiwan have grown at an extraordinary 39% per annum. Back in the early 1960s, when Taiwan's major export earner was sugar, the island was of marginal import supply significance to the United States. As stated above, by 1973 Taiwan was the seventh largest source of U.S. imports, out-ranking France. This rapid trade expansion by Taiwan is not solely with the United States, but with other trading partners as well: Japan, Asia and the EEC. Beginning in 1967, the U.S. became Taiwan's largest foreign market, overshadowing Japan ever since. As of 1975, America absorbed 34% of Taiwan's exports, while Japan took only 13%. In recent years the U.S. share has been slipping as Taiwan has begun to develop its European markets.

Obviously, Taiwan now makes commodities it did not make before; commodities which the United States and the rest of the world are eager to buy — namely, textiles and electrical goods. Looking at the 1974 composition of Taiwan's exports, one is struck by the fact that sugar, the first-ranked export earner in 1965, by 1974 had been demoted to fourth place, dwindling to 5.5% of total export value. In 1962 industrial products were 51% of exports; by 1972 they had risen to 83%. Thus, the importance of all agricultural products, both raw and processed, declined precipitously from a 49% share to 17% of exportables in just one decade. This steady economic shift in the composition of Taiwan's exports was stalled and even reversed a bit in 1975 when the price of sugar shot up, misleadingly magnifying the importance of that commodity. What underlies this realignment in the composition of exports are Taiwan's take-off into economic growth and the accompanying changes in the domestic structure of production.
and employment indicative of the transformation of an agrarian economy into a predominantly industrial one.

Taiwan's development is self-generated; Taiwan no longer receives U.S. economic or military aid (a minor exception: there are benefits from residual economic funds that generate 50 million dollars a year, i.e., old low-interest loans from the 1950s, and from purchases of weapons on credit); and the foreign debt is less than 5% of the gross national product. The remarkable Taiwanese achievement is, precisely put, that these people have propelled the growth of their real GNP at a rate of 10.7% per annum between 1963-73 (Background Notes, Department of State, May 1974). In 1972 the World Bank ranked Taiwan's per capita income as Asia's third highest after Japan and Fiji (Far Eastern Economic Review, Yearbook 1975). The extent of the Taiwanese economy's structural transformation is revealed in the following figures: between 1963 and 1974 the percentage of agriculture in GNP shrank from 22% down to 12%, while the contribution of industry swelled from 25% to 33%; the service sector remained constant at 24%.

U.S. EXPORTS

Computations based on annual trade data appearing in the U.S. Commerce Department's Overseas Business Reports indicate that over 1960-73 the growth of the U.S. share in foreign markets has not kept pace with imports.

The computations reveal that between 1960 and 1973 the growth of the East and South Asia market for U.S. exports (10.73%) was below the world pace (11.83%). But the growth rate of the Taiwan market (12.39%) is above the world market average, although it trails the growth of the Japan market (14.43% per annum).

In 1973, Taiwan was the fifteenth largest purchaser of U.S. exports, outranking Switzerland and Israel. By 1974, it had jumped to tenth place among our export markets, and it has been forecast to rise to sixth place in a relatively few years. ROC Ministry of Finance statistics for 1975 show that Japan was Taiwan's largest supplier, 31.83%, followed by the U.S. at 27%. Between 1964 and 1972 Japan had been increasingly edging the U.S. out of the largest share of the Taiwanese market. In 1964 the disparity in market shares was at its starkest: 44% versus 24%. Since 1972, however, Taiwan has had increasing success in reducing its dependence on Japan by taking its shopping list to Europe.
In contrast to the very pronounced shifts in the commodity composition of Taiwan’s exports over the period 1960 to 1973, the evolution of the general commodity composition of Taiwan’s purchases from abroad has been very gradual. As in the past, the largest import category in 1975 was agricultural and industrial raw materials, accounting for more than 60% of the total import bill. Capital equipment amounted to about 33% of the total, while consumer goods accounted for about 6%. Between 1972 and 1973, when imports of agricultural and industrial raw materials, on which Taiwan’s resource-scarce processing economy depends, rose eightfold in absolute value (from $212 million to $1.6 billion), they declined only 8% as a share to total imports. Consumer goods dwindled from 9.3% to 6%. Not surprisingly for an industrializing economy, the greatest gain in share of imports was registered by the capital goods category. It gained almost a third, rising from 22% to 32% of the total value of imports.

The major import sources of these capital goods are Japan and the United States. In 1975 these two nations held virtually equal shares in the Taiwanese machinery and tools market, but that outcome was probably the result of the severity of the recession in Japan. In 1974, a year of more normal market shares, Japan enjoyed sales of $700 million, whereas the U.S. registered sales of only $550 million.

For some years Taiwan has been incurring increasingly severe trade deficits with Japan, a situation which has focused the Taiwanese authorities’ attention on the idea of trying to reduce reliance on Japan. To sustain industrialization, the ROC has planned a shift from light and labor-intensive industries such as textiles to capital- and technology-intensive industries such as petrochemicals, precision machinery and heavy industries. This means substantial sales opportunities for capital goods producing nations. The stated preference of the ROC authorities is that the U.S. and Europe should win the largest share of these new sales. However, several factors point to the continued strength of Japan in the capital goods market. Because Japanese suppliers have been able to offer local Chinese firms comparatively inexpensive products, there has been little inclination to “buy American” or to “buy European.” The Japanese supply high-quality goods while offering lower freight costs, shorter delivery schedules, and in many cases easier payment terms. Furthermore, as many manufacturers are currently using production equipment originally purchased in Japan, reliance on Japanese suppliers for
parts and consulting services, at least for the meantime, is unavoidable.

U.S. DIRECT INVESTMENT

East and South Asia comprise a region in which the net capital flow component of U.S. direct investment grew more quickly, over the period 1960 to 1974, than anywhere else in the world. This particular measure is used here, rather than total direct investment, because this was the only type of data available on Taiwan.

Computations based on Commerce Department data appearing annually in its Survey of Current Business show that between 1960 and 1973, U.S. venture capital was attracted to the East and South Asia region at a growth rate of 32.22% per annum, which is more than twice the average for all developing countries, 13.69%, during this period. In Taiwan the growth rate of new U.S. investment has been 28.21% per annum.

Venture capital is sent where its owners expect to find rapid growth in sales and profits. Indications are that U.S. capital is being deployed to Asia at such a rapid rate because that is where it gets the best of both. A recent Department of Commerce survey of sales by the foreign subsidiaries of U.S. multinational corporations, covering the years 1966 through 1972, shows that the Asian region has enjoyed much more rapid market growth than, for example, Latin America, and a total of more than 200% in sales growth over the period for these majority-owned subsidiaries.

Next, consider the sales record of a subset of U.S. multinationals — the manufacturing subsidiaries, that is, excluding those engaged in such operations as trading, petroleum, mining and smelting, and finance. Between 1966 and 1972, U.S. manufacturing subsidiaries in East Asia have outperformed those located elsewhere. A sales index based on Commerce Department sources shows that the Far East outstrips Africa, Latin America and the world average. But this performance is heavily influenced by Japan, which did significantly better than the rest of the Far East. In 1972, a solid 60% of sales in the Far East were controlled by U.S. manufacturing subsidiaries located in Japan. Sales growth by non-Japanese Asian manufacturing subsidiaries conforms to the world average 15.2%, and is only slightly better than that achieved by subsidiaries in other developing economies, 14.0%. Within the manufacturing category, U.S. subsidiaries in non-Japanese Asia engaged in the manufacture of machinery had a sales field day. During the period 1966 to 1972, their sales
increased at the rate of 44.5% per annum, nearly double the rate anywhere else.

The Far East (including Japan) continues to be the world’s most profitable region for U.S. investment in manufacturing. *Business Asia*, a Hong Kong weekly, using Commerce Department data, reports that the average 1973 rate of return on U.S. direct investment in manufacturing in Asia was 22.8%, and Australia 19.7%. In stark contrast, Latin America offered a return of only 13.3%, a rate below the world average of 15.9%. As usual, the high return from Middle East oil operations made this region the leader in overall profitability. In 1974-75, as world inflation surged and recession set in, profit rates sank in all areas except the oil regions. The rate of return on U.S. investment in manufacturing in Asia in those abnormal years plummeted to 14% from the lofty 22% figure.

Unfortunately, there are no accessible published sales and profit data on U.S. multinationals located in Taiwan. However, since 90% of the foreign capital in Taiwan is devoted to manufacturing, it seems reasonable to accept the average sales and profit statistics on all Asian multinational manufacturers presented above as suggestive of the Taiwanese profit rates.

In the latter half of the 1960s, these sales and profits lures drew U.S. investments into the Far East at an increasingly rapid pace, especially in South Korea, Taiwan and the Philippines (the U.S. share of total invested stock in this area reached about 40% in 1969). But as the 1970s opened, Japan’s investments in this area began to increase sharply; investment stock at the close of 1975 increased 10.8-fold compared with the 1969 year-end. By the end of 1973, Japan’s investment share topped all investor countries including the U.S., in Thailand and South Korea. And by the 1974 year-end, Japan’s share was the highest also in Indonesia. Japan’s share in Asian investment stock rose conspicuously from 13.6% at the close of 1969 to 33.6% at the 1975 year-end. In contrast, the share of U.S. investments in Asia declined from 38.5% to 25.2%. However, the U.S. share of investment in the light industry countries — South Korea, Taiwan, Hong Kong and Singapore — did not fall so precipitously as it did in the primary product countries — Philippines, Thailand, Malaysia, and Indonesia. In the former group it slid from 39% to 31%, whereas in the primary products group it dove from 38% to 21% in just six years. Accordingly, Japan’s gains were far more dramatic in the primary group, up from 13% to 33%, than in the light group, from 16% up to 26%. Of these eight Asian nations, Indonesia, with its opportunities for petroleum extraction, has taken the lion’s share
of foreign capital — $4.8 billion as of 1975. Taiwan with $1.3 billion was a close third to Singapore's second place with $1.4 billion.

Having assessed the general Far Eastern direct investment situation, we turn to an explicit examination of the available Taiwanese data. At the end of September 1976, the total amount of overseas Chinese and foreign investments reached $1.5 billion, of which $488 million under 280 projects came from the U.S., accounting for more than 32% of the total inflow of foreign private capital. During the recession years 1974–75 the U.S. was adding but little new investment. In 1974, the U.S. held $428 million (only $50 million less than the 1976 figure) or an overwhelming 46% of the total stock in 1974. The source of America's importance as a foreign investor in Taiwan can be traced to the nature of the annual new capital flows in 1974 through 1976. In 1974, Japan and the U.S. committed equal shares of the flow of new investment; in 1975, the U.S. took the lead again, 42% versus 24% of the new flow. But in 1976, Japan put up 30% compared to our 21% of the inflow.

Although U.S. direct investment commitments to Taiwan have faltered, other items in our capital account dealings with ROC remain prominent. Loans from U.S. banks remain strong. The U.S. Eximbank alone has, in fact, extended more than $1 billion in loans to Taiwan and guaranteed another $700 million of private bank loans. This clearly makes Taiwan the country with the third largest Eximbank exposure worldwide, (only Brazil and Spain have more). As of the end of March 1977, $1.54 billion of loans had been granted to state-run enterprises like Taiwan Power Co., China Steel Corp., Chinese Petroleum Corp., and Taiwan Railway Administration. The largest recipient was Taiwan Power Co., with a large portion of the funds going to Taiwan's ambitious nuclear power development program. And as Minister Sum of the ROC remarked in his address to the USA-ROC Economic Council, this Eximbank credit will bring American firms $2.5 billion worth of business. (Eximbank loans are granted for 60% of the purchase price.)

1. During discussion at the conference, Marvin Solomon, Senior Counsel to the Export-Import Bank, supplied these figures to replace the already out-of-date published ones I had presented orally.
CONCLUSION

Perhaps the reader is feeling more befuddled than informed after this heavy onslaught of statistics. As one last exercise, tally up America’s economic stake in Taiwan — nearly $500 million in direct investments; enjoyment of one of the highest rates of profitability and sales growth in the world; all the goods exchanged with our thirteenth-ranked trading partner; $1.54 billion in loans outstanding and the $2.5 billion in sales which they generate — in this author’s opinion, a very substantial stake indeed.

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Dr. Chiu thanked Ms. Norma Schroder for presenting her paper and then invited the discussants to comment on the papers presented. The first discussant was Mr. Martin Pilachowski, Vice-
President of Maryland National Bank, who discussed the economic relations between the Port of Baltimore and Taiwan, giving a banker's view of the ROC. Mr. Pilachowski cited the ROC government's determination to succeed through internal development and through participation in the international market, and the ROC government's ability to implement its ongoing economic evolution.

[The following is the summary of Mr. Pilachowski's statement.]

**COMMENTS**

**MARTIN PILACHOWSKI**

I won't go into some of the numbers that have been very ably presented by my predecessors, other than to say that I do agree with them. The progress that has been made is certainly substantial. I had a somewhat unique opportunity to see it on two levels, first during the sixties as a naval officer in Kao-hsiung, and later in my banking career travelling extensively through Asia.

I think it's important to look behind the progress and try to get a feel for the motivating factors that have generated the ROC's significant progress. I think the ROC is to be commended, and I think the ability of the country to come to the international marketplace is a very strong indication of just how soundly and how well they run their affairs internally and internationally.

The financial institutions in Taiwan bear a very heavy burden because of the lack of the substantial capital markets that one sees in other areas. To say the least, they have handled this role in a very commendable fashion. Looking at the structure, all the financial institutions are under control of one format under the Ministry of Finance with an ongoing relationship with the Central Bank of China, which is the lender of last resort. There is progress being made in areas that would be considered weaknesses based on the short-term money market operations which would expand the ability of both the investor and business to take advantage of varying opportunities for taking and replacing funds.

In looking at how we as a bank invest in the financial community in the ROC, it has traditionally been an ongoing
source of profits for U.S. banking institutions as well as European and other Asian institutions to provide not only for the infrastructure or developmental financing but also trade financing. On a more local level, trade between the Republic of China and the Baltimore area is probably a lot more significant than most people would realize in looking at the total tonnage that passes through the Port of Baltimore. We have been doing business there for quite some time. While I can’t give you the exact figures, it is substantial, and it is constantly growing. For those of you involved in the Baltimore business community, our local involvement will continue to expand with some additional shipping lines coming into the Port, which I think bodes well for future prospects of two-way world trade. Since there was mention made of the relationship between the ROC and the attitudes revolving around the American businessman’s approach to the PRC, I think all we need to do in this area is look at the numbers that are involved. Two-way trade with the Republic of China, as was mentioned, has now exceeded $4 billion; certainly, the trade volume with the PRC in no way approaches this volume. I think that the attitude of current business, as bankers see it, is that the numbers are the key in a sense, and that we should continue to do things in this vein.

In summary, I again feel that the driving forces have been the government’s determination to succeed in both internal development as well as implementing the practice and putting their products in the international marketplace. They have done a commendable job. Certainly the stability of the ROC economy is one of the most enviable in all of Asia. The exchange rate of the NT dollar has remained significantly stable over the last twenty years or so, varying only slightly, again attributable to the government’s ability to implement ongoing economic thought processes which have kept the country headed in the right direction. Thank you very much.

Dr. Chiu thanked Mr. Pilachowski for his comments, especially his remarks on Baltimore’s trade and financial relations with the ROC. He then introduced the second discussant, Professor J. S. Prybyla, to speak. Dr. Chiu said that
Professor Prybyla is a prolific writer and also a person of wide experience. He recently visited both the People's Republic of China (1974) and the ROC (1976) to observe their respective economic development, and is Professor of Economics at Pennsylvania State University.

Professor Prybyla praised Mr. Wu’s presentation as a synthesis of the crux of the situation. He cited the ROC’s "textbook transition" from dependency to economic independence. He said Mr. Wu’s guide should be followed by those responsible for economic decisions, and that insufficiently informed decisions as to future U.S. relations with the ROC could be destructive. Dr. Prybyla commented that while Mr. Wu’s presentation is positive on the investment and trade climate of the ROC, it does not reveal the difficulties and frustrations that investors face, e.g., frustrations arising from difficulties with workers and bureaucracies.

[The following is the summary of Professor Prybyla's statement.]

COMMENTS

J. S. PRYBYLA

I

Allow me, first of all, to congratulate Mr. Wu on his informative, well organized, and lucid presentation of the basic elements which constitute the investment and foreign trade climate of the Republic of China. The paper represents, in my view, a good synthesis of the fundamental facts of the situation and is a helpful guide for potential investors and traders.

Mr. Wu performs a distinct service in stressing (i) the significant achievements of the Republic of China in economic growth over the last quarter century; (ii) the successful creation of a model of development that combines private initiative with constructive governmental intervention, and the profit motive with equity in the distribution of land, income and opportunity; and (iii) an almost textbook perfect transition of a once dependent economy to self-sustained growth. Not the least of the paper's merits is to remind us of the close commercial relationship between Taiwan and the United States and of the important stake which this country has in the continued viability and prosperity
of the Republic of China. Such reminders are especially important at this time when crucial political decisions affecting our diplomatic and legal relations with the ROC are under active consideration in Washington. Mr. Wu's guide to investment in and trade with the ROC merits attention by our policy makers and by those whose involvement in trade and investment with Taiwan puts them in a position to bear influence on decision-making councils of our nation. As other papers at this conference make clear (I have in mind, in particular, the analyses by N. Shroder, Y. L. Wu and K. C. Yeh as well as the instructive German case study by R. Heuser), nothing could be more disruptive to the economy and society of Taiwan as well as damaging to our own economic interests and international credibility than an insufficiently informed decision concerning our future relations with the Republic of China. In this setting, Mr. Wu's essay is most timely and sobering.

II

My reservations about the paper are of two kinds. The first concerns a methodological point which, I think, is important both as a matter of substance and from the standpoint of the paper's persuasiveness or — if I may use the word — "saleability" to informed American opinion. The second concerns updating and elaboration of some of the facts mentioned by Mr. Wu.

1. As is to be expected, the paper draws a very positive picture of the investment and trade climate in the ROC, and concludes on an optimistic note. If there are shadows on the economic landscape, as there surely are, and if future prospects are fraught with dangers and uncertainty, they are hardly to be detected in the presentation. Now, we all know that there exist difficulties with which foreign investors in Taiwan must cope and of which they should be made aware in fairness to all concerned. While the argument of a favorable investment and trade climate is basically accurate, it is not the whole story. Failure to spell out, openly and clearly, some of the more important problems, and frustrations which foreign investors and traders are likely to encounter in their dealings with Chinese managements, workers, and government bureaucracies can only contribute to later disillusionment and discouragement. I think the paper's value would have been much enhanced had the author enumerated some of the major negatives and suggested ways and means of dealing with them. In this regard the paper weakens, through omission,
its own strong case. I have seen analyses of this kind from the pen of researchers in the Republic of China, so the subject is clearly not taboo.

2. (a) The author correctly points to the crucial changes currently taking place in the structure of the ROC economy. The pivotal change concerns the transition to a more capital- and technology-intensive economy and the preoccupation with upgrading the quality of output, especially exportable output. In this connection it would be useful, I think, to mention some of the measures currently under active consideration by the government of the ROC aimed at revising the present Statute for Encouragement of Investment in a way that would generate the appropriate investment from foreign and domestic sources. I am thinking in particular of discussions concerning the possibility of extending the five-year tax holiday by one to three years to encourage investment in the priority industries; proposed tax incentives to large trading companies as a means of expanding the export trade; the proposed revision of tax incentives to firms undergoing mergers; suggested exemptions from import duty to be given to productive enterprises for the import of equipment not produced domestically; and the exemption from withholding and consolidated income tax of one year savings deposits, post office savings deposits, and trust funds. These, plus the proposed revision of the Statute for Technical Cooperation, are important measures designed to stimulate domestic and foreign private investments in the years to come when the present stimulus provided by expenditures on the ten major projects declines with the projects' completion.

(b) Mr. Wu addresses himself briefly to the problem of imbalance in Taiwan's trade with the United States. This is a sensitive issue in this country and will certainly require thoughtful corrective measures by both partners. It would have been desirable, I believe, to have dealt more fully with this subject in the paper, for a continuation of the present lopsided exchanges could easily lead to a deterioration in the climate of US-ROC trade.

(c) Finally, I would have liked to hear more about the progress being made in the development of the twelve new industrial parks and the implementation of the Hsinchu Scientific and Industrial Park Project, which appears to be a most interesting pilot experiment in providing an appropriate environment for the development of technologically advanced industries. I would be especially interested in the author's views on the
ability of Taiwan’s social structure to absorb rapidly high-level technology.

I understand, of course, that time and space limitations militate against the inclusion of all these various issues in the paper. I am quite simply raising them as a possible subject of our discussions.

Dr. Chiu thanked Professor J. S. Prybyla for presenting such constructive comments on Mr. Wu’s paper; he then announced a fifteen minute break for this session, after which the floor would be open for discussion. He also informed the participants that the third discussant, Professor James P. Chandler, had just arrived and would present his comments at the discussion period.

This session adjourned at 11:20 a.m. and resumed at 11:30 a.m.

Dr. Chiu called the session into order and announced that the floor was now open for discussion.

[The following is the summary of questions and answers.]

DISCUSSION

Valerie Watts James: I have a question for Mr. Wu. I am Assistant Professor of International Law and Political Science at Morgan State University. Mr. Wu made reference to the fact that there are no strikes in Taiwan, or very few strikes. He also mentioned the unions. What positions do unions play insofar as the economy of the ROC is concerned?

Dr. Chiu: Dr. Wei will be more competent to answer that question.

Dr. Wei: There are labor unions in Taiwan, and their way of getting what they want is not to strike, but to put pressure upon the government, and through the government to put pressure upon the factories. For instance, when the pay of some local
factory financed by foreign investors is too low in the opinion of the workers, then the workers have several ways of getting what they want. In the first place, they can make their wage demand to the owner of the factory directly. In most factories there is someone called the officer of labor relations, so usually this worker or representative of the workers goes to that officer and says, “It’s too low, we have to increase the pay.” If they cannot find satisfactory answers from the factory, then they can go to the provincial or City Bureau of Social Affairs. There is a branch in that Bureau which can serve as an intermediary between the workers’ group and the factory. So this is the way to get things done. Maybe this is in the traditional Chinese cultural context and is not by direct confrontation. It’s by some kind of behind-the-scenes maneuver that the workers are able to get what they want. That’s as much as I can say. I do not know the detailed legal arrangements as to how the workers actually resolve differences between themselves and the factory owners.

Dr. Heuser: I would like to ask Dr. Wei another question. Dr. Wei emphasized in his quite articulate overall presentation of the present circumstances in Taiwan, that Taiwan will remain a democratic land. It seems to me that people in western countries are wondering why despite the facts that in Taiwan there are economic improvement and political stability, as well as a growing living standard, nevertheless the country is still in a situation of emergency and martial law. People in western countries are interested to hear something from the people who are in government in Taiwan why this is so, because for us it is not easy to understand, viewing the facts I have just mentioned.

Dr. Wei: As to this question, again I will answer not in the legal sense; I think Dr. Chiu can add to my answer in that regard. I will give you essentially a political assessment of the situation. Taiwan has martial law, but no curfew. There are cases in which there are constant curfews in some countries, such as in South Korea and the Philippines, and there are nations in which curfew is the martial law. We have martial law, but no curfew. The martial law has been declared more for preparation for the possible emergence of a critical situation. In other words, at least formally speaking, we are still in continuous conflict with Mainland China, and if you review the developments after 1971 after we withdrew from the U.N., then I think we have a pretty good record in protecting civil rights, particularly in the areas of private citizens. South Korea, to my knowledge, has nine times declared national emergencies, and the Philippines has suspended
its democracy by proclaiming martial law for the whole country, and Thailand has a coup and student revolt. What we did, we not only resisted any change in the form of government, we initiated two supplementary national elections, adding more than fifty new members to the national Yuan, to the Control Yuan, and to the National Assembly. People have asked this question of martial law again and again. We are aware of this problem, and we are concerned with this problem, but again, my answer here is that it is more for preparation for a possible emergency situation rather than actually applying every facet of law to restricting the freedom of the people of Taiwan.

Dr. Chiu: With respect to the question of martial law, I just want to remind you that there is a de facto martial law curfew in all United States cities. So I warn you not to go out after the conference is over in the evening (laughter). But martial law here is enforced not by the government but by the gangsters in this country.

Question [to Prof. Prybyla; speaker unidentified]: What is the viability of economic expansion in the ROC?

Prof. Prybyla: There are some problems. I'll mention some of the less innocuous factors. I think there is serious question among some Chinese as to viability in some labor projects. There is some question in the people's minds as to the educational qualifications of the labor leaders in the Republic of China. There is, I think, a certain growing restlessness, too, in the labor force, in regard to wage structures, wage levels, consumer aspirations and so on, which may not be as easily dealt with by legal injunctions. . . there are problems, I think, in management, the quality of management in Chinese firms. So these are some. And also, I am not as optimistic about the future international climate for investment in Taiwan as some of the speakers. I do tend to share Mr. Wu's and Mr. Wei's fears that some shift in our relations with China may very adversely affect the climate of investment. I am not sure whether Ms. Schroder mentioned this — I think she did — but much of the foreign investment, especially American investment in Taiwan, is rather short-term in terms of equity. This may be in part because of the concentration of investment in light industry. But it is symptomatic that the United States investor has confidence in the future of Taiwan, but it is not very long-term.

Question [speaker unidentified]: How much investment in Taiwan is short-term?
Dr. Wei: I agree with Ms. Schroder that a more extensive answer to this question should be based upon a careful review of data. But I can base an answer on my own experience up here as an Eisenhower Fellow visiting the U.S. While I was in New York I met with four major bank executives, including the J. P. Morgan Bank & Trust Co., I asked a question, “Before you loan the money to the ROC, with whom do you check? Do you check with the U.S. Department of Commerce or Export-Import Bank?” And I got an answer from the J. P. Morgan vice-president for foreign investment. He told me that we rely on our own experts; we make our own assessments, because the amount of money is too large to be insured by anybody, so we’d better be sure what we’re doing. So they invested in a loan for building six nuclear power plants, and this is a very large amount of borrowing. Of course we Chinese in Taiwan are more careful, you may say more prudent, in borrowing money. In our economic situation, we could have borrowed much more. If we follow, say, the example of Korea, we would have at least doubled or tripled our borrowing from international markets. But we want to maintain our good record and to maintain a relatively low portion of our economy which is based upon borrowing money. So this much I can say. The kind of projects which involve large amounts of money are on long-term loans, not short-term loans. I know less about the investment part, but I do know about the loan part.

Ms. Seunarine: This question is for Mr. Pilachowski. I would like you to comment on whether Maryland National Bank finds any special allure in the Republic of China as compared to other eastern countries for investment.

Mr. Pilachowski: We find it a great deal more attractive than some other countries. We are primarily a bank concerned with the financing of trade, again connected with the Port of Baltimore. The Republic of China offers us as an institution an opportunity to do both the medium-term lending that Dr. Wei was referring to and short-term lending. If you look at other countries, their demand for short-term funds is not as strong, and also we view them as being less stable for varying reasons. Other developing Asian countries have been mentioned — I do not mean that we do not do business with those places also. But our desire to increase our business is dependent upon more immediate evidence of stability in those countries than is presently seen vis-a-vis what we see in the Republic of China. It’s a very favorable atmosphere for us. The only more favorable atmosphere is that of Japan.
QUESTION [speaker unidentified]: I want to comment on Dr. Heuser’s remark about national emergency in Taiwan. Actually, the United States has been in a national emergency since 1917. Indeed, that’s how the President regulates foreign activity. My question is, what do you see as the ultimate situation in the Republic of China — what will it be in the year 2000?

DR. CHIU: I think I will call Dr. Wei to answer that question, as a scholar, not as a government official (laughter).

DR. WEI: Thank you very much, Hungdah. You have just saved my case. Let me put it this way. Let me give you three pitfalls which we try not to fall into. I have met so many people in the United States while representing the ROC in Taiwan in varying capacities, first as Director of the Institute of International Relations, and now as Chairman of the Research, Development and Evaluation Commission. There are several traps which we can fall into if we are not careful. One is that Taiwan can continue trading (after the U.S. has normalized its relations with the PRC); and that Taiwan is now economically so good that it does not need formal ties with the U.S. So to the person who asks, “Do you think Taiwan’s economy is good?” One may say, “Yes, it is good.” “Do you think Taiwan’s economy can withstand any shock?” One may say, “I think maybe yes.” “Then why should you worry about diplomatic ties with the U.S.? We think you can stand any shock.” This is one pitfall. Another question asked is, “You people have been very successful in dealing with unfavorable money situations since 1971. You have been able to even increase trade with countries with which you have no ties — is that correct?” One would say, “Yes.” “And you have developed substantive ties with many countries (without diplomatic ties with the ROC).” One would say, “That’s correct.” Then they say, “Why should you worry about ties with the U.S.A.? You have developed a whole bunch of substantive ties. You can keep up the same thing.” This is another pitfall. The third pitfall is this: “Is Taiwan secure?” Now, the instinctive response is, “Yes, Taiwan is secure.” “Well, can you be secure in the near future? Can you defend yourself against Mainland China?” We are more likely to answer, “Yes, we will be able to defend against Mainland China.” “Then, why should you worry about a defense treaty?” These three pitfalls I have encountered again and again. I got so tired of it that whenever I had anything to do in the U.S.A., I would say first, let me tell you three things. Then we are in business.

My honest evaluation as a person trained in development, international law, and political science is this: There is no
substitute for formal ties. Without formal ties, your existence at best is something of a para-social, political, and economic entity, something which is less than that of a state. In this regard, we recently had a meeting at St. Louis of the International Studies Association on the legal status of divided states. What we have is a situation in which there is a zero-sum game in the chapter of recognition and the conventional international law. That is, the winner gets all. Until 1971, the ROC was a beneficiary of conventional international law in which we received the recognition of the majority of the states of the world. After 1971 we were the victim of conventional international law in which a diminishing number of states recognized the ROC. How can we resolve this question? The resolution is not going to come from us; it is for the international jurists to deal with this question. Under international law, there are three types of international personalities: states, belligerents, and insurgents. Where do you find divided states? Are they belligerents? Are they insurgents? They are more than that. The experience of the ROC has been that we try very hard to be a good member of the international community. We behave as a state. We adhere to all the regulations and codes of behavior which are worthy of any entity that is a state. We are out of the W.H.O. (World Health Organization), we are out of the I.C.A.O. (International Civil Aviation Organization), we are out of many international organizations, but we still adhere to the rules of behavior, with the hope that the international community will treat us as a political system worthy of the recognition of the world community. We are trying very hard to increase diplomatic ties with other countries. We are not satisfied with substantive ties — ties that are maintained only in the absence of diplomatic/formal ties.

Comment, Mr. Clough: American companies investing directly in the ROC, e.g., EXXON, do not invest lightly in countries like Taiwan without some confidence in the future.

Question [speaker unidentified]: I would like to ask Dr. Wei about the extent of political participation in Taiwan. You have indicated in your discussion that most of the political power is in the hands of the Taiwanese Chinese.... What had been the experience of minority groups in light of the fact that you have varying political power groups in Taiwan?

Dr. Wei: The ruling party is the Chinese Nationalist Party (Kuomingtang, K.M.T.). For those who have done research on Taiwan's political process, it has become apparent that the process of political representation on Taiwan is far more complex...
than has been described by western scholars. In order to win election in Taiwan, one generally must gain nomination by the ruling party. In some cases nomination by the ruling party as a candidate amounts to election. In selecting candidates to run for positions, the ruling party is very careful. They want to get a person who is respected, who has the means to run in the election and win. So in this case, in local areas if you seek out a Mainland Chinese to run in a predominantly Taiwanese area, you are not going to win. So by necessity, the party has to select a Taiwanese Chinese candidate. So because the Mainland Chinese are mostly living in the cities and only a few in the countryside, the proportion of Mainland Chinese who have won seats in the Taiwan Provincial Assembly is less than their overall percentage in the whole population, a situation which can be compared with the United States in some ways. What I can say here is that it is a deliberate effort made by the government of the ROC as well as a natural process of gradual emergence of the majority influence. The Constitution of the Republic of China does have certain guarantees for minority groups to be represented in the National Assembly and other representative organizations. The Aborigines in Taiwan have guaranteed seats, as well as women. According to our constitution, women must have 10 percent of the seats in all levels of legislative bodies, which I understand is not the case in many countries.

DR. CHIU: I want to call to your attention that in China there are some small minorities. They have representatives in the National Assembly. The Aborigines in Taiwan, for example, number only 200,000, and in order to be seated in the National Assembly you need 400,000. But they are guaranteed one seat. For instance, in the United States, if you have about 12 percent Black, if you use the Chinese formula, Blacks would be guaranteed at least 12 to 15 percent or 20 percent in the U.S. Congress.

[Dr. Chiu then invited Professor James P. Chandler — the third discussant — for this session to speak.]

PROF. CHANDLER: Dr. Chiu, I appreciate the invitation to come. I had other commitments in St. Louis which prevented me from leaving there until this morning. As I listened to the panel and I looked at the panel, I noted that except for the Chairman, they were economists and bankers and not international lawyers. But that is what I am — I am a professor of international law. The last question that was discussed by Dr. Wei, I should say, the second to the last question he discussed in response to a question concerning the future of the ROC in the year 2000, is of interest to
me. I have only two comments which I want to make in connection with that. First of all, in my travels in the Republic of China in Taiwan I have found a delightful and beautiful country, and I have found there an extremely hospitable and happy and contented people. This is significant, I think, in terms of our conceptions of international law, particularly as it relates to rights of self-determination. I think at bottom the question becomes whether or not the current evolution of relations between the People's Republic of China and other countries in the world will result in great harm to the existing state of the Republic of China. I think, under conventional ideas of international law, the right of a desirable people, in a desirable territory, to determine for themselves the type of government, the type of state, and the type of allegiance they will have, is a basic and a fundamental human right, and one that ought to be respected by the people in the Republic of China as well as the people in the People's Republic of China. So it is that principle of contemporary international law which should be of overriding importance here, and I think the current emphasis on the importance of individual rights at the national level in this country and its probable evolution in terms of its influence upon other states is undoubtedly to have an impact as yet unforeseeable upon the future prospects of the Republic of China. I want to commend Dr. Chiu for sponsoring this very fine conference and to thank all of you for coming.

DR. CHIU: Thank you, Professor Chandler. You mentioned that you are an international lawyer. But I want to advise the audience that Professor Chandler is also a computer scientist. He is now putting out a book called *Computers and the Law*, to be published by the West Publishing Company, which is one of the leading law publishers. We can entertain one more question.

QUESTION [speaker unidentified]: This concerns investment on Taiwan. Taiwan is apparently self-sufficient in generating capital. In the area of capital, does it really matter very much to the Taiwan people what kind of investments are made?

MR. PILACHOWSKI: That is a very good and also a very difficult question. In regard to the statement that only five percent of private capital comes from outside sources, I personally believe that it is probably a bit optimistic to say that this part of outside capital is of the least importance. The types of projects the government is looking toward — and this is my personal view — are going to need substantially more input from outside, not only in dollars but in the technology necessary to continue to expand. If you look at their trading partners in the area — Korea, Hong
Kong, Japan — the basic products are pretty much the same. What flight of capital would do to the economy of Taiwan is, again, very difficult to estimate. Obviously it would end the expansion of technical capabilities. In case of flight of capital, it would certainly hurt the economy of Taiwan; it's very difficult to put a dollar value on the actual economic impact that would result from the flight of capital.

DR. WEI: I have a comment. Foreign investment has not only an economic meaning but also a political meaning for Taiwan, particularly investment by important, established companies in Taiwan. It imparts a feeling of security to overseas Chinese investors. Also the fact that a foreign company is willing to invest in Taiwan gives some assurance to local people and indicates something about an objective evaluation of Taiwan. In that light, foreign investment, although not very large in percentage terms, has a meaning. Capital flight is a wise decision if the country falls. If you transfer your capital out of the country and the country does not fall, you have had it. This actually occurred with a few people in Taiwan. There were a few people in Taiwan in 1971 or 1972 who tried to get their capital out of Taiwan — but the problem is, Taiwan is a very favorable investment market. It has a good stable government, stable social environment, and relatively reasonable wages. Consider, for example, a textile factory owner with, say, 20 million NT, which is a small, but not too small, establishment in Taiwan: when he converts that money into U.S. dollars, it amounts to $500,000. He can only open one or two restaurants in the United States, that's all. What can he do with that? Therefore, when someone thinks of transferring to the United States, he only finds that his competition with the same factory is earning more money. So the final analysis is still the question of profits and the favorable environment, and that, I think, is probably a more crucial factor in determining whether capital will stay in Taiwan.

PROF. PRYBYLA: That's like jumping over the Grand Canyon and finding yourself short (laughter). I think that, seriously, whatever the religion one is practicing at the moment, it is the kind of capital that I don't think Taiwan is at present capable of generating. They are moving to a very high-powered, very sophisticated skill-intensive technology.

MR. HSU: I just want to stress one point. We talk about capital. Capital actually has several meanings. For a wealthy Chinese industrialist who has made a lot of money in the past, well, he's sitting on the money, he doesn't know what to do. This
type of capital has little meaning on Taiwan economy. On the other hand, a foreign company is trying to make an equity investment in Taiwan — a loan that would bring in mass technology would be used quite differently.

I also want to make a brief comment on the national emergency situation. We all recognize that change of legislation will take time. In the process, we also realize that many existing laws are not being enforced. So there are two separate issues, looking at the existence of certain laws and at what laws are being enforced. In other words, just reading in the law books there is a national mobilization act or a national emergency law, is quite different from saying as a fact how much these laws are enforced on a daily basis.

Dr. Chiu: Thank you. The afternoon session will start at 2:30 p.m. sharp. The Chairperson will be Oliver Oldman, Learned Hand Professor of Law and Director of the International Tax Program at Harvard Law School.

The first session ended at 12:30 p.m.

Reported by Joyce Seunarine

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WRITTEN STATEMENT SUBMITTED BY PROF. CHUNG-SEN YANG* AFTER THE CONFERENCE

I would like to make some remarks on the question raised in the first session about the labor law and working conditions in the ROC. To improve the workmen's livelihood and welfare as a means to foster social security is set forth in the Constitution of ROC as the basic national policy. There is a great amount of labor legislation aimed at protecting the working conditions and promoting the welfare of the workers. The workmen's right to organize or join a labor union is not only protected but also made mandatory by the Labor Union Law. Certain unfair labor practices which might hinder the activities and development of

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labor unions on the part of the employers are prohibited with criminal sanctions. The Factory Law sets forth various safety and sanitation standards as well as minimum working conditions which every employer shall comply with. The contents of this law are pretty comprehensive. It covers, among other things, maximum working hours, minimum wage, allowance, overtime payment, fringe benefits, vacation and termination of contract. Among these provisions, one especially merits attention, namely, that the workers are entitled to participate through their representatives in the decision-making process of the factory policies with their employers (Art. 49-55). In order to enforce this Factory Law, the government employs many factory examiners who have the duty of visiting periodically each factory to examine whether the legal requirements are observed. If there is any irregularity or violation on the part of the employer, the employer may be prosecuted and punished by the court. As far as I know, there have been a number of court cases in which certain factory owners were fined heavily by the court for failure to maintain the minimum sanitary facilities or for having the workers work beyond maximum working hours.

Since 1960, the ROC government has enforced a compulsory insurance program for the workers so that they are insured against sickness, injury, disability, unemployment, old age, death and childbirth. This program has turned out to be very successful.

As far as collective bargaining and labor disputes are concerned, the labor union may negotiate with the employer through the collective bargaining process (see the Law Concerning Collective Agreement). If certain labor disputes should happen and both sides fail to reach an amicable settlement through conciliation, then the workers may go on strike according to Art. 26 of the aforementioned Labor Union Law. However, a special law entitled Law Governing the Settlement of Disputes between Labor and Management provides that in a time of emergency any labor dispute shall resort to conciliation and arbitration and the employers are not allowed to shut down their factories nor are the workers permitted to go on strike (Art. 36, Sec. 2). Since at the present time the ROC is still facing the military threat of the PRC, the right to strike on the part of the workers is therefore temporarily suspended in order to assure industrial peace and internal stability.

It is to be noted that the government agencies concerned in the ROC are not unmindful of the welfare of workmen. As a matter of fact, in the past years, the Ministry of Interior Affairs
has endeavored to revise and codify the existing labor laws and regulations and bring them in line with those of the developed countries for the purpose of promoting considerably the welfare of laborers and giving them much better protection. However, such revisions may increase the costs of doing business and may have an adverse effect on the competitive power of the ROC's exports as well as on the incidence of foreign investment, which may in turn retard the economic prosperity in the ROC. Since at the present, the first priority for the ROC is to enhance industrial prosperity and economic development, the attempt to raise workers' benefits cannot but yield to the general national interest to a certain extent.
II. PRACTICAL AND LEGAL ASPECTS OF US-ROC TRADE AND INVESTMENT
(2:30–5:00 p.m.)
April 15, 1977

The second session was opened by David Simon, Chairperson of the Conference. Mr. Simon welcomed the participants and introduced the Chairman of the second session, Oliver Oldman, Learned Hand Professor of Law and Director of the International Tax Program, Harvard Law School.

Professor Oldman stressed the importance of legal incentives to investment and trade, in terms of tax advantages and flexibility in corporate options, as well as the importance of viewing the ROC not as an isolated entity but as an active member of the international trading community, with the rights and duties that accompany such membership.

Following his introductory remarks, Professor Oldman introduced the session's first speaker, Norman Littell. Mr. Littell, who practices law in Washington, D.C., spoke of his experiences as drafter of the ROC's Foreign Investment Encouragement Law.

[The following is the text of Mr. Littell's paper.]

THE DEVELOPMENT OF THE FOREIGN INVESTMENT ENCOURAGEMENT LAW IN THE REPUBLIC OF CHINA*

NORMAN M. LITTELL†

While the United States expended nearly $23 billion of United States taxpayers' dollars between the end of World War II and 1949, we learned by trial and error how to export our mightiest resource: the secret of the dynamic relationship that joins resources, manpower and capital investment to ensure production and employment.

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In creating the Economic Cooperation Administration through the ECA Act embodying the Marshall Plan, Congress sought to surmount the many obstacles preventing private enterprises and investment from going abroad, and adopted as a part of the Act the so-called Guarantee Clause for private investment abroad, offering to insure the investor for an approved American investment abroad against loss by (a) inconvertibility of foreign currency into dollars because of exchange and other restrictions, (b) loss through destruction by riot or revolution, and (c) war, for projects approved by ECA and the foreign government concerned on undertakings helpful to general recovery.

It so happened that the Foreign Affairs Committee of the House and the Foreign Relations Committee of the Senate approved and adopted a draft of the “Guarantee Clause” submitted by the writer in testifying as Chairman of the Foreign Investment Committee of the International Bar Association (and successively thereafter as Chairman of a corresponding committee of the American Bar Association and of the Inter-American Bar Association). This ECA program worked so well that by 1959, a program was developed to bring many delegations from underdeveloped countries to the United States in order for them to see the private enterprise system in operations by visiting chain stores, banks, factories, stock exchanges and other enterprises. Doubtless because of the above-mentioned background, the writer was asked by the Secretary of State to meet with each of these delegations during one day of their visit to the United States to examine the foreign investment encouragement (or discouragement) laws of their respective countries.

This sounds like an assignment requiring great learning in foreign and international law but in meeting with these delegations, having had advance briefing as to their laws and translations of the material parts, their legal restrictions on foreign investments were, generally speaking, so hopelessly impossible for a foreign investor to face or live with, that it was like shooting sitting ducks to tell the delegations (as diplomatically as possible!) what was wrong with their laws.

An alert and able group was from Taiwan. The delegation returned to Taiwan to draft the Foreign Investment Encourage-

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2. One member of the ROC group, the Honorable C. K. Yen, is now President of the Republic of China, succeeding the Honorable Chiang Kai-shek. Another member, the Honorable K. T. Li, became Minister of Finance and is now semi-retired, because of ill health, as “Minister Without Portfolio.”
ment Law of 1959. The new law as drafted was adopted by the Legislative Yuan, the elected “Congress” of Taiwan.

Impracticability of some provisions of the law of 1959 soon became apparent. Request was made from Taiwan to Secretary of State Dulles to send the writer to Taiwan to help revise the 1959 law. I was invited to go as consultant to the State Department. While under great pressure in other legal business, I agreed to use my vacation time to go to Taiwan, accompanied by Mrs. Littell, a member of the Bar of Louisiana and the Supreme Court of the United States. We went together during our vacation time in the summer of 1960.

Without detailed discussion of the intensive redrafting period in Taiwan, it is sufficient to say that what became the “Foreign Investment Encouragement Law of 1961” took shape. The writer was the first “foreigner” to be invited to appear before the Legislative Yuan in order to explain the law, and he was also invited to the “White House” of Taiwan to see President Chiang Kai-shek for the same purpose. In the course of the latter discussion, the President said that he understood that I would like to visit Quemoy, which islands lying off the mainland of Communist China, together with Matsu, was under Nationalist control, but was under bombardment by the Communist People’s Republic of China on alternate days.

I readily seized the opportunity afforded by the President’s very kind offer to provide transportation by plane, and in a small government plane landed at Quemoy on a day when bombing was not scheduled. On that day and on the alternate days when the Republic of China from the mainland was not sending real bombs, the air force from Taiwan “bombed” Quemoy and Matsu with leaflets showing on one day the picture of clothes and their prices available in the free order of Taiwan, and on another day, yardage of goods needed in all households, readily available in Taiwan and the low prices of such merchandise, together with all manner of products, including food readily available in the steadily rising standard of living on Taiwan. I mention the incident because it dramatized graphically the force and effect of private enterprise as a weapon in the arsenal of free government.

The success of the Republic of China in bringing the fruits of the private enterprise system to Taiwan achieved a record in economic progress, temporarily interrupted by a world recession in 1974-75, but mounting to a gross rate of 10% annual increase in contrast to 7.2% in the ten years preceding the Foreign Investment
Encouragement Law (1953-62). While great credit must be given to the performance of the high productivity of the Chinese worker in the Republic of China's economy, and sound government management, American policy in encouraging foreign investments with its own guarantees of security, plus the incentives offered by the Chinese law, the percentage of gain in gross national production in 1976 attained 11.86%, surpassing the target of 6.4%. The Gross National Product was $17,145 million. In realistic terms, after allowance for inflation, the increase was 11.86%, compared with 2.4% in 1975.

Above all, getting down to the lives of individual citizens of Taiwan, the per capita income was $809, or an increase of 14.6% over 1975.

All of which was aided and precipitated by a flow of private investments from abroad from the United States, the overseas Chinese, Japan, Europe, and a number of other countries.3

Following the exodus of the Nationalist government from Mainland China in 1949 to Taiwan, there was a brief period in which world opinion was that Mainland Communist China represented the wave of the future, but under the dictum of President Chiang Kai-shek that "self-help was the best help," the government of the Republic of China on Taiwan grew to spectacular success. As Ambassador James C. H. Shen from the Republic of China to the United States stated to the 20th Century Club in Hartford, Connecticut, on December 2, 1976:

The United States has played a major role in Taiwan's economic growth from its beginning. At a time when Free China was in dire need of help of many kinds, the United States provided us, shortly after our government was transferred to Taipei, with a liberal economic assistance program. Such aid continued for a period of 15 years, from 1950 to 1965, totalling US$1.5 billion, which contributed considerably toward stabilizing Free China's currency and

helping to build up Taiwan from an agricultural economy to a semi-industrialized society.  

The head of ECA aid to Taiwan from 1958 to 1960, Wesley Haraldson, said that the hard work of the Chinese people "fueled the rapid growth of Taiwan's economy. . . . I have never known a people who worked so hard as the people of Taiwan. It was amazing. And I never saw a hint of hanky-panky with our aid funds."

So successful was this cooperative program between the United States and the Republic of China that it stands as a monumental lesson to our foreign aid policy — namely, that self-help in the private enterprise system is the ultimate key to a sound economy. In 1965, the Republic of China was the first country to be dropped from our foreign aid appropriations.  

As Ambassador Shen rightly pointed out, American private industry took up where the American government aid left off, and in due time evolved specifically no less than 250 industrial projects, from the manufacture of automobiles to the production of plastic shoes, but with the largest segment being invested in electronic and chemical industries.  

Our former American Ambassador to the Republic of China, the Honorable Leonard Unger, was lavish in his praise of achievements on Taiwan in his article in the January/February 1977, issue of International Business.  

Now, in overwhelming statistics and generalities as to the individual, we can note these sensational gains: The people in Taiwan are far better fed and clothed than in Mainland China. The individual calorie count exceeds 2,800 daily, up 37 calories for the past ten years, and the per capita daily consumption of protein has increased from 57.8 grams in 1962 to 74.8 in 1975.  

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7. Supra, note 4, p. 12.
Energies were not devoted entirely to material progress as indispensable for national survival, but every effort was made to fashion a viable free nation of cultural enlightenment and social justice, fostering democratic rule, cultivation of universal education, advancement of social well-being, promotion of public health and revitalization of Chinese culture.

In spite of the vulnerability of Taiwan as a subtropical country, normally spawning grounds for tropical diseases, Taiwan has succeeded in eliminating such Asiatic scourges as smallpox, malaria, cholera, typhoid fever and yellow fever. According to the World Health Organization, Taiwan has become "one of the healthiest places in Asia," increasing the life expectancy on Taiwan to an average of 66.7 years for men and 72.2 for women, as compared to 41 years for men and 45.7 for women in 1945. The Constitution of the Republic of China charges the government with the responsibility of providing universal education, beginning at the age of nine with free education for all children. The attendance rate of children of school age has reached an all time high of 99.3% — possibly unequaled elsewhere in the world.8

At the end of 1975, there were 3,400 schools of all levels, with an enrollment of 4.42 million students, or 27.4% of the entire population. Great strides have been made in the field of higher education; whereas there were only four college-level institutions in 1945, today there are about 100 universities and colleges.

A vital facet of national life on Taiwan has been the effort made to foster human freedoms under the rule of law. Visiting American jurists noted that significantly impressive progress has been made in maximizing the basis for the people's enjoyment of all fundamental human rights. The people there enjoy the rights of free election, freedom of expression, freedom of association, freedom of the press, freedom of religion, the rights of private ownership, free choice of education and employment, freedom of travel and the rights of a free judiciary.

The importance of the US-ROC economic interaction lies not so much in the outstanding growth which the ROC has experienced, as evidenced by the impressive statistics of the last fifteen years, but in the effect of that growth on the people of Taiwan and in the foreign policy lessons to be learned. As to the first lesson, the statistics do speak for themselves; there can be no

8. Id.
doubt that, as a people, the Chinese in the ROC enjoy a level of existence that exceeds that in virtually every other developing country. The ROC's present policy, of shifting from labor- to technology-intensive production, will undoubtedly increase the ROC's standard of living even further, as Taiwan moves beyond the developing countries and joins the developed countries economically.

But the foreign policy lessons are at least as important, especially from the U.S. point of view. Although the ROC remains strongly dependent on the United States as a trading partner, it is important that that dependence is grounded in trade for mutual benefit rather than on U.S. governmental largesse. The ROC's turn-around in this respect — from aid recipient to trading partner — is perhaps the most spectacular example of the success of the American free-enterprise system as expressed in American foreign policy. The American blend of public expenditures and private enterprise has ensured the survival of a nation that had teetered on the brink of absorption, has given Americans the benefits of a highly desirable trading partner, and has given the Taiwanese the benefits which accrue to a free and prosperous nation. It is important, in this period of re-evaluation of American policies with regard to China, to remember the successes and lessons of our experience with Taiwan. We must remember that the Chinese in Taiwan were willing partners in their development, neither subservient nor bullying, and that the key to the success of US-ROC relations has been and continues to be the strong community of interest and mutuality of respect between the two nations. Surely, the Republic of China, the great experiment and exemplary success of the free-enterprise system in American foreign relations, should not be delivered up as an expendable pawn on an impersonal chessboard in the maneuverings between the United States and the People's Republic of China: the loss would simply be too great, in terms of the personal stake of the Taiwanese, in terms of America's moral options in world politics, and in light of what would be the vast contradictions between America's express belief in free enterprise and its spurning the very people who most relied on that belief, the Chinese in the ROC.

Professor Oldman thanked Mr. Littell for his presentation setting the historical stage for the afternoon's session. He then
introduced Dr. Chun Li, who spoke on the lawyer's role in structuring trade and investment in the ROC. Dr. Li, who is an attorney in Taipei, outlined the principal tax advantages offered by the ROC for foreign investment and set forth the forms of corporate structure available to foreign investors, foreign traders, and enterprises wishing to establish resident agents on Taiwan.

[The following is the text of Dr. Li’s paper.]

HOW TO STRUCTURE INVESTMENT AND TRADE OPERATIONS FOR AMERICANS IN THE ROC: A LAWYER'S EXPERIENCE

CHUN LI*

I. INTRODUCTION

In writing this paper, my sole purpose is to bring to the notice of prospective American investors and traders certain crucial aspects relating to investment and trade in the Republic of China (hereinafter ROC) from my many years' experience of private law practice in that country.

Land and People

As many are undoubtedly aware, the ROC used to be a huge national entity whose territory embraced the entire Mainland China and many outlying islands, large and small, including, among others, Taiwan, Quemoy, Matsu and Penghu (the Pescadores). In late 1949, following the Communist take-over of Mainland China, the government of the ROC moved its seat to Taiwan. At present, only Taiwan, Quemoy, Matsu, and Penghu are under the effective control of that government, Taiwan being the largest land mass of all, on which over 95 percent of the ROC's population resides.

For centuries Taiwan has been known to Westerners as Formosa, a name given by the 16th century Portuguese mariners who first occupied and administered the island following their

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discovery. Subsequently, the island was taken over by the Chinese and renamed “Tai-Wan,” meaning literally “terraced bay.” In 1887 Imperial China proclaimed it a province, formally bringing it within the ambit of the Chinese Empire. Upon China’s defeat in the first Sino-Japanese War in 1895, Taiwan was ceded to Japan, thus becoming a Japanese colony. It was restored to China in 1945 after World War II. Thereupon, it was made a province of the ROC.

Shaped roughly like a tobacco leaf, Taiwan is 240 miles in length and 85 miles in width at its broadest point. It has a total land area of 13,885 square miles. Its present population is approximately 16 million, with an annual rate of increase at slightly less than two percent.

Some comparison between Taiwan and mainland China might be of interest. Mainland China, with a total land area of 4.4 million square miles, is 300 times the size and its massive people of 800 million 50 times the population of Taiwan. However, notwithstanding Mainland China’s undisputed superiority in territorial space and manpower, it lags behind the ROC in the important areas of economic development and foreign trade. In 1976 foreign trade of the ROC totalled US$15,760 million, while that of Mainland China was only US$13,400 million.

Economic Development and Foreign Trade

Since the early 1950s the people and government in Taiwan have made economic development their foremost national goal. Through a series of governmental processes which included a land reform program, basic social structural changes, many legislative enactments designed to encourage investment, credit revision, expansion and improvement of infrastructure, and upgrading of education, the economy of the ROC has prospered, so much so that today many leaders of the world community speak of her as a model of economic development among developing nations. Concomitantly, foreign trade of the ROC has expanded by leaps and bounds. The latest statistics of the International Monetary Fund lists her the twentieth among the world’s trading countries. She is a major trading partner of the United States, being as of the present the twelfth on the list of America’s trading partners. Two-way trade between the United States and the ROC in 1976 amounted to over US$4.6 billion, with the latter enjoying a surplus of approximately US$1.3 billion. If trade between the two
countries keeps expanding, it is hopeful that the ROC will move up to the seventh or sixth place among U.S. trading partners within the next few years.

Taiwan has been one of Asia's most attractive investment sites and it will remain so if the government's present development-oriented policy continues. Foreign investment since 1952 totals US$1.405 billion. The United States is the single largest investor (US$470.04 million), followed by overseas Chinese (US$411.33 million), Japan (US$215.9 million) and European countries principally West Germany and the Netherlands (US$161.6 million). Since the energy crisis in late 1973, foreign investment has somewhat tapered off, but this is believed to be a transient phenomenon. As economies of major industrial powers are gradually recovering, it is expected that more foreign investors will come to the ROC to make investment in the years to come.

II. BRIEF DESCRIPTION OF ROC LEGAL SYSTEM AND MAJOR GOVERNMENT AGENCIES REGULATING INVESTMENT AND TRADE

Legal System

Although ancient Chinese society was principally guided by the moral teachings of Confucius, law as a social institution was known to the Chinese as early as before the birth of Christ. China's first legal code, Fa Ching (The Canons of Law), dates back to 255-206 B.C. in the Ch'in dynasty. From then on down to the Ch'ing (Manchu) Government (1644–1911), all Chinese dynasties had their own codes of law. It should, however, be noted here that from today's point of view, these codes could hardly have been called law, as they were enacted without any form of legislative process. Largely penal in nature, they were actually fiats promulgated by the governor for control of the governed.

In the closing years of the Ch'ing dynasty, because of China's repeated military defeats at the hands of foreign powers, agitations for constitutional, legal, social and industrial reforms gained nationwide momentum. Legal reforms were given top priority as the entire Chinese nation was pained by the humiliating effects of the extraterritorial rights imposed by the victorious powers. The Ch'ing Government made a special effort to formulate new laws to meet public demands, but before the work was completed, revolution broke out in 1912 causing the downfall of the Manchu dynasty.
After the establishment of the Chinese Republic, the work of law reform continued. In the initial stage assistance of Japanese legal scholars was sought. As Japanese law is by and large German and French oriented, so is ROC law. Up to the time the ROC Government evacuated to Taiwan in 1949, the nation had various modern statutory laws comparable to those in force in other civilized nations.

Today the laws previously used in Mainland China remain in force in ROC-controlled territory.

The ROC has three levels of courts. On the national level, there is the Supreme Court, which is the court of last resort. On the provincial level, there is the High Court, which is a court of intermediate appellate jurisdiction. The High Court may have one or more branches, depending upon the volume of judicial business that comes before it. On the local level, there is the District Court, a court of first instance having general jurisdiction in both civil and criminal cases. Attached to each court is a Public Procurator's Office staffed by one or more public procurators whose duty it is to investigate and prosecute criminal offenses on behalf of the State. The nation's chief public procurator is the Procurator-General, an executive official serving under the Minister of Justice.

Like other foreigners, Americans in the ROC, except for those enjoying diplomatic privileges and immunities or those enjoying privileges and immunities under the Status of Forces Agreement, are all subject to the jurisdiction of ROC courts. ROC criminal law has both territorial and extraterritorial application. Thus, if a ROC national or foreigner commits a certain act outside the ROC which is an offense under her criminal law, such as counterfeiting ROC national currency, sedition or high treason, the actor is punishable by ROC law. Once he is in ROC territory, he can be arrested, prosecuted, tried, and convicted.

There are no jury trials in ROC courts. For this reason, the judge is all powerful: he finds facts, rules on evidence, and renders judgment. The role of the lawyer in the courtroom is rather limited — a trial is in the main the judge's show. In this respect, the ROC judge very much resembles his counterpart in German courts.

There are local bars and one national bar in the ROC. The national bar is an association of all local bars. ROC bars, however, are in fact lawyers' guilds, as, unlike bars in the United States, their membership is restricted to private law practitioners and does not extend to judges, public procurators, government attorneys and law professors.
Agencies Regulating Investment and Trade

Foreign investment and trade are under the jurisdiction of the Ministry of Economic Affairs (MOEA). A special agency by the name of Investment Screening Commission (ISC) was set up within the MOEA to screen and approve investment applications submitted by overseas Chinese and foreign nationals. A Vice-Minister of the MOEA serves ex officio as Chairman of the ISC, whose membership includes several officials at the vice-minister level of other ministries and representatives of the provincial and local governments. The ISC has a secretariat and a number of divisions, each charged with certain responsibilities of daily routine. Decisions, however, are made by the members of the Commission at meetings on a collective basis.

For every investment application that has to do with manufacturing, the clearance of the Board of Industrial Development, also an agency under the MOEA, is essential. The Board has responsibility for the overall planning of the nation's industrial development, so investment applications involving manufacturing activities are subject to its review. In fact, without its favorable recommendation a foreign investment application has little hope of being approved by the ISC.

If a foreign investor desires to import from abroad equipment and raw materials for its own plant, his investment application will, as a rule, be forwarded by the ISC to the MOEA's Board of Foreign Trade (hereinafter BOFT) for review and recommendation. Invariably, the BOFT will require the foreign investor to purchase equipment and raw materials from the local market to the extent that they are available locally. What is more, it will refuse to permit the foreign investor to import used equipment from abroad for fear that foreign manufacturers would use the ROC as a dumping ground for obsolete equipment. Only in very exceptional cases where the foreign investor is able to support importation of used equipment with incontestable grounds will the BOFT make an exception to the above.

On a more general level, the BOFT controls all imports and exports through its power to grant import and export licenses. Together with the Bureau of Commodity Inspection of the MOEA, it also exercises a certain degree of supervision over the quality of export merchandise. Occasionally, the BOFT, when requested to do so, will go out of its way to mediate in disputes between the local purchaser and the foreign supplier and vice versa.
Mention should also be made of still another agency under the MOEA which, though not regulatory in nature, stands prominently in the government hierarchy insofar as foreign investment is concerned. That agency is the Industrial Development and Investment Center (IDIC), created solely to provide assistance to foreign investors. The IDIC maintains overseas offices in half a dozen major cities around the world, including New York City, Chicago, Los Angeles and Frankfurt. These offices furnish information to and assist prospective investors in identifying investment possibilities in the ROC.

The Ministry of Finance also plays an important role in the administration of foreign investment. Many tax incentives, including those of tax exemption and accelerated depreciation of fixed assets, fall within its jurisdiction. Other investment inducing benefits, such as free importation of equipment, five-year deferred payment or installment payment of import duty, tax rebates for raw materials used for export products, establishment of bonded warehouses or factories, and so on, also must receive its approval. Of all the Ministry's powers the greatest is, perhaps, that of determining what products should be accorded the status of encouraged products, thus entitling them to five years tax exemption. In this connection, attention is called to the fact that not every product manufactured by the investor's plant is eligible for the tax holiday; the Ministry has prescribed certain criteria which products must meet in order to qualify therefor. Reference will be made to such criteria elsewhere in this paper when the subject of foreign investment is to be treated in more detail.

At the provincial level, the Department of Reconstruction of the Taiwan Provincial Government is the agency with which foreign investors will come into the most frequent contact. This agency is responsible for the licensing of all factories in Taiwan save those situated within the Municipality of Taipei, which has its own Bureau of Reconstruction to do the job. The Provincial Department of Reconstruction has one other important function, that is, classifying land and issuing industrial land certificates without which factories will not be permitted to be established. This function is, however, rarely exercised by the Bureau of Reconstruction of the Municipality of Taipei, as land within the city limits is too expensive to be used for factories.

Occasions may arise when foreign investors are called upon to deal with the local governments within whose jurisdictions they keep business offices or factories of their invested enterprises. Clothed with no decision-making or supervisory powers, these
local governments are not regulatory agencies and they treat foreign invested enterprises the same way as they would any local enterprises.

III. THE LAWYER'S ROLE IN FOREIGN INVESTMENT AND TRADE

Local lawyers specializing in investment and international business transactions ought to be a valuable asset to the foreign investor or trader. As a common practice, American investors or traders used to retain their own American lawyers for consultation on legal matters. This is certainly fine at home, but several considerations weigh against the use of American lawyers in the ROC. In the first place, American lawyers usually do not speak, read, or understand enough of the Chinese language to be capable of effectively handling their clients’ legal business. Second, it cannot be expected that they possess a thorough knowledge of the local laws and regulations applicable to foreign investment and trade. Third, not being brought up in a Chinese environment, they usually lack that degree of tactfulness which is characteristic of the Chinese in the course of human relations. Of all these qualifications the last is particularly important in terms of accomplishment of objectives in Chinese society, but it apparently cannot be acquired through learning processes. Thus, it is perhaps to the advantage of the American investor or trader to utilize the services of a local lawyer to handle for him matters relating to investment or trade in the ROC. A most ideal arrangement, which has in fact been widely adopted by American investors or traders, is to employ a local lawyer to work with their own American counsel. By so doing, the local lawyer complements the work of the American counsel, with the client getting the benefit of the legal talents of both.

The local lawyer's role should not be limited to handling legal technicalities for his clients. It does not take much legal expertise to fill out a foreign investment application or application for import or export license, even though it is required to be written in the Chinese language. What should be the first and foremost requirement for the local lawyer is to help his clients map out investment strategies. For instance, he should be able to advise his clients as to whether a small equity with a large loan from the parent company is a better mode of investment than a large equity investment without a loan, or whether loaning equipment by the parent company to the subsidiary enterprise is a more
flexible arrangement than an outright cash equity investment in times of fast technological or other changes. Advice such as this is crucial to the investor in the sense that it will help him arrive at a correct decision so that he can set his venture on a proper course at its very beginning.

It is not even unusual for American investors or traders to consult with their local lawyers on business issues. To generalize here the kind of advice sought by them is both impractical and impossible, but a couple of examples may throw some light on the nature of questions they commonly ask. They may, for instance, be concerned with the pricing of their export products and ask whether it should be at a higher or lower level because of possible consequences upon their present or future tax liabilities. They may also ask whether purchase of raw materials from local sources is, in regard to cost and in other respects, more desirable than importation from abroad. Quite obviously, not every local lawyer is competent to answer such questions, as they call for some familiarity with the client’s business as well as a fair knowledge of general business know-how. These examples nevertheless give some indication of the whole spectrum of services the local lawyer may be called on to perform.

If the American investor or trader is not physically present in the host country, the local lawyer may have to act as his representative. In this capacity, the local lawyer will conduct negotiations with the client’s business counterparts or officials of government agencies on behalf of his absentee principal. He will thus be more than the investor’s or trader’s attorney; in a truer sense, he will become the latter’s business agent.

Last, but not least, the local lawyer will at times serve as interpreter for his American clients, most of whom do not speak the Chinese language. While English is the second language for the majority of the educated sector of the ROC population, it is deemed advisable and prudent for the American investor or trader to use his Chinese lawyer as interpreter in conversation with his business counterparts or government officials, particularly when matters of legal importance are involved.

At present, there are in the ROC a dozen or so law practitioners who not only have excellent English language capability but also received legal training in the United States, some being holders of the J.D. degree. These lawyers are generally competent for legal service to American investors and traders.
IV. INVESTMENT

Not all American investors or traders have the same business objectives in the ROC. Some are attracted to the country by the favorable investment climate there and they desire to set up factories to manufacture products for sale to local consumers or for export, or both. Others are interested in purchasing merchandise from local producers and exporting it to the United States and/or other areas, and vice versa. Still others simply want to send a representative to the ROC and have him stationed there for liaison purposes, such as doing market research, supervising execution of purchase orders by local suppliers, maintaining contact with prospective customers, and so on. Depending on the objectives of a particular client, the local lawyer's role is to advise him on the proper approach to take and to assist him in the structuring of his operations within the legal framework of the ROC.

From what has been stated, it may be appropriate to classify the business objectives of American investors and traders in the ROC, according to their nature, into two major categories, i.e., investment and trade. Representatives of American business establishments sent to and stationed in the ROC are sui generis, having little to do with either investment or trade. They perform, nevertheless, a pattern of activities quite commonly adopted by American companies, thus deserving some treatment as a separate and distinct category. The main object of the writer, as previously stated, is to deal with certain crucial legal aspects relating to foreign investment and trade.

Foreign Investment — Legal Definition and Scope

To the layman, investment may conceptually mean a variety of business undertakings: setting up a factory for manufacture of products, forming a company to carry on trade, purchasing real estate, buying stocks and bonds, and the like. The writer had the personal experience of being asked on one occasion by an American businessman to assist him in making an "investment," as he called it, in the ROC by opening a steak house.

The legal definition of investment can, of course, be markedly different. Under the Statute for Investment by Foreign Nationals, promulgated July 14, 1954, and last amended June 22, 1968 (hereinafter SIFN), investment has a restricted meaning. Only the
establishment of one of the following enterprises will be treated legally as foreign investment: (i) productive or manufacturing enterprises capable of meeting domestic needs; (ii) enterprises whose products have export markets; (iii) enterprises which will foster the development and improvement of the nation's major industries, including mining and communications industries; and (iv) other industries which will benefit the nation's economic and social development. Thus, it is clear that not every type of business is open to foreign investors. The dominant theme is production and manufacture, since the government policy with respect to foreign investment is primarily oriented toward national economic development.

When legal assistance is sought by an American client on a specific investment project in the ROC, the local lawyer should first carefully look into the client's plans to see whether the proposed project can qualify for foreign investment. In this regard, a few key questions should be asked. Will the investment provide import-substitutes needed for domestic consumption? Will the investment produce export items to improve the nation's trade balance and generate more foreign exchange earnings? Will the investment tend to develop or improve the nation's important industries, including mining and communications industries? If the answers to the above are all in the negative, then ask a last question: Will the investment be in any way beneficial to the economic and social development of the nation? This last question is broad enough to provide a leeway through which a good case may be made for the client's project, as any direct financial investment is bound to result in some benefit to the economic and social development of the host country.

The SIFN provides certain privileges and benefits for foreign investors, such as repatriation of invested capital, outbound remittance of net profit, guarantee against requisition or expropriation, waiver of nationality and residence requirements, and so on. Attention is, however, called to the fact that the SIFN itself contains no provisions of tax benefits which for practically every foreign investor are a major incentive. Tax benefits are provided in the Statute for Encouragement of Investment (hereinafter SEI), a statute applicable to both national and foreign investors. These include a five-year tax holiday or accelerated depreciation of fixed assets, a maximum rate of business income tax, import duty exemption or five-year deferred payment of import duty on capital equipment, and many other lesser benefits.
It is overridingly important to point out that even though a proposed project of a foreign investor approved by the government may qualify for foreign investment, it does not necessarily mean that it will be entitled to the tax holiday or accelerated depreciation of fixed assets under the SEI. Only certain enterprises prescribed in government executive orders published from time to time may enjoy such benefits, subject to the further condition that they meet certain procedural requirements. The prescription of these enterprises is officially designated "Categories and Criteria of Productive Enterprises Eligible for Encouragement." The local lawyer must check carefully to see whether the particular investment project proposed by the client falls within the prescribed categories and meets the prescribed criteria.

The latest categories and criteria, amended and published by the Executive Yuan, the nation's highest administrative body, on April 28, 1975,* list 14 categories of enterprises with various criteria as being entitled to encouragement treatment in the form of a tax holiday or accelerated depreciation of fixed assets. The principal category is manufacturing industries, which include: food processing industry, paper industry, rubber processing industry, chemical industry, processing industry of non-metallic minerals, basic metals manufacturing industry, machinery manufacturing industry, electrical equipment manufacturing industry, electronics industry, transportation equipment manufacturing industry, ceramic industry, textile industry, building and prefabricated materials manufacturing industry, and other manufacturing industries (such as clinical and surgical instruments; photographic and optical instruments, watches, clocks, and their parts and assemblies; etc.). The other 13 categories of encouraged industries are: handicraft industry, mining industry, agricultural industry, forestry industry, fishery industry, animal husbandry industry, transportation industry, warehousing industry, public utilities industry, public housing construction industry, enterprises providing technical services, enterprises engaged in tourist hotel operations, and heavy equipment construction industry. For each industry the government prescribed certain criteria of which a detailed description here is infeasible due to limited space.

* Editors' Note: The Statute for Encouragement of Investment was again amended on July 26, 1977. The English translation is available from the Chinese Investment and Trade Office in New York, see p. 22 supra.
Prescribed Form of Organization of Invested Enterprises

In addition to the above, the form of organization of the invested business is also a key factor in the granting of the tax holiday or the accelerated depreciation of fixed assets or other prescribed benefits. The SEI (Art. 3) explicitly stipulates that to qualify for productive enterprises within the contemplation of the "Categories and Criteria of Productive Enterprises Eligible for Encouragement," each invested enterprise must be organized as a company limited by shares in accordance with the Company Law. In structure and legal ramifications a company limited by shares is more or less similar to an American corporation, but it does have some unique features which are worthy of note from the standpoint of the American investor. These features are briefly stated below.

1. There must be seven or more incorporators, more than one-half of whom must have their domiciles within the ROC (Art. 128, para. 1). This domicile requirement is, however, waived in the case of foreign investment. Both corporate persons and natural persons can be incorporators. Thus, if X corporation, a Delaware corporation, makes an investment in the ROC and organizes a wholly owned subsidiary under the Company Law, then X corporation itself can be an incorporator. To meet the requirement of a minimum of seven incorporators, it will have to nominate six or more other persons, corporate and/or natural, but preferably its employees, to be incorporators. To qualify for waiver of the domicile requirement, however, such persons must join the principal investor in applying for recognition of their status as co-investors.

2. The company must have, at least, three directors elected from among its stockholders (Art. 192, para. 1). The latter qualification means that to be eligible for election to a directorship, one must, at least, own one share of stock. Since a corporate investor cannot act by itself, it will have to appoint one or more representatives to represent and act for it as stockholder, and such representatives will be eligible for election to directorships. The Company Law does not require directors to have ROC nationality, nor does it require them to keep their residence in the ROC. It does, however, require the chairman of the board of directors to have both ROC nationality and residence, but again such requirements are waived in the case of foreign investment. The
term of office of directors cannot be longer than three years, but they are eligible for reelection (Art. 195, para. 1).

3. Directors must attend board meetings personally, except that the articles of incorporation of a company may provide that one director may by written authorization appoint another director as his proxy to attend board meetings on his behalf (Art. 205). No director, however, may act as proxy for more than one other director. Each director is entitled to one vote.

4. A company limited by shares may, but is not required to, have a number of executive directors elected from among the directors. They meet regularly when the board of directors are in recess to make decisions on corporate business and affairs. The Company Law requires a majority of executive directors to have their residence in the ROC, but if they are foreign investors or co-investors, such requirement is waived under the SIFN.

5. The chairman of the board of directors, elected from among the directors or executive directors, as the case may be, is the legal representative of the company vis-à-vis the outsider. He presides over board and stockholders meetings. He must be an ROC national and have his legal residence in the ROC. Both requirements are, however, waived if the company is a foreign investment company.

6. The Company Law requires a company limited by shares to have, at least, one supervisor elected from among the stockholders. If a company has more than one supervisor, at least one of them must be an ROC resident. Again, this requirement is waived in the case of foreign investment. The institution of supervisorship is of continental origin. Both the German Commercial Code and the Japanese Commercial Code have similar provisions. Under the Company Law the structure of a company limited by shares contemplates three direct sources of power and control: the stockholders, the directors and the supervisor. The directors, whose functions are executive in nature, are solely responsible for the management and business operations of the company. The supervisor, on the other hand, represents the stockholders in overseeing the work of the management and the financial condition of the company. One of his primary functions is to check on the financial reports prepared by the board of directors before they are submitted to the annual stockholders meeting. Although the directors are legally bound to respond to the requirements of the supervisor and to supply to him full information concerning the business operations and financial condition of the company, the ultimate controlling authority
remains the stockholders, who may not only remove directors and
the supervisor through their voting power, but may also make
policy decisions and declare dividends. In actual practice,
however, the stockholders rarely, if ever, do so and tend to rubber
stamp recommendations of the directors on matters relating to
company policies and dividend distribution.

7. The president and vice president of the company must be
ROC residents, although they need not be ROC nationals (Art. 29,
para. 4, and Art. 39). This means that if the investor desires to
appoint a foreigner to be president or vice president of his invested
company, the appointee must take up his residence in the ROC.
This, in turn, means that the appointee must enter the ROC with
an entry visa, as only this type of visa will make it possible for
him to apply for resident status in the ROC.

8. To require stockholders or board meetings to be held
within the ROC would cause much inconvenience to foreign
investors, even though modern air transportation has considera-
bly reduced the distance between the various continents. For
convenience sake, the articles of incorporation may provide the
holding of stockholders and board meetings outside the ROC.

Local Participation

To prevent foreign dominance of national economy, most
developing countries require some degree of local participation in
foreign investment. Either a foreign invested enterprise should be
joined by indigenous partners at the time of its initiation, or
indigenous partners should be allowed to participate in the
enterprise after it has been in operation for a certain number of
years. In general, the ROC Government, even at this date, still
allows foreign investors to freely set up 100 percent self-owned
subsidiaries. However, it does require local participation in certain
selected industries. The basic metals manufacturing industry,
considered crucially important for national economic and other
development, is, for example, one such industry; no foreign
investor or investors may own more than 40 percent of total equity
except in cases where special approval has been granted by the
ISC. Local participation is also required for the electronics
industry, but wholly owned subsidiaries are permitted if all their
products are intended for export. In the pork processing industry
local equity participation is prescribed at 50 percent at the
minimum.
At the other end of the spectrum, if an invested enterprise is 100 percent foreign owned, the ROC Government may require the transfer to local people of a designated percentage of equity ownership after a limited number of years. When such dilution of foreign equity ownership is required, the percentage of capital stock to be transferred and the time limit within which the transfer should take place are invariably prescribed in the investment approval granted by the ISC.

**Joint Ventures with Local Partners**

Most American investors seem to prefer wholly owned subsidiaries to joint ventures with local partners, largely out of a desire to run their business without interference from any non-governmental third parties. Where a wholly owned subsidiary is impermissible and joint venture the only answer, the negotiation and drafting of a joint venture agreement becomes vital to the interests of the foreign investor. In this connection, the local lawyer will have an important role to play. As a law practitioner specialized in foreign investment, the writer wishes to offer the following for the consideration of American investors interested in joint ventures in the ROC:

1. In the absence of a required percentage of local equity ownership, it will be a distinct advantage for the American investor to own 51 percent or more of the total equity of the invested enterprise. In the first place, his investment will then be guaranteed by law (Art. 15 of the SIFN) against government requisition or expropriation within 20 years from the date of commencement of operation of the invested enterprise as long as he maintains a minimum ownership of 51 percent of the total capital stock. Secondly, he will have a majority vote — thus a bigger voice — at the stockholders meeting. Because the stockholders are the ultimate authority and controlling body of a company limited by shares under the Company Law, this will in turn assure him of firm, if not absolute, control of the business.

2. How many persons each party can nominate and have elected to the board of directors is vitally important for corporate decision making; for resolutions at board meetings are adopted by a majority vote in number of the directors, each director, as noted before, being entitled to one vote regardless of the amount of stock owned by him. The number of directors controlled by each party becomes all the more important in the appointment of the president of the company, which is legally effectual only by the
concurrence of a majority of the directors. It is quite common for
joint venture partners to agree upon and set forth in their joint
venture agreement the respective numbers of directors they each
shall be entitled to nominate and have elected to the board as well
as the party which shall have the right to nominate the president.
Most American investors also like to reserve to themselves the
right to nominate the plant manager and the controller because of
the importance of these positions to the success of their ventures.
A suitable provision to this effect in the joint venture agreement
will prevent possible controversies over the issue from arising
between the partners.

3. The partners should agree upon the place or places where
stockholders and board meetings are to be held. As non-
indigenous investors and their nominated non-indigenous co-
investors cannot visit the ROC too often, a provision in the joint
venture agreement that such meetings may, if requested, be held
outside the ROC should be of advantage to them. To ensure full
compliance by local partners with such a provision, it is desirable
to have it written into the articles of incorporation.

4. The mode of settling possible controversies between the
partners is one aspect deserving the closest attention of the
American investor. Joint ventures are usually business undertak-
ings of long duration, and there is no guarantee that the
American investor and his local partner or partners will see eye to
eye on everything with respect to the business and operations of
the joint venture. To provide in the joint venture agreement how
differences or controversies arising between the parties out of, or
relating to how their joint venture should be settled, ought to be a
prudent and necessary step. Largely due to their cultural
background, local people are loath to fight legal battles whether in
ROC or foreign courts. Their centuries-old preferred dispute-
settling methods are reconciliation and arbitration. In recent
years there has been witnessed a growing tendency among
American investors favoring arbitration in the United States or a
third country in accordance with the rules of the American
Arbitration Association or the rules of conciliation and arbitration
of the International Chamber of Commerce at Paris, and this is
permissible under the ROC law if the local partner or partners
agree. Under Article 8 of the Statute for Technical Cooperation,
where a dispute should arise out of technical cooperation, it shall
be settled in accordance with the arbitration method as agreed
upon between the parties. Thus, if a certain foreign investment
has a licensing arrangement, i.e., supply by the foreign investor of
technical know-how to the invested enterprise on a royalty basis, the inclusion of an arbitration clause in the licensing agreement is mandatory.

Whether arbitration awards rendered outside the ROC will be honored by ROC courts is surely a matter of deep concern for the American investor. There is no precise legal provision, nor do there exist any precedents, on this point. The law on the enforceability of foreign judgments may, however, provide some assistance in ascertaining the possible judicial attitude with respect thereto. Under Article 402 of the Code of Civil Procedure, the validity of a judgment of a foreign court will not be recognized by ROC courts if one of the following elements is present: (i) such judgment is not res judicata; (ii) according to the laws of the ROC the foreign court rendering the judgment did not have a valid basis for exercising jurisdiction over the case; (iii) such judgment is considered incompatible with the public order and good morals of the Republic; and (iv) judgments of courts of the ROC are not reciprocally recognized by the foreign court rendering the judgment. It is believed that when a foreign investor applies to an ROC court for execution on a foreign arbitral award the court will probably refrain from subjecting the award to a review on its merits, but that the possibility of the court applying some of the criteria applicable to foreign judgments cannot be totally ruled out.

5. The American investor and his local partner or partners are free to agree upon a law governing their legal relationship under their joint venture agreement. Under Article 6 of the Law Governing Application of Laws in Cases Involving Foreign Persons, contracting parties are permitted to choose any applicable law to govern their contracts. Most American investors wish to choose laws of the State of New York as governing law, and this is acceptable to the ROC authorities provided the choice is not imposed upon the local partner or partners against their free will and provided, further, that none of the provisions of the joint venture agreement are against ROC laws or public policy.

6. Joint venture agreements may be written in the English language. The ROC authorities, including the ISC and other regulatory agencies, will accept English language agreements if Chinese translations are attached thereto. It should, however, be brought to the attention of the American investor that if he signs a joint venture agreement in the United States, his signature must be notarized at the nearest ROC Consulate in order for the instrument to be effectual in the ROC. The signatures of signers of
joint venture agreements executed elsewhere other than in the ROC must likewise be notarized either at an ROC Consulate or by an ROC representative if there exists no ROC Consulate in the area.

Tax Benefits

It has become an established practice for developing countries to offer certain benefits to investors as an incentive to investment. The ROC follows this practice. Of the many benefits granted to domestic and foreign investors under the SEI, the following are worthy of particular mention.

A productive enterprise newly established and eligible for encouragement in accordance with the "Categories and Criteria" prescribed by the government, as referred to above, is entitled to apply for a five-year income tax exemption starting from the date of the first sale of its products or the date services were first rendered, as the case may be, or for accelerated depreciation of the fixed assets of its plant, which must be either imported or entirely new. In his investment application the investor must state what his choice is as between these two options. If his election is accelerated depreciation, the useful lives of fixed assets for the stated purposes shall be determined as follows: (i) for machinery and equipment, if the useful lives prescribed by the tax authorities are 10 years or more, they may be accelerated to 5 years; if the prescribed useful lives are less than 10 years, they may be reduced to one half of the prescribed number of years; and (ii) for buildings, installations, or communication or transportation equipment, their useful lives may be reduced to one-third of the prescribed number of years.

When an existing productive enterprise eligible for encouragement expands its productive equipment to increase the quantity of its products or capacity of its services, it is entitled to apply for a four-year income tax exemption or accelerated depreciation of the fixed assets of its plant, which, also, must be imported or entirely new. Only that portion of the income which is derived from the production of expanded plant facilities is tax exempt and only expanded plant facilities can be depreciated on an accelerated basis. The same useful lives of originally acquired fixed assets for accelerated purposes apply to expanded plant facilities.

Under the SEI, as last amended December 30, 1974* maximum rates of business income tax payable by productive

* See Editors' Note p. 84 supra.
enterprises not eligible for tax holiday or after termination of tax holiday are as follows:

<table>
<thead>
<tr>
<th>Categories of Enterprises</th>
<th>Maximum Income Tax Rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Productive enterprises in general which started operation on or before December 31, 1973, or which were approved on or before December 31, 1973, but started operation before December 31, 1975, or at a government approved later date</td>
<td>25%</td>
</tr>
<tr>
<td>(b) Productive enterprises employing more advanced technology, using more durable equipment and running greater business risks with delayed profit expectations, which started operation on or before December 31, 1973, or which started operation before December 31, 1975, or at a government approved later date</td>
<td>22%</td>
</tr>
<tr>
<td>(c) Productive enterprises in general, approved after January 1, 1974</td>
<td>30%</td>
</tr>
<tr>
<td>(d) Productive enterprises engaged in the manufacture of basic metals or heavy machinery, petrochemical industries, and capital- or technology-intensive industries, approved after January 1, 1974</td>
<td>22%</td>
</tr>
</tbody>
</table>

By comparison, the present rate of business income tax for ordinary profit-seeking enterprises, that is, enterprises not eligible for encouragement, is 35 percent of the excess of taxable income over NT$500,000.

The investor may also benefit from certain provisions with respect to import duties on machinery and equipment used for his plant. Under Article 27, paragraph 2, of the SEI, a limited number of approved productive enterprises (such as steel, aluminum refining, copper refining, electrical engineering, electronics, machine making, shipbuilding, chemical, textile dyeing and finishing, coal mining, and garbage treatment), if they meet the "Categories and Criteria" referred to above, may apply for duty-free importation of machinery and equipment used for their plants under an investment project or a subsequent expansion project approved by the government. Machinery and equipment for which
a duty exemption may be granted are limited to those which cannot be supplied by domestic manufacturers.

Less favorable than free importation is five-year deferred payment of import duties on machinery and equipment. Under Article 27 of the Customs Duty Law, a 100 percent export-oriented invested enterprise organized as a company limited by shares which makes substantial contributions to domestic economic development or applies advanced technology is permitted to defer the payment of import duties on machinery and equipment used for its plant under a government approved project for five years, subject to a satisfactory guarantee for the deferred payment being furnished to the customs authorities. As of the present, only the following industries are eligible for such benefits: steel, aluminum and copper, electrical engineering, electronics, machine making, automobiles and parts, shipbuilding, chemical, petroleum, mining, precision instruments, metal processing, lumber processing, rubber, and food. Most American invested electronics companies in the ROC took advantage of this benefit, which in its net effect is a five-year non-interest-bearing loan from the government to the investor.

If a productive enterprise importing machinery and equipment for its plant qualifies neither for duty exemption nor five-year duty deferral, it may well seek an installment payment of import duties under Article 27, paragraph 1, of the SEI. Depending upon the amount levied, the importer may normally pay import duties in 12 to 30 equal monthly installments, secured by a satisfactory guarantee. The first installment payment is due one year from the date of commencement of operation or the date that services were first rendered.

The Regulations Governing Tax Rebates of Export Products provide benefits to export factories by way of exemption of import duties and commodity tax on raw materials used for export products. Briefly stated, the exemption may be realized through one of the following arrangements:

a. If duties, surtax, harbor dues and commodity tax (wherever applicable) have been paid on raw materials at the time of importation, a refund may be claimed when processed products are re-exported;
   b. Duties, surtax and harbor dues may be owed on credit, to be offset against the raw material content of the processed products re-exported with a prescribed time;
c. Imported raw materials may be stored in a bonded warehouse inside the importer's factory; and

d. Imported raw materials may be stored in the importer's bonded factory under the supervision of either a designated bonding agency or the customs authorities.

Other Privileges and Benefits

In addition to the above, foreign investors are entitled to a number of other privileges and benefits which are not granted to nationals. Under Article 12 of the SIFN, two years after completion of his investment project, the foreign investor may apply for necessary foreign exchange to repatriate, on an annual basis, 15 percent of his invested capital. Repatriation must be applied for not later than the end of June of the year immediately succeeding the year in which the privilege accrues. The investor may, however, with the permission of the Central Bank of China (CBC), the nation's foreign exchange controlling agency, postpone a particular repatriation for one year if funds are needed by his invested enterprise as working capital, but other than this the repatriation privilege is non-cumulative.

Under the same Article, profit earned from investment may be remitted by the foreign investor out of the country yearly with no limitation of amount. Applications for such remittance must be submitted to the CBC within six months from the date tax liabilities of the invested enterprise were determined by the tax office. Like capital repatriation, the foreign investor may, with the permission of the CBC, keep the profit as working capital for the invested enterprise for one year, beyond which his privilege for that particular remittance will lapse.

One thing must not slip from the foreign investor's notice. Although one's invested enterprise may enjoy a tax holiday, he himself remains subject to personal income tax as a non-resident on the dividend earned from his investment. While an ordinary non-resident is taxed at the rate of 35 percent on dividends or other profit distributions received from ROC sources, favorable treatment is accorded the foreign investor. According to Article 17 of the SEI, the withholding tax rate is 15 percent for those foreign investors whose investment applications were approved by the government on or before December 31, 1973, and 20 percent for those foreign investors who received government approval of their investment applications on or after January 1, 1974. As for the latter, the non-resident taxpayer is entitled to claim a refund in
the event he cannot make use of the entire 20 percent paid as a tax credit in the country of his domicile. The refundable amount, nevertheless, is limited to the excess of the 20 percent tax over 15 percent, or the excess over the rate which can be claimed as tax credit in the country of his domicile, whichever is smaller in amount. Statutory protection is given to foreign investment from government requisition or expropriation. Under Article 14 of the SIFN, if the total amount of foreign equity investment of an enterprise is less than 51 percent of its total registered capital, the enterprise cannot be requisitioned or expropriated except where it is required by national defense and then only with payment of reasonable compensation. The government is obligated to make available the necessary foreign exchange to the foreign investor at any time desired by him for remitting such compensation out of the country.

As already mentioned before, as long as the foreign investor's equity investment in his invested enterprise is maintained at 51 percent or more of its total registered capital, there can be no requisition or expropriation of the enterprise by the government on any ground whatsoever. As this is a statutory guarantee, the government is legally bound to honor its commitment.

Incidentally, the ROC is a signatory to the International Convention for the Settlement of Investment Disputes. Legislative action has been taken by the ROC government for the implementation of the said convention in the ROC. Under a statute passed by the Legislative Yuan, which is the ROC's national legislative body, and promulgated by the President on December 21, 1968, ROC courts are required to grant compulsory execution on any arbitral awards rendered in accordance with the provisions of the said convention.

**Investment Procedures**

Any foreign investor desirous of making an investment in the ROC should file a Foreign Nationals Investment Application (FNIA) with the ISC, except for the establishment of an export enterprise in one of the Export Processing Zones, in which case an application should be filed with the MOEA's Export Processing Zones Administration. Application forms are obtainable from the Chinese Investment and Trade Office in New York City (515 Madison Avenue) or any ROC Consulate in the United States.
One oft-asked question is how long it will take to get an investment application approved by the screening agency. Under Article 7 of the SIFN, if an application submitted by the foreign investor is complete in every respect and accompanied by all required supporting documents, such as the certificate of legal personality or certificate of nationality of the applicant, the certificates of nationality of natural-person co-investors, and power of attorney for the local lawyer, all duly consularized, the screening agency must act upon it and make a decision not later than four months from the date of its filing. In actual fact, if the foreign investor hires a competent local lawyer who is capable of writing a legally correct and comprehensive application, it is not impossible to obtain a decision in less than two months.

The approval of the screening agency, in its net value, is an approval in principle with six months validity only. In other words, the government by its approval merely grants the investor the privilege to apply for establishment of his proposed enterprise within a six-month period. During the period, the investor must take necessary steps to cause the approved capital to be remitted into the country, to organize and register his invested company, to apply for importation of capital equipment and raw materials, and to commence the construction of his plant. In the event he fails to take all these steps within this six month period, the government may, if it sees fit, revoke its prior approval. Such being the case, if the investor anticipates that he will be unable to implement his approved investment plans within six months from the date of the government approval, and he does not want to forfeit his privilege of investment either, he should apply to the original screening agency for an extension of the investment implementation period well in advance of its expiration. Such application for extension will normally be granted on good cause shown. But, unless circumstances are exceptional, no more than two extensions will be granted in one single case. Thus, all told, the investor has a total of 18 months at his disposal to implement his investment plans.

A word on the power of attorney granted to the local lawyer by the foreign investor. It should be a general power of attorney, granting him authority and powers to do any and all acts and to make and submit any and all applications to all relevant governmental agencies, whether at the central, provincial or local level, on behalf of the investor in connection with his proposed investment in the ROC. Moreover, it should include a substitution
clause, as this will give the appointed local attorney the power to appoint a substitute or substitutes in case of necessity.

V. TRADE

Trade is a much simpler subject than foreign investment. Notwithstanding her diplomatic reverses in recent years, trade is being carried on presently by the ROC with over 100 members of the international community. Among the ROC’s major trading partners, the United States not only maintains diplomatic relations with her but is also a close ally. The two countries have a Treaty of Friendship, Commerce and Navigation between themselves, signed in Nanking on November 4, 1946, which contains a provision permitting citizens of each country to carry on trade throughout the whole extent of the territory of the other (Art. II). By contrast, Japan, Canada, West Germany and Hong Kong have no diplomatic relations with the ROC, but the absence thereof does not seem to have had any negative effect on the trade activities between one territorial unit and the other. Indeed, to the amazement of many, since the ROC’s termination of diplomatic relations with Japan, trade volume between the two countries has been steadily on the increase. Just to give some idea of their expanding trade volume, in 1976 the ROC exported US$1,090 million worth of goods to Japan and imported from her US$2,442 million worth, with an unfavorable balance of US$1,352 million. ROC trade with the United States in the same year fared much better than with Japan, with sales at US$3,010.7 million and purchases at US$1,802.3 million, thus leaving a balance of US$1,208.4 million in the ROC’s favor. A fair guess is that as her economy steadily grows, the ROC will buy more from the United States in the years ahead.

Modes of Trade Operation

Two principal modes are generally used by Americans or other foreign nationals for carrying on trade in the ROC. One is the establishment of a company limited by shares under the Company Law with some participation of ROC nationals. To form such a company, which will be one of ROC nationality, no Foreign Nationals Investment Application is required to be filed with the ISC, for such investment — if it can be called investment at all — is not a foreign investment within the definition of the SIFN. The minimum capital requirement for this type of company varies with its business, the highest being NT$500,000,000 and the
lowest NT$500,000. If the capitalization of a company is NT$20,000,000 or more, the application for incorporation should be filed with the MOEA. If it is below NT$20,000,000, the application should be filed with the Bureau of Reconstruction of the city or county where the principal business office of the company is located.

At the risk of being repetitious, let it be mentioned here that a company limited by shares must have at least seven incorporators, three directors, and one supervisor, all of whom must own at least one share of stock. It must also have a chairman of its board of directors elected from among the directors. Whereas the SIFN expressly waives the nationality and residence requirements for board chairman and the residence requirement for incorporators and executive directors of foreign investment companies, there are no such waivers in the case of companies organized by foreign nationals for trading purposes. At least one half of the incorporators and the supervisor, or one of the supervisors if the company has more than one supervisor, must be domiciled in the ROC. If the company has executive directors, at least one half of them must also have their domiciles in the ROC.

Through the vehicle of nominees, the minimum number of seven incorporators can be easily met. Until now the government's liberal policy with respect to local participation for companies engaged in trade remains unchanged. There is no hard and fast rule concerning a minimum percentage of capital stock that must be owned by ROC nationals. The government will license a company if there is more than nominal local capital participation.

Companies so formed will be ROC companies and, as such, will be entitled to the same treatment as is accorded to any ROC companies organized and existing under the Company Law. They will, however, not be entitled to repatriation of capital, remittance of profit, and the other privileges and benefits under the SIFN. In spite of this, some Americans still look with favor upon this form of organization because it has the distinct advantage of insulating the parent company from liabilities that might arise out of doing business in the ROC.

The other method is for a foreign corporation to establish a branch in the ROC. In such case, it is legally identified as a branch of a foreign company. Several conditions, enumerated below, must be fulfilled before the branch can open for business.

1. The foreign corporation must adopt a Chinese corporate name, normally a literal translation of its English name or name
in another language, which must not only indicate the type of business organization but also the nationality of the corporation.

2. The foreign corporation must first apply to the MOEA for recognition of its foreign corporate personality and obtain a certificate of recognition. This certificate will entitle the recognized foreign corporation to act within the ROC boundaries.

3. The foreign corporation must remit into the ROC at the time of establishment of its branch a minimum amount of NT$500,000 as the branch’s operating funds. At no time during its existence will the branch be permitted to solicit from the public subscriptions to the stock or float bonds or other securities of the foreign corporation.

4. The foreign corporation must appoint an ROC national or resident foreigner as its attorney in fact and legal representative in the ROC to represent it in litigations and non-litigious matters and to receive service of legal process on its behalf.

Only when all the above conditions have been fully met will the foreign corporation be permitted to establish its branch and commence business operations in the ROC. Within 15 days of the date of its establishment, the branch must apply to the MOEA for a corporate license. It may only carry on such businesses in the ROC as are registered with and specified in the corporate license granted by the MOEA. The branch may be headed by a foreign national, subject to the requirement that he maintain a residence in the ROC.

A branch of a foreign corporation is permitted under Article 19 of the Land Law to purchase and own land in the ROC to the extent necessary for the carrying out of its business objectives. This legal provision, however, is governed in its actual operation by the principle of reciprocity. That is to say, only branches of foreign corporations whose own States of incorporation permit ROC nationals to purchase and own land in their own territory may be granted the same privileges in the ROC.

A foreign corporation having a branch in the ROC has no privilege to repatriate the operating funds it remitted in at the time of establishment of its branch. Furthermore, profit earned by the branch cannot be remitted out of the country. This is, nevertheless, offset to some degree by an established practice whereby the tax office, on application, will permit branches of foreign corporations to remit abroad, on a yearly basis, an approved amount of foreign exchange to contribute to the overhead of their head offices.
Import and Export Control

Import and export in the ROC are under government control. Within the MOEA there have been established a policy-making body called the International Trade Commission (ITC) and an administrative body called the Board of Foreign Trade (BOFT), which has been mentioned previously. These two agencies are charged with the important responsibilities of trade development and administration of foreign trade.

Succinctly stated, imports and exports are classified into three main categories: (i) permissible items, (ii) controlled items and (iii) prohibited items. Depending upon domestic production and international market conditions, classification of import and export merchandise is subject to constant review and adjustment by the ITC and the BOFT. Basic rules for imports and exports are provided in the Regulations Governing Classification and Control of Imports and Exports, last amended and published by the MOEA on June 14, 1973, which importers and exporters should familiarize themselves with.

The mere fact that an ROC company or branch of a foreign corporation has come into being does not mean that it can automatically engage itself in import or export business, or both. To be able to do so, it must qualify for and register itself as a Trader and obtain a Trader license from the BOFT. Necessary qualifications for registration of a Trader include the following: (i) having an export performance record of at least US$200,000 for the year immediately preceding the filing of the application (certain foreign exchange earned by exporters is assignable which the applicant for a Trader license can buy at the prevailing market rate); (ii) having a registered paid-up capital of not less than NT$2,000,000; and (iii) having a permanent business office of its own. If the paid-up capital of the company is over NT$100,000,000, the requirement for export performance record may be waived by special approval of the BOFT.

In principle, imports of Traders are limited to permissible items. When they import, licenses must first be obtained from the BOFT. Controlled items may, nevertheless, be imported by Traders when specially authorized by the BOFT.

Traders may export permissible items by applying directly to any of the several government appointed foreign exchange banks. For controlled items, however, prior approval must be obtained from the BOFT. It should be noted here that export of permissible items to countries which enforce import quotas is subject to special regulation by the BOFT.
VI. REPRESENTATIVES OF FOREIGN CORPORATIONS

If a foreign corporation does not intend to make investment or actually engage in trade in the ROC, but only wishes to do certain acts there, such as monitoring trade opportunities, supervising execution of its purchase orders by local manufacturers, advertising its products in local newspapers or through other mass media, or giving technical advice or assistance to local purchasers of its equipment or materials, a most economical and convenient way of achieving these objectives is to send a Representative to the ROC. This is permitted by Article 386 of the Company Law. The foreign corporation may also authorize its Representative to bring suits and receive service of legal process in the ROC on its behalf.

A Representative of a foreign corporation is permitted to maintain an office with a limited staff to assist him in the performance of his duties, but he must not carry on business transactions. Business transactions, if any, must be conducted directly between his principal, the foreign corporation which sends him, and the local purchaser. His position is thus very much like that of a business correspondent. Furthermore, he must not receive payments from his principal's local customers. All expenses of his office, including salaries for himself and members of his staff and other necessary expenditures, must be remitted in by his principal from abroad, and he is required to report such remittances to the Bureau of Foreign Exchange of the CBC on a monthly basis for record purposes.

As to tax liabilities, the principal of the Representative is free of any ROC taxes as long as transactions are concluded, contracts signed, and payments made outside the ROC. Every care should therefore be taken by the Representative to see that he does nothing that could possibly be interpreted by the local tax office as constituting doing business in the ROC. The Representative himself and members of his staff are subject to personal income tax as any other residents of the ROC.

The sending of a Representative to the ROC requires an application to be filed with the MOEA, giving the name of the foreign corporation which sends the Representative, the name, nationality and other personal data of the Representative, and the juristic acts and/or the scope of activities he is authorized by his principal to do in the ROC. The application must be accompanied by certain supporting documents, such as the certificate of legal personality of the applicant, a certified transcript of the board resolution authorizing the sending of the Representative, the power of attorney granted to the Representative, and so on.
a written approval is received from the MOEA, the Representative can officially function and legally do all the authorized acts in the ROC.

A Representative of a foreign corporation need not be a foreign national. If a foreign corporation so wishes, it may appoint a local person as its Representative. American corporations, however, normally prefer to send Americans as their Representatives because of faster entry and exit processing by using the American passport.

VII. CONCLUSIONS

How well a local lawyer can help his American clients structure their investment and trade operations in the ROC depends to a considerable extent upon certain qualities of the lawyer. A prerequisite for him is, of course, an adequate knowledge of the English language, both written and spoken. While interpreters can always provide a bridge, direct communication between the lawyer and the client is considered essential, not only because of the lawyer-and-client privity but also because of the absolute need of meeting of minds in terms of the client's objectives. Unless the lawyer understands fully and clearly what the client wants to do in the ROC, there is no assurance that he can structure the latter's operations satisfactorily. Since much of the communication will be through the telex machine and by letters, written English is even more important than spoken English. The lawyer must have at his command a sufficient vocabulary of both legal and business terms. An additional arsenal of accounting terms is desirable and useful, but not necessary.

It is absolutely essential that the lawyer be thoroughly familiar with the laws and regulations of the ROC applicable to investment and trade, particularly foreign investment. His legal expertise will be put to an acid test when he is initially called upon to prepare a FNIA. A knowledgeable lawyer, after having ascertained the client's objectives, will usually be able to work out an investment plan tailored to the client's needs and then write a flawless application that will ensure its early approval by the ISC. On the other hand, if the legal knowledge of the lawyer in such field is inadequate, chances are that he may miss something in the application, thus either delaying its approval due to the necessity of amendment or causing the loss to the client of a certain benefit or benefits. With regard to the latter, a good case in
point is where the scenario of the client’s investment in fact meets the requirements for a five-year deferred payment of import duties on capital equipment, but this benefit is denied to him because of the failure of the lawyer to apply therefor. For a major investment project, this could mean a very large sum of money in terms of loss of interest.

Equally important is the lawyer’s experience. In an investment case, the lawyer’s professional duties do not end with the submission of the FNIA; unless his arrangement with the client dictates otherwise, he must go on to take care of many other important legal matters including organization of the company, importation of equipment and raw materials, and the obtaining of a factory license for the plant. Even after the plant has been in operation, matters requiring the attention of the lawyer continue to spring up. Although by local practice paper work for the application for tax holiday or accelerated depreciation of fixed assets is within the realm of the CPA’s duties, the lawyer’s advice may be needed by the client on legal issues pertaining thereto. It is possible that the client may desire to add some new products to the production lines of his plant, thus requiring the lawyer’s assistance in preparing and submitting an additional FNIA to the ISC. Also, investment equity may have to be increased as a result of expansion of manufacturing facilities, necessitating approval by the ISC and consequent recapitalization. These are but a few examples demonstrating the wide spectrum of work the lawyer may be called upon to perform. They are, nonetheless, sufficient to bring home to the investor the point that an experienced local lawyer who knows the entire spectrum of the investment process is indeed essential for the successful completion of his investment.

Some background of the investor’s business at home will help the lawyer in the performance of his duties, particularly in the initial stage of his employment when investment plans are being worked out by him with data supplied by the investor. As foreign investment in the ROC is, in general, gradually shifting from labor-intensive to technology-oriented products, it is quite likely that in a particular case the local lawyer may know nothing or very little about the investor’s business or the products he is going to manufacture in the ROC. If this is the case, it will be desirable for the investor to brief the lawyer along these lines so that the latter will acquire a clear notion of the client’s business as well as his investment objectives. The importance of this cannot be overemphasized as the categorization of the investor’s products will ultimately affect their eligibility for tax holiday or accelerated
depreciation of fixed assets, which is a major incentive to most investors.

In the actual selection of business form, the lawyer's recommendation will naturally be by and large dictated by the client's objectives. Past record indicates unequivocally that an option favored by the overwhelming majority of Americans seeking business opportunities in the ROC has been foreign investment. This is understandable in view of the many substantial privileges and benefits conferred by the SEI, the SIFN, and the other applicable laws and regulations. With this end in view, if the client is prepared to set up some sort of manufacturing facilities in the ROC through equity investment, the local lawyer should to the extent possible invoke every legal support to structure his venture as a foreign investment, so as to help him maximize his values.

From the standpoint of the host government, large equity investment is perhaps the most welcome, and the reason for this is not far to seek. In his own interest, however, the foreign investor may want to structure his investment with a small equity and a large loan. Loans may be obtained from either domestic or foreign sources, but one aspect deserving special attention is that the ROC government permits foreign investors to make investment in the form of loan to their invested enterprises. This makes it possible for the foreign investor to substitute loan for cash equity with accompanying benefits of interest payment and shorter repatriation period.

A technical and management service agreement between the foreign investor and his invested enterprise providing payment by the latter to the former of a lump-sum fee is another subtle form of accelerated repatriation of capital worthy of exploration. In recent years the host government has adopted a more stringent policy as regards such agreements. It is, nevertheless, one area which the local lawyer should look into in the course of planning investment strategy for the client.

Trade is a lesser and much simpler approach. The establishment of a company or branch of a foreign corporation under the ROC Company Law does not involve much legal complexity insofar as the application process is concerned. Furthermore, the Trader license is also not difficult to obtain provided the prescription of the required US$200,000 export performance record is duly complied with. Subject to the existing applicable regulations, foreign Traders can import and export commodities as business exigencies call for. It is not uncommon for them to enter
into long-term output/supply contracts with local manufacturers in order to guard against disruption of supplies. Lack of privilege of outbound remittance of profit is a bit annoying. But most foreign Traders do not seem to be overly bothered by this, as they can either use their profit for paying such expenditures as air tickets and hotel bills of visitors, expansion or decoration of business offices and the like, or deposit the same in a bank savings account.

Sending Representatives to the ROC was once a popular approach among foreign corporations because of its distinct merit of tax immunity. Due to abuses by some foreign corporations, the host government has lately tightened supervision over such establishments. American corporations which have sent or intend to send Representatives to the ROC will do themselves a great service by requiring the latter to strictly refrain from any kind of business activity while in the host country. As stated previously, business transactions, if any, must be conducted directly between the local customer and the Representative's principal.

Professor Oldman thanked Dr. Li for his detailed and complete presentation, and introduced the session's third principal speaker, Mr. Myron Solter. Mr. Solter, an attorney in Washington, D.C., spoke on the legal resolution of export trade disputes, a topic that has taken on great significance following the passage of the Trade Act of 1974 and the strengthened role of the U.S. International Trade Commission.

[The following is the text of Mr. Solter's paper.]
When an underdeveloped country blessed with an intelligent and energetic population and favored with a skillful and dedicated government adopts a course of economic development, its export growth inevitably collides with the business and labor groups producing competing products in the receiving countries.

For the Republic of China, the initial collisions between exports from Taiwan and domestic industry began about fifteen years ago, with plywood and mushrooms, and have intensified since. Presently under attack in the United States are such important products as footwear, TV receivers, textiles, solid-state watches, and a number of lesser articles. With continued expansion of exports to the United States from the Republic of China, future collisions may be expected, both as renewals of attacks against present export products, and as new products are developed and become significant factors in the United States market.

The scope of this paper is therefore directed to the legal mechanisms in the United States by which these economic conflicts are resolved.

II. SOURCES OF APPLICABLE LAW

A. International Sources


   It is this bilateral treaty which serves as the framework for U.S. trade relations with the ROC. It provides, inter alia, for most-favored-nation treatment in matters affecting imports.

2. **General Agreement on Tariffs and Trade**

   The Republic of China is not a member of the General Agreement on Tariffs and Trade (GATT) and therefore does not benefit directly from the rights and privileges enjoyed by GATT signatories.
However, to the extent that the United States must resolve its trade conflicts with GATT members within the framework of that body, in multination trade disputes involving both the Republic of China and one or more GATT members, the Republic of China receives indirectly the benefit of United States-GATT resolutions by virtue of most-favored-nation treatment under the FCN treaty. Not all GATT benefits pass to the Republic of China in this way; e.g., it is doubtful whether, after restriction of its exports to the United States, the Republic of China would be entitled to compensation or retaliation vis-à-vis the United States under the GATT rules. Similarly, in a trade dispute involving the United States and the Republic of China alone, the United States is not obliged to apply the GATT rules, but only the less comprehensive articles of the FCN treaty.

3. Special International Agreements

Special international agreements, either bilateral or multilateral, are a not infrequent device for resolving trade disputes. The most significant such agreement presently in force is the Multifiber Textile Trade Agreement, under which the United States has concluded a number of bilateral agreements with exporting countries, including the Republic of China, limiting the quantity of textiles which may be exported to the United States.

4. Voluntary Restraint Assurances

A useful device sometimes used to resolve trade disputes on an informal basis is the giving of "assurances" by the government of an exporting country to the United States, usually in the form of a memorandum of understanding, that it will restrain its exports for a period of time to a stipulated level. While it is doubtful that such assurances constitute law in the sense of treaties or executive agreements, the device can enable more flexible solutions than can be achieved under the formal legal means. An example of its use with the ROC was to restrain the level of canned mushroom exports to the United States in 1968 and again in 1976.

B. Domestic Sources

1. Legislation

With Congress reposes the principal constitutional authority to regulate foreign trade. Congress can, and from time to time does, pass legislation increasing import duties in response to
domestic industry pleas. One example of a significant such bill currently under consideration, which would adversely affect exports from Taiwan to the United States, is H. R. 14600 (94th Congress) to impose very large duty increases on solid state watches and parts thereof.

2. Antidumping

The Antidumping Act of 1921, and the regulations issued thereunder, require that when it is determined that imports have been sold at "less than fair value," and that the articles thus imported have caused injury to the domestic industry, an additional duty equal to the dumping margin will be assessed. Procedurally, the Treasury Department conducts an investigation during six months from the date of its Antidumping Proceeding Notice, which initiates the matter, to determine the existence of sales at less than fair value. If Treasury finds the existence of such sales, it forwards the matter to the International Trade Commission (ITC), which conducts a three month investigation to determine whether the dumped imports have caused injury to the domestic industry. If the ITC so finds, it returns the matter to the Secretary of the Treasury, who thereupon issues a dumping order.

The existence of an antidumping order can seriously inhibit the growth of exports. For example, an order applying to clear sheet glass from Taiwan issued in 1971. Despite the best efforts of the manufacturer to remove all possibility of dumping margins, by revising its home market and export pricing, uncertainties concerning United States Customs administration under the order have discouraged would be importers, and exports of clear sheet glass from Taiwan have been seriously impaired.

An antidumping proceeding notice against PVC sheet and film from Taiwan was issued on April 1, 1977. The Antidumping Act thus remains a serious threat to export expansion from the Republic of China.

3. Countervailing Duty

Section 303 of the Tariff Act of 1930 provides that when the government of an exporting country bestows a "grant or bounty" upon exports to the United States, an additional duty equal to the amount of the subsidy will be imposed.

The Republic of China, similarly to many other developing countries, offers a number of governmental incentives to encourage new investment in productive enterprises. If such encourage-
ment measures are to be deemed to constitute subsidization of exports to the United States, the resulting countervailing duty burden could become a major barrier to the Republic of China’s export growth.

Presently or recently before the Treasury Department, which administers the countervailing duty statute, are three cases on articles from Taiwan: non-rubber footwear, bicycles, and handbags. All are based on claims by the domestic petitioners that the Republic of China’s investment encouragement measures constitute countervailable export subsidization. While final determination has not been issued as yet in bicycles and handbags, it appears from tentative determinations in these cases that Treasury will probably finally determine the following incentives not to constitute countervailable grants or bounties:

(a) Reduction in foreign exchange commissions charged by banks in converting currency.

(b) Reduction in import license fees charged by banks for the obtaining of an import license.

(c) Exemption from the business tax (a gross receipts tax) on export sales.

(d) Reduction in the stamp tax on export documents.

(e) Suspension of interest charged by banks on bills of exchange and letters of credit.

(f) Resumption of duty remissions on imported raw materials and component parts which reflects internationally accepted principles of “drawback” on such items.

(g) Suspension of harbor dues on exported items.

(h) Suspension of airport safety dues.

(i) Increase in processing loss ratios for purposes of duty drawback.

Treasury will probably find that the following incentives do constitute grants or bounties:

(a) Loans at preferential rates of interest for the purchase of equipment by manufacturers and short-term export financing.
(b) Exemption from income taxes, deed taxes and customs
duties on imported capital items for firms located in
Export Processing Zones.

(c) Income tax holidays for newly established firms granted
under the Statute for Encouragement of Investment.

However, it appears likely that as applied to exports of bicycles
and handbags, the impact of these measures on stimulating
exports to the United States has been de minimis, and that
countervailing duties will therefore not be assessed.

4. Escape Clause

The most significant legal mechanism by which domestic
industries can seek protection from import competition is the
“escape clause” found in sections 201-203 of the Trade Act of
1974. Under this authority, upon petition by an interested group, a
request by the President, or upon its own motion, the ITC
conducts a six month investigation to determine with respect to
the imported article whether:

(a) Imports are increasing;

(b) The domestic industry producing like or directly competi-
tive articles is being seriously injured, or is threatened
with serious injury; and

(c) The increased imports are a substantial cause of the
serious injury.

If the ITC so finds, it reports its findings to the President together
with its recommendation of the quantum of import restriction
necessary to remedy the injury, and its opinion on whether
adjustment assistance would provide a remedy.

Within 60 days after receipt of the ITC’s report and
recommendations, the President must determine whether and to
what extent he will grant import relief and/or adjustment
assistance. The President is not bound to follow the recommenda-
tion of the ITC, but, being guided by the total interest, may
provide (1) a duty increase, (2) a tariff rate quota, (3) an absolute
quota, (4) negotiate orderly marketing agreements, (5) take any
combination of these actions, or (6) take no restrictive action. If
his action differs from the ITC’s recommendation, the Congress
may within 90 days override the President's determination by a concurrent resolution of both houses.

Since first implemented in domestic law as section 7 of the Trade Agreements Extension Act of 1951, the escape clause has been the device most used by domestic industries to attack import competition. It is more flexible than the other statutory remedies, since the President may tailor the final result to policy and international considerations with which the more narrow determinations of the ITC are not concerned.

Plywood and canned mushrooms were the first Republic of China products to be attacked via the escape clause in the early 1960s. Since then the escape clause investigations have been directed to canned asparagus, sheet glass, footwear (twice), TV receivers (twice), canned mushrooms (twice), marble products, sugar, and presently cast iron cookware and stoves, all of which are important elements in the Republic of China's exports to the United States.

5. Unfair Trade Practices in International Trade

Under section 337 of the Tariff Act of 1930, upon petition, the ITC conducts an adjudicatory proceeding to determine whether there exists in connection with the importation of an article "unfair methods of competition and unfair acts . . . the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States or to prevent the establishment of such an industry, or to restrain or monopolize trade and commerce in the United States." If the ITC finds a violation, it may bar the offending article from entry or may issue cease and desist orders. The President can revoke the ITC's orders for public policy reasons.

When this statute was first enacted in 1922, it was hailed as the foreign trade counterpart of the Federal Trade Commission Act. However, in the past, this mechanism has been applied virtually exclusively to articles claimed to infringe the United States letters patent.

An example of its application to Republic of China exports was the recent exclusion of reclosable plastic bags for patent infringement. It does not represent a serious threat to the Republic of China's export expansion as long as it is applied only to cases of patent infringement. However, there is now pending before the ITC a section 337 case against TV receivers imported from Japan, which is based solely on allegations of unfair practices. If the ITC
should find affirmatively for the petitioners in this case, it would represent a very considerable extension of the jurisdiction of the United States antitrust laws beyond the scope hitherto allowed them.

III. WHAT DOES THE FUTURE HOLD?

The hypothesis stated at the outset of this paper makes it highly probable that trade disputes between export industries in the Republic of China and the competing industries in the United States will expand as the Republic of China's exports grow. There is no doubt that increasingly recourse will be had by domestic interests to the protective mechanisms outlined above. However, the aggregate outcome of these disputes, in addition to the case-to-case merits, will be determined very substantially by two extralegal factors: United States foreign trade policy and the Republic of China governmental policy toward such disputes.

A. United States Foreign Trade Policy

As of this time, only one major trade case has been decided by the Carter Administration, but its implications give a fair appreciation of the policy direction in which the Carter Administration may move. This is the non-rubber footwear escape clause case. Involving some $2 billion in trade annually, it is economically important. Due to the geographic dispersal of footwear factories in the United States and the long protection-seeking effort of the industry, it is politically important. The ITC had recommended a tariff-rate quota which would have had a very depressing effect on footwear imports. President Carter chose, however, to take the least restrictive action, that of announcing that he would seek orderly marketing agreements with the Republic of China, which by the way is the largest import supplier, and Korea. The policy thus indicated is one of reluctance to impose unilateral trade restraints, and to seek instead solutions based on negotiation.

B. Policy of the Government of the Republic of China

Some industries in Taiwan such as the mushroom packers, have through long experience become knowledgeable and capable in coping with trade disputes. Other industries, either small, or facing such problems for the first time, are not sophisticated in
this sense and have not always taken timely and vigorous defensive steps. However, the Board of Foreign Trade, which is an agency of the Ministry of Economic Affairs, under the guidance of Director Y. T. Wong and Deputy Director H. K. Shao, has long been sensitive to the need for the affected industries actively to defend these actions in the United States at the administrative level, rather than relying solely on government-to-government efforts. The BOFT is actively encouraging and guiding Taiwan's export industries. The continuation of this policy will undoubtedly favorably affect the future.

Professor Oldman thanked Mr. Solter for his presentation and then invited the discussants to contribute their comments. The first discussant was Edward Laing, Associate Professor of International Law and International Transactions at the University of Maryland School of Law.

[The following is the summary of Professor Laing's statement.]

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**COMMENTS**

**Edward Laing**

Taiwan is doing some very interesting things with other developing countries. Taiwan has offered technical assistance and has had exchanges and visits with other developing countries. These kinds of contacts with the rest of the developing world, who have seats in the UN, may help Taiwan in the future.

My reading and discussions with Dr. Li lead me to conclude that a lot of the success of Taiwan has to do with a very stable and interesting legal order. One thing that interests me is that Taiwan seems to steer a middle course between the over-technicalization of the legal practice of the U.S. and a somewhat oversimplified legal practice of the PRC. The legal regime in the ROC has contributed rather significantly to the ROC success.
One of my areas of interest as a teacher is the protectionist forces in the United States, at which I am now quite bothered. They are doing things against the interests of the developing countries. Protectionist trends in the ITC and elsewhere in the U.S. are apparently likely to continue, and unfortunately these trends are backed up by some ambiguous legislation, e.g., the Trade Act of 1974.

The Trade Act has loopholes that can be used by protectionist forces in the U.S., but I hope they will not continue to be used to the disadvantage of the developing countries. For example, the ITC “clear glass” case in 1971, an anti-dumping case concerning Taiwan, was based on statistics relating to Japan. This was one of the more extreme actions of the ITC in this area. I hope that the ROC’s success in trade in the last few years will not lead protectionist forces to hurt Taiwan.

Finally, I hope that international organizations will realize the inadvisability of Taiwan’s non-participation in them. It would only be to the benefit of the entire trading world if Taiwan were to participate in these international organizations.

Professor Oldman thanked Professor Laing for his comments and turned the floor over to R. Daniel Webster, Legal Advisor to Chairman Daniel Minchew of the U.S. International Trade Commission.

[The following is a summary of Mr. Webster’s comments, together with additional remarks submitted for publication after the conference.]

COMMENTS

R. DAN WEBSTER

I would like to talk briefly about two recent decisions made by the ITC that may have significant impact on Taiwan. The first is the footwear case. In this case the ITC found that footwear was being imported into the United States in such
increased quantities that it was a substantial cause of injury to a domestic industry. The ITC recommended that a tariff rate quota system be imposed over a five-year period. The quota level would be established at 265,000,000 pairs per year with all shoes imported above that level to be assessed a tariff of 40 percent annually, then reduced to its original levels at the end of that period. The quota level for the ROC was 88,000,000 pairs. This is to be contrasted with imports of 110,000,000 pairs in 1975. The President exercised his authority to provide other relief under the Trade Act of 1974, and notified the Congress that he was attempting to negotiate orderly marketing agreements. Negotiations are now underway.

In the television case, the Commission found that color TV's were being imported from Japan into the U.S. in such increased quantities as to be a substantial cause of serious injury to the U.S. color TV industry. An increase in tariffs on color TV's was recommended to the President. While the President has not formally announced his decision, indications are that he will attempt the same orderly marketing agreements as in the footwear case.

The ROC is the second leading supplier of U.S. imports of television receivers. I would suspect that the President will attempt to negotiate orderly marketing agreements with the ROC, as he is presently doing with Japan.

There are certain advantages to orderly marketing agreements which the President opted for in the footwear case and which the Commission does not have in its authority to recommend. The orderly marketing agreement process allows the President to negotiate with the supplying country a level of imports and possibly by doing so arrive at an agreement which has less disruptive effects on both parties. There is the additional benefit to the U.S. in that it is not required to give compensation under the general agreement on tariffs and trade.

ADDENDAL COMMENTS

Considerable discussion has taken place as to whether the U.S. International Trade Commission is properly fulfilling its role in administering sections of the Trade Act of 1974 and previous legislation amended by that Act. Most of the controversy centers on the administration of section 201 of the Trade Act, which provides the mechanism for relief to domestic industries seriously injured or threatened with serious injury by increasing imports.
This provision, known as the import relief section or "escape clause," spells out the criteria the Commission must use to determine eligibility for relief, and then to provide relief to remedy the injury.

The most common criticism — that the Commission is recommending relief which will be damaging to consumers or cause serious international political repercussions — shows that we at the U.S. International Trade Commission have not done an effective job in educating the public and, in some cases, the bar, as to our role in the overall trade policy network.

First of all, we are an independent agency, not a part of the executive branch. Our funds are not reviewed by the Office of Management and Budget, and, as far as I know, we are the only agency in the U.S. Government of which this is the case. The reason is simple. The Congress, in attempting to exercise its constitutional authority, under Article I, Section 8 of the Constitution, to regulate international trade, decided to create an agency which was totally independent from the executive branch so that decisions could be made based on economics, rather than politics.

The criteria for eligibility for relief from imports were relaxed with the passage of the Trade Act of 1974. Under the Trade Expansion Act of 1962, the Commission had not in a single case been able to find a domestic industry eligible for import relief. It was a conscious effort on the part of Congress, not the Commission, to relax these criteria.

As for the criticism that the Commission has not considered costs to the consumer in its recommendations, or that we have not adequately considered the international implications of our "protectionist" policies, let me just say that I am pleased we have not. If we had done so, we would have been stepping well outside our authority and usurping the role of the President as outlined in the Trade Act. The Act provides that the President, after receiving our advice on the economic impact of imports on the domestic industry and our recommendation of relief which would remedy this adverse economic impact, will weigh this impact against such factors as consumer costs and international political ramifications and then make his decision. We do not take it personally when the President does not implement one of our remedy recommendations; if the law allowed us to consider other factors we may have reached the same conclusions.

Despite the outcry against the U.S. "protectionist" policies, there has been only one case since the Trade Act became law in
which the United States has placed unilateral restrictions on imported goods — that being the case involving specialty steels. We at the USITC are comfortable in providing our advice to the President based on only the effect of imports on the domestic industry. By providing good economic advice in this one area, we avoid having to deal with political pressures that the Executive and Congress encounter daily, and we are able to give the President sound advice on one of the important factors he must consider.

Professor Oldman thanked Mr. Webster for his statement, and then introduced Preston M. Torbert, an American attorney practicing in Taipei with the law firm of Yahng & Roles.

[The following is the summary of Mr. Torbert's comments.]

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**COMMENTS**

**PRESTON M. TORBERT**

The question which I believe people may be asking themselves is what am I doing in Taiwan. There are two functions which the U.S. lawyer fulfills in Taiwan. First, he advises on U.S. law, particularly advising U.S. clients engaging in transactions in Taiwan, either directly operating from the U.S. or through subsidiaries or joint ventures in Taiwan. The second function is as a liaison between Chinese attorneys and American clients.

The legal system of the Republic of China provides many contrasts and surprises for an American attorney. Perhaps one of the greatest contrasts is the importance of administrative law in the daily operation of the legal system. This will come as no surprise to attorneys from Washington, D.C., but for most American attorneys administrative law is a very minor part of their total practice. Mr. Chun Li's comments on investment, import and export procedures indicate well the extent of the government bureaucracy's role in managing trade and investment.
The administrative character of law practice is due in large part to the great authority exercised by the Executive Yuan, the executive branch of government. Statutes in the ROC are often broadly drafted grants of authority from the legislative to the executive branch to handle certain matters. The executive branch then drafts more detailed regulations and interprets them in the best interests of the country as it perceives them. One example of the executive branch's power to interpret is in the Regulations on Visas for Foreign Passport Holders which state that a foreigner should present "evidence of his purpose in coming to the ROC." Since mid-1976 the Ministry of Foreign Affairs fundamentally altered practice under these Regulations by interpreting this language to mean that all foreigners going to Taiwan to work must comply with other regulations which only refer to technicians. Accordingly, foreigners who are not technicians have found it impossible to get a visa through normal channels. Examples of harsh administrative interpretations are common in all areas, but particularly taxation. Of course, the immigration and tax areas are in large part administrative in the United States, too. The ROC legal system, however, appears to allow substantially more administrative discretion to its executive branch sub-departments than the American system. One result of this preeminent authority of the executive branch is a comparatively large degree of administrative supervision of the economy. Indeed, two surveys on U.S. corporate investment in Taiwan have mentioned excessive government "red tape" as the major complaint of the investors.

Of course, government involvement in the economy also has its positive side. Among these are the statutory incentives for investment mentioned by Mr. Chun Li. In addition to these, negotiated business assurances have also been an extremely important factor in attracting investments. These assurances by the ROC government to the investor have entailed such practices as promises to purchase a plant's entire output at a fixed price, a guarantee of raw materials supplies at a set price or the exclusion of competing foreign products from the Taiwan market. The ROC government has also played a positive role in trying to prevent unnecessary conflicts between Taiwan and American manufacturers by promoting education about foreign markets. After the recent misunderstanding concerning reclosable plastic bags made in Taiwan and exported to the U.S. which allegedly infringed an American patent, the government took steps to help inform Taiwan manufacturers about U.S. patent law to prevent future incidents of this kind.
An interesting aspect of Taiwan's exports to the U.S. and resulting trade disputes involves the nature of the parties. Mr. Myron Solter mentioned disputes relating to television receivers and solid-state watches made in Taiwan and exported to the U.S. It is interesting to note that a large percentage of these products made in Taiwan are made by subsidiaries of U.S. corporations. The disputes, therefore, are often not simple conflicts of interest between Taiwan and the United States, but disputes between American companies producing in Taiwan and American companies producing in the U.S.

Finally, in regard to the papers relating to the future of ROC-US economic relations, a change in U.S. policy toward recognition of the People's Republic of China would not necessarily cause any significant legal problems under ROC law. The ROC Constitution (Article 141) requires the ROC's foreign relations to be conducted on the basis of "equality and reciprocity." Recently the Premier and the Foreign Minister have made public statements indicating that they believe that the ROC's foreign relations include its relations with countries which do not have formal diplomatic relations with it. This constitutional standard of equality and reciprocity, therefore, should apply generally to ROC-US relations after a possible break in formal diplomatic relations. As long as the U.S. continued to conduct economic relations with Taiwan on a non-discriminatory basis, there is no reason to believe that the ROC would discriminate against American business. The practice of ROC-Japanese relations indicates that economic ties can continue without major difficulties after the rupture of formal diplomatic ties.

Professor Oldman thanked Mr. Torbert for his comments, then adjourned the session for 20 minutes. Following this intermission, Professor Oldman opened the session for questions and comments from the floor.

DISCUSSION

PROF. OLDMAN TO MR. SOLTER: The Chinese find it useful and sometimes necessary to defend their actions relating to the United
States in American administrative agencies. Do Americans who have disputes with Taiwan have the same ability to appear before Taiwanese agencies?

Mr. Solter: A lot of decisions in Taiwan are made by administrative agencies. A foreign investor can appeal his decision from a lower administrative agency to a higher one. For example, if a request or application of a foreign investor is turned down by the Ministry of Economic Affairs, the decision can be appealed to the Executive Yuan. This is an appeal from the ministerial level to the cabinet level. In some cases one can make an appeal from the cabinet level to an administrative court.

Prof. Oldman: Is adjustment assistance one of the forms of relief asked for by U.S. groups adversely affected by imports?

Mr. Solter: It is generally believed that adjustment assistance doesn’t provide a workable solution to imports. The passage of the Trade Act in early 1975 has not altered this belief.

Mr. Webster: Adjustment assistance is inadequate as now funded.

Mr. Solter: You may be interested to know that President Carter has announced that there will be legislation within 90 days to amend adjustment assistance.

Prof. Laing: There is a low limit on adjustment assistance loans that can be made available to firms. One million dollars is the limit on direct loans and three million is the limit on guarantees. I think adjustment assistance can be a good alternative to harsh tariffs.

Mr. Webster: Adjustment assistance to workers is different from adjustment assistance to firms. It is unlimited and goes through labor unions.

Question [speaker unidentified]: In the ROC are there regulations for foreign technology to be transferred to the local people so that the developing state can become independent?

Dr. Li: The ROC wants advanced technology, and it encourages the transfer of technology in the form of certain tax benefits. If a foreign investor has advanced technology, it is entitled to the free import of capital equipment. If this is not met, it can apply for five years of tax deferral. Also, a person will receive a royalty for importing management know-how.

Prof. Oldman: There are great tax benefits in the ROC.

Question [speaker unidentified]: Why is the ROC not a member of GATT?
MR. L. CHAO: Although the ROC was a member of GATT, I could not recall when the ROC terminated her membership.* Mr. Solter commented, however, that the ROC gets the advantages of most favored nation status even though it is not a member of GATT.

QUESTION [speaker unidentified]: How serious are the U.S. complaints about Taiwan tariffs on imported products?

ANSWER: The complaint particularly applies to consumer and electronic machinery. An American businessman in Taiwan who made the complaint said that the import duty makes it impossible for him to import to Taiwan. There is no final outcome as yet, but the U.S. has suggested to the ROC that the complaint perhaps has merit as to certain products.

Professor Oldman closed the second session by commenting on the great complexity of the issues involved in the interaction of the ROC's political and economic position in the world. He thanked the speakers for the clarity they brought to these issues and adjourned the session.

Reported by Stewart Diana and David Simon

The second session was followed by a reception sponsored by the University of Maryland International Law Society, after which the conference participants enjoyed a banquet dinner. Following the dinner, Jane Brandt, Editor-in-Chief of the University of Maryland Law School's International Trade Law Journal, introduced the dinner speaker, Mr. William Morell, who had recently left his position as Assistant Secretary, Department of Treasury, to join the US-ROC Economic Council.

[The following is the text of Mr. Morell's speech.]

* See the discussion in Session III at p. 204 infra.
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 unequaled 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 Communiqué. 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.
III. FUTURE OF US-ROC ECONOMIC RELATIONS

(9:30 a.m.–12:00 noon)

April 16, 1977

The meeting was opened by Mr. Simon, who introduced the chairperson for the session, Dr. G. J. Sigur, Director of the Institute for Sino-Soviet Studies at George Washington University. Dr. Sigur said that he was delighted to be here this morning and to serve as chairman of this final session of the Conference on U.S.-Republic of China Relations. He thought that it was always exciting to deal with projections concerning the future. He had always envied Herman Kahn in the Hudson Institute, and he had thought often that perhaps it would be interesting to join him and deal with things in a way that you did not have to concern yourself too much with facts. However, that was not what we were going to try to do today. We were going to be concerned with facts, and would deal with one of the most important questions facing the United States in its global policies, and especially in its policies toward Asia and the Pacific and what would happen in terms of our ties with the Republic of China on Taiwan, particularly in the economic area. The resolution of the American position toward the ROC could be critical to the whole question of American intentions and hopes of maintaining peace and stability throughout the world. Dr. Sigur did not think that such a formulation overstated the case. He believed it was true, and therefore he was sure that we would all take this matter of the future of these relations with the seriousness which it warranted. He was very pleased to start this session off by introducing David Simon, who would summarize the American Chamber of Commerce on Taipei position paper on US-ROC relations. Dr. Sigur then invited Mr. Simon to speak. Mr. Simon said that none of what he had to say here was his own words. It was all directly from Taiwan’s American Chamber of Commerce and he was just going to summarize the position paper.

The position paper stated that the PRC engages in restrictive trade practices as compared to the ROC, which presents a truly reciprocal trade pattern with resulting economic benefits to both the United States and Taiwan. The People’s Republic of China has a non-consumer product market of limited products, non-recurrent purchases and import restrictions. The interest of the PRC is in technology, not in products. It was estimated in the
report that consumer products will not be in demand in the PRC for two generations. The loss of United States relations with the Republic of China would have many ramifications: the outlook for economic increase would be negative and abrogation of the Defense Treaty would remove protection essential for Taiwan. Some specific problems cited were Eximbank loans and guarantees of 1.5 billion dollars, U.S. banks on Taiwan, United States investment, OPIC insurance, and the most favored nation treatment of Taiwan. It was also pointed out by the Chamber of Commerce that United States security could also be threatened.

[The following is the text of the position paper prepared by the American Chamber of Commerce in the Republic of China.]

US-ROC ECONOMIC RELATIONSHIP:
A BUSINESSMAN'S VIEW*

AMERICAN CHAMBER OF COMMERCE IN
THE REPUBLIC OF CHINA

A. INTRODUCTION

Since the signing of the Shanghai Communique in 1972, a great deal of attention has been given to the question of what benefits would be gained from improved relations between the United States and the People's Republic of China. Aside from the fundamental geopolitical advantage of keeping the USSR and the PRC from greater solidarity, there have been high expectations as to the eventual economic benefits which will accrue to both countries.

At first blush these benefits seem well worth achieving. Certainly very few of us would take issue with the goal of keeping two communist countries from joining forces against the U.S., or support the argument that we should continue to ignore the 850 million Chinese on the Mainland. But when it comes to the economic issues, we believe that these have not been adequately analyzed, and that they should be thoroughly assessed before any further steps are taken toward normalization with the PRC. In essence, we think that the U.S. Government has expected more gains than can be realized . . . but more importantly, we think it has totally ignored the potential losses.
For the past few years, the American Chamber of Commerce in the Republic of China has supported positions which favor the expansion of commercial and cultural relations between the U.S. and the PRC, provided this is not done at the expense of the Republic of China. Our position has echoed the recent resolution by a majority of the U.S. House of Representatives, which states "that the U.S. Government, while engaged in reducing tensions with the PRC, do nothing to compromise the freedom of the Republic of China and its 16 million people." Basically we believe that the long-standing American relationship with the Chinese who have made Taiwan a flourishing example of economic and cultural cooperation should not be sacrificed for a political objective which does not give comparable reciprocity to American initiatives.

This position paper has been prepared by members of the American Chamber of Commerce in the Republic of China, an organization of U.S. business executives who manage some 220 U.S. invested corporations in Taiwan. The Chamber's prime objective is to enhance and protect American trade, investment and credit relations with the Republic of China.

B. U.S. ECONOMIC RELATIONS WITH THE TWO CHINAS

While the opening of U.S. commercial relations with the PRC began in an encouraging way and with great expectations, they still give no opportunities for normal commerce; even the cultural and tourist interchange has been unilaterally restricted by the PRC to minimum levels. The U.S. two-way trade with the PRC in 1975 declined to $462 million (from $922 million in 1974) while the U.S. did $3.5 billion in two-way trade with Taiwan in 1975.

The PRC refuses to accept credits from foreign trading partners including the U.S. and has generally confined commercial contacts to the Canton Trade Fair. The PRC also refuses to permit American buying or selling offices to operate in the country and refuses to permit American banks to handle financial and trade transactions between the two countries.

In extreme contrast, the Republic of China on Taiwan has consistently offered full business reciprocity, investment opportunities and unlimited support to two-way commercial interchange, to a point where our two-way trade with them made Taiwan America's 13th largest trading partner in 1975. This created opportunities for thousands of export-related jobs in the United States. Also, U.S. investment as of July 1976 amounted to
$476 million and has prospered in one of the most hospitable investment climates in the Asia-Pacific area. In addition, Taiwan has also opened its arms to American religious groups, scholars and tourists serving to maintain our long standing relationships with the Chinese people at a high level of compatibility and cooperation.

It could be argued that normalization of the political relationship should begin at least to remedy the lack of commercial and cultural reciprocity, but thus far this is not supported by the experiences of other countries which do have diplomatic relations with the PRC. It appears that reciprocity is not a 50-50 proposition with the PRC.

C. WHAT'S IN IT FOR THE U.S.?

Yet there still seems to be a compulsion to forego the tried-and-true relationship with the ROC in favor of the hope of great economic benefits from the PRC. And even more alarming, we observe a sense of urgency in the U.S. Government’s desire to culminate normalization with the PRC “before it’s too late.” Admittedly, the public posture of the current Administration is low at present, no doubt due to the Presidential election campaign. But the stated goal is still “normalization” and we perceive that even though it is alleged that there is no time-table and no formula, there appears to be an academic and State Department groundswell (possibly amplified by press speculation) which is anxious to conclude an early agreement with the PRC. We believe this issue will surface rapidly once a new president is elected.

Therefore, it is essential that we analyze what the real economic benefits to the U.S. will be — or put more colloquially, what's in it for the U.S.? An analysis follows as to the prospects of improved US-PRC trade based on the assumed condition of diplomatic recognition.

D. WHAT'S THE REAL MARKET POTENTIAL WITH THE PRC?

When we evaluate the PRC’s past buying policy we find that the potential market for U.S. products is limited to a few select product categories, that the purchases are non-recurrent, that the availability of a broad consumer market base may well be 40 to 50 years away, and that the emphasis is on self-sufficiency which exhibits itself in an interest in technology rather than in products. In addition, the fact that the PRC is a non-market economy will affect the ability of U.S. exporters to sell their products on a
competitive and reciprocal basis; there are many import restrictions levied on a variety of products which limit the current as well as eventual market potential. Furthermore, the absence of free choice by the consumer will restrict the ability of U.S. exporters to develop new markets for their products. Brief comments are given below on the three most important categories:

Industrial Products

In line with former Premier Chou En-lai's report to the 4th National People's Congress, one of the PRC goals is to build "an independent and relatively comprehensive industrial and economic system by 1980." Therefore it is reasonable to expect that the PRC will be looking abroad for equipment during the next few years. But history has shown that they are more interested in technology than in equipment, with some limited exceptions to meet their urgent needs where either their capacity or technical know-how is limited. Some of the examples are the purchases of jet aircraft, fertilizer plants, and deep-well oil drilling platforms. In the case of the aircraft sale, the PRC technology is obviously not at a comparable level to the U.S., and purchases of this type are expected to continue. As for the fertilizer plants, this is a good example of a dire need to supplement their capacity on a one-time basis. The same holds true for the oil drilling platforms; after purchasing several from Japan, France and Norway, the PRC is now manufacturing their own.

Consumer Products

Even though the PRC is a rich land with numerous natural resources, many areas are still uninhabited and thus have little or no infrastructure. In short, its economic development may well be some 40 to 50 years away from where the needs of its people can be matched to the richness of its resources. Therefore, the opportunity for selling U.S. consumer goods appears to be at least two generations away. A good example is provided by the Japanese: to date they have not managed to sell any consumer products to the PRC.

Agricultural Products

As for a sustained favorable outlook for agricultural products, it is not expected that the PRC will remain a large importer of foodstuffs for long. Less than 20% of its total land surface is now
cultivated, which is quite low compared to its potential arable acreage. In addition the current per acre yield is very low due to a lack of fertilizer and pesticides as well as a limited irrigation system. Therefore, the capability of the PRC to increase its agricultural output is substantial, large enough to be a threat as an eventual competitor to the U.S. in their surplus crop years.

After analyzing the economic realities, the prospects of significantly increasing trade between the U.S. and the PRC are certainly not optimistic. So the question remains, What's in it for the U.S., particularly if it is to be accomplished at the expense of a valued trading partner, the Republic of China?

E. DISADVANTAGES TO THE U.S.

Now let's turn our attention to what the potential loss would be to our economic relations with the Republic of China. There are basically two scenarios; the first involves de-facto derecognition of the ROC without regard to how future trade, investment and credit relations would be handled. In this first scenario we would also assume the abrogation of the 1954 Mutual Defense Treaty, inasmuch as we understand that it may not be possible to have a Defense Treaty with a country with which we have no diplomatic relations.

Without sounding ominous and without making any predictions as to what the PRC and ROC might do militarily, our feeling is that we in Taiwan would experience serious difficulties in doing business. There could be a degree of social unrest which might vent itself on American companies. Further investment would stop, and capital flight would be probable. In short, sudden diplomatic derecognition without any redress does not provide a positive outlook for U.S. economic interests. (Frankly speaking, it seems inconceivable and unrealistic that such a scenario would take place; in all our 200 year history there is no precedence for abandoning a trusted ally and valued trading partner in the way just described.)

A second scenario involves “normalization” with the PRC but not under the three conditions outlined by the PRC (diplomatic recognition, U.S. troop withdrawal, and abrogation of the Mutual Defense Treaty). We particularly believe that the third condition, that of abrogation of the Mutual Defense Treaty, is totally unacceptable to the protection of American economic interests with the Republic of China. In short, the Mutual Defense Treaty is central to our economic survival on Taiwan. Without offering any
new “formula” for solution, we will state a number of additional issues which need to be resolved before any further steps are taken toward normalization with the PRC. We hope that the U.S. Government is already working on these areas. It is critically important that solutions be found to these problems.

F. ISSUES WHICH NEED TO BE RESOLVED

1. Eximbank Loans and Guarantees

As of December 1975, the ROC had loans and guarantees outstanding in the amount of more than US$1.7 billion, thus making it the Eximbank’s largest customer after Brazil. What happens to these funds and will Taiwan be eligible for loans in the future?

2. U.S. Banks on Taiwan

As of July 1976, there were eight U.S. banks represented on Taiwan. What will be their status after normalization? Will they be allowed to continue their operations in Taiwan?

3. U.S. Investment on Taiwan

As of July 1976, there was some US$476 million worth of U.S. investment on Taiwan. This investment is distributed across the range of the country’s industrial projects and infrastructure. A series of questions arise which are currently adequately answered under the present Friendship, Commerce and Navigation (FCN) Treaty of 1948, but which will need review if the FCN Treaty were not to be in force.

Will this investment have national treatment, meaning that U.S. investment will be subject to the same laws and enjoy the same rights as do domestic enterprises of the host country?

In the event of expropriation or nationalization for a public purpose, will it be done without discrimination and accompanied by prompt, adequate and effective compensation?

Will compensation under expropriation amount to the market value immediately before the expropriation itself or before the host government’s official announcement that expropriation will occur?

Will there be international arbitration in the event of a dispute between the U.S. investor and the host country?
4. Overseas Private Insurance Company (OPIC) Coverage

As of July 1976, the maximum contract value of OPIC insurance was $132 million for inconvertability, $153 million for expropriation, and $137 million for war. Could additional coverage be obtained?

5. Textile Quotas to the U.S.

Taiwan's textile exports to the U.S. fall under the 1974 Multi-Fibre Agreement, the international framework for voluntary bilateral restraints between textile exporters and importers. On the other hand, the PRC has been unwilling to subscribe to any voluntary trade restraints, even with countries with which it has diplomatic relations. What happens to Chinese textile exports to the U.S.?

6. U.S. Agricultural Exports to Taiwan

In 1975, the U.S. exported some $420 million worth of agricultural products to Taiwan. Most of these exports are conducted under several long-range agreements negotiated between the U.S. and the ROC. What happens to these agreements?

7. Nuclear Fuel for Taiwan's Nuclear Power Plants

Currently two nuclear power plants are under construction in Taiwan, and four more are planned. Under what conditions will Taiwan be able to obtain nuclear fuels for these plants?

8. Generalized Preference Scheme

Will Taiwan still be eligible for duty reductions under the Generalized Preference Scheme?

9. Most Favored Nation Treatment

The ROC currently has MFN treatment, but the PRC does not. Before MFN can be granted by the U.S. President to the PRC, the Trade Act of 1974 requires that a bilateral trade agreement be negotiated first, and then be approved by the U.S. Congress. Part and parcel of Congressional approval is the settlement of frozen assets, which has been an extremely thorny issue thus far. Anyway, what happens to the ROC's Most Favored Nation standing?
10. Concerns for U.S. Security

We do not profess to be experts in international security matters, but as U.S. citizens, we are vitally concerned with the security of our country. We feel it important that the U.S. maintain a strong military presence in the area. Breaking our faith with the people of Taiwan would only weaken us in the eyes of the other nations of the area, and would strengthen the position of the Communists.

We find it ironic that we seem to be having trouble over the use of our bases in the Philippines, whereas the ROC no doubt would cooperate with us fully in our objective of having a strong forward defense in the Western Pacific Island chain.

The foregoing listing represents only a sampling of the issues which need to be resolved before any further steps are taken toward normalization with the PRC.

G. CONCLUSION

We do not disagree with the objectives of keeping the two Communist countries from joining forces against the U.S., but we feel that this objective can be accomplished through skillful negotiating, without sacrificing the people of the ROC or the U.S. position in the Far East. We believe that the PRC has more to gain from normalization of relations between the two countries than does the U.S., and that the U.S. should negotiate more from a position of strength. It appears that a group within the U.S. Government is so intent with normalizing relations with the PRC "before it's too late," that they are proposing giving in to the demands of the PRC in the hope that they will agree to normalization. We should have learned by now that this is no way to negotiate with the Communists.

The PRC has stated three demands in the Shanghai Communiqué. We believe that the U.S. negotiators should firmly state two conditions. One should be to keep the Mutual Defense Treaty with the ROC, and the second should be to protect U.S. economic interests with Taiwan. If these two conditions are not met, then it is our judgment that normalization of relations is not worth the price.

Dr. Sigur thanked Mr. Simon for his very excellent summarization of the view of the American business community in
Taiwan, which represented, of course, some of the largest business interests in this country. He thought that it was important that we should take seriously what they said. He then invited Dr. Yuan-li Wu of Hoover Institution to present the paper on the economic impact of US-PRC relations on the ROC; this paper was prepared jointly by Dr. Wu and Dr. K. C. Yeh. He also expressed his regret that one of the co-authors of the paper, Dr. K. C. Yeh of The Rand Corporation, could not come because of his overseas trip.

Drs. Wu and Yeh's paper discussed the economic impact of United States-People's Republic of China relations on the Republic of China. Their purpose was to examine factors contributing to the rapid expansion of exports in Taiwan and to Taiwan's economic growth and to determine how these factors would be affected by the alternatives for changing relations with the ROC.

Taiwanese expansion in exports is correlated with United States direct investment. This is what Dr. Wu termed a linear correlation, that is, exports from Taiwan come from United States and Japanese manufacturers. Dr. Wu stated that for continued export growth there must be continued investment and continued increase in importation by the United States. However, continued export growth depends on the political climate. Investors expect stability, and the best way to eliminate uncertainties is for the United States to make clear that present relations will continue.

Dr. Wu identified three alternatives: (1) continuation of the status quo, (2) diplomatic recognition of Peking and abandonment of the Republic of China, and (3) diplomatic recognition of both the People's Republic of China and the Republic of China. Dr. Wu prefers the third alternative, the so-called German plan.

Dr. Wu stated that if the legal status of Taiwan is questioned, a situation would arise where problems are created for businessmen by other countries. Some of those problems identified were threats to curtail freedom of access to transportation and resources, legal redress, and sea rights. Such problems would require private intervention and Dr. Wu questioned whether anyone would be willing to assist. Dr. Wu suggested that the "open door" should swing both ways.

[The following is the text of the paper prepared by Dr. Wu and Dr. Yeh.]
ECONOMIC IMPACT OF ALTERNATIVE US-ROC RELATIONS

Y. L. Wu* AND K. C. Yeh**

The central question discussed in this paper is the economic impact of alternative US-ROC relations. As US-PRC relations develop further, alternative forms of the relations between the US and the ROC must be considered. Among these broad alternatives are: (a) continuation of US-ROC relations as they now stand, (b) a more unambiguous two-China policy on the part of the United States which will reaffirm the latter's determination to abide by existing treaties and to maintain its political and economic relations with the ROC under bilateral agreements at the government level, whatever may be the relationship between the United States and the PRC, and (c) downgrading of US-ROC relations, which can be carried out in varying degrees either following or simultaneously with the diplomatic recognition of Peking. We assume for the purpose of this paper that the term "normalization" is used by most people at present as a code word for diplomatic recognition of Peking, although the two terms are not necessarily identical. (Some countries that have maintained full diplomatic relations with Peking for some time do not seem to enjoy closer substantive relations with the PRC than does the United States. It is hard to define precisely what one means by "normal relations" with Peking.) By "economic impact" we mean the effect on (a) the economic viability of Taiwan as an independent economic entity, (b) the present and future economic interests of the United States, and (c) the economic interests of such major interested parties as Japan.

We shall attempt, in the first place, to identify the basic factors, insofar as they are relevant for our purpose, that have made possible the impressive economic performance of Taiwan, both in the decade and a half before the 1973 oil crisis and since that crisis (see Figure 1). Taiwan's past economic performance can best be illustrated here by a quick reference to (a) the growth of its GNP and foreign trade, (b) the relative price stability up to the eve of the oil crisis in spite of Taiwan's rapid economic growth, (c) the continuous improvement of its balance of payments until the oil crisis and even in spite of it, and (d) the relatively equitable

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Figure 1

Real GNP, Foreign Trade, (Exports + Imports at Current Prices), and Wholesale Price Indices (1952 = 100) 1952-1976

- - = GNP
--- = Foreign Trade
----- = Wholesale Price Index
distribution of income and economic power among the island's population.

The United States resumed large-scale economic aid to Taiwan in 1952. The index of Taiwan's real GNP (at constant 1966 prices) in 1972, the year immediately preceding the oil crisis, stood at 538.2 (1952 = 100).\(^1\) The annual rate of growth during the two decades averaged 8.8 percent, rising from 7.2 percent a year during the first decade to 10.4 percent during the second decade. Alternatively, we can point to the increase in the average annual growth rate in successive periods from 7.2 percent in 1952–60 to 9.6 percent in 1960–65 and 10.1 percent in 1965–72. The latter comparison is perhaps more meaningful, for reasons which will become clear later. The trend was briefly interrupted by the worldwide recession in 1974, but the economy has moved upward again since then. While the real growth rate fell to only 0.6 percent in 1974, it returned to 2.0 percent in 1975, and bounced back to over 10 percent in 1976.\(^2\) On a per capita basis, Taiwan's GNP growth rate between 1952 and 1972 averaged 5.6 percent a year in real terms, far exceeding the corresponding rates of most other developing countries including the PRC. There can be little doubt that Taiwan has taken off on a path of sustained economic growth. The record of 1974–76 testifies further to the resilience of the economic system in the face of exogenous shocks.

This remarkable growth record was achieved with only moderate price increases. The average rate of increase of wholesale prices between 1952 and 1972 was 4.6 percent a year; that of consumer prices, 5.8 percent. The rate of increase of wholesale prices slowed considerably from 8.8 percent a year in 1952–60 to 3.4 percent a year in 1960–73; correspondingly, that of consumer prices fell from 9.7 percent a year in 1952–60 to 4 percent in 1960–73. As a result of the oil crisis, wholesale and retail prices rose by 35.2 percent and 47.5 percent respectively in 1974. However, the price index was again stabilized after that. It dropped by 5.1 percent in 1975 for wholesale and rose by 5.2 percent for retail.

After its reform in 1958, the official exchange rate of the New Taiwan Dollar has not varied significantly from the free market rate, except for a brief period following the loss of Taiwan's U.N.

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membership in 1971 and, to a lesser extent, during the oil crisis in 1973–74. Taiwan's official international reserves were at the level of about $1.6 billion in October 1976, apart from which additional holdings of probably about the same amount are available.

From the point of view of social stability, the trend toward more equitable distribution of income is even more significant. The Gini coefficient declined continuously from 0.6 in 1953 to 0.30 in 1972. The top 20 percent of all households on the income ladder received 61 percent of total income in Taiwan in 1953; this share dropped to 39 percent in 1972. The shares of those with lower incomes increased correspondingly. A comparison of Taiwan's pattern of income distribution with those of other countries shows that the lowest 40 percent of its population on the income ladder had a distinctly larger share of total income than the corresponding segment of populations in most other Asian countries such as Korea, Thailand, the Philippines and India. In fact, its relative shares of income by income class were almost identical with those of Japan and came rather close to those of the United States. Measured in these terms, income distribution in Taiwan in 1972 was only slightly "less equal" than that of Poland in 1964 and slightly "more equal" than in Yugoslavia in 1968.

The underlying factors of Taiwan's rapid economic growth are many and their interrelationships complex. Two, however, stand out as fundamental and are especially relevant to an assessment of Taiwan's economic viability in the future; to wit, the rapid growth of human and material capital stock and the phenomenal expansion of exports. During the period in question, the former laid the groundwork for the increase in the economy's productive capacity while the latter provided the necessary stimulus for the expansion of aggregate demand. At the initial stage, that is, during the 1950s, when the economy faced a dual gap in foreign exchange and domestic savings, massive U.S. aid played a key role in sustaining a high rate of investment. Subsequently, domestic savings and foreign investment replaced U.S. aid as the major source of financing development; foreign investment also served as a supplement to Taiwan's foreign

exchange earnings. Finally, although its amount has been small relative to U.S. aid in the 1950s, foreign investment has been an indispensable vehicle in export marketing and in the transfer of technology, two of the principal factors that have made possible the growth of Taiwan's export-oriented economy and its structural change.

STAGES OF GROWTH OF TAIWAN'S EXPORTS AND IMPORTS

Since Taiwan is an island with limited natural resources, its continuous growth and economic viability must be predicated upon its ability to draw upon available resources in other countries. The fruits of these overseas resources must in general be purchased. Accordingly, a priori, the sustained growth of the economy requires the unimpeded growth of foreign trade and investment, as well as long-run equilibrium in the balance of payments. Furthermore, as long as the domestic market is relatively small, demand for increasing production must rely largely upon the export market. Hence our attention should be focused, in the first place, upon the principal factors underlying Taiwan's expansion in foreign trade.

A statistical overview of the growth of Taiwan's exports from 1952 to 1973 suggests that this historical development can best be divided into four distinct periods. (Figure 2 depicts the annual rate of growth of Taiwan's exports on a year-to-year basis; the index of any given year is calculated by using the preceding year as 100.)

(a) Continual fluctuations were exhibited during the period before 1959. Increases in exports in some years were followed by declines in others, and the annual growth rate in value terms varied within a wide range, from +30 percent to -30 percent. (b) The second period began in 1959 and ended in 1966. The annual growth rate of exports in real terms increased steadily through 1964. The corresponding rate in value terms fluctuated more widely due to changes in export prices. (An increase of 50 percent in value was registered in 1962.) During the second part of this period exports in real terms grew at about 20 percent a year. (c) The third period began in 1967 and ended in 1973. During this period Taiwan's exports grew generally at 20 percent or more in quantum each year. The annual increase in value terms was, of course, at a faster rate, reaching a peak of 50 percent in 1973 due to a considerable rise of prices during that year. (d) The fourth period began in 1974. Because of the sharp increase in crude oil price and the world-wide recession that ensued, Taiwan's exports declined.
Annual Index of Exports from Taiwan (preceding year = 100), 1953-1976

- solid line: value index
- dotted line: quantum index
- benchmark dates

Exports from Taiwan = 100, 1953-1976
by 4.4 percent in real terms in 1974. Recovery began in the latter part of 1975 and the volume was substantially larger in 1976. A similar review of the history of Taiwan's imports presents us with the following picture (Figure 3). (a) Before 1963, the annual growth rates of Taiwan's imports fluctuated considerably, although the fluctuations were within a narrower range than those of pre-1959 exports. The corresponding annual growth rate of imports in quantum varied from +10 percent to -7 percent in most years; greater fluctuations were registered in value terms. However, declines in quantum were reported only in two out of the eleven years in this period; declines in value were registered only in three years. (b) The second period began in 1963 and ended in 1973. In value terms, imports rose at above 20 percent a year in most years during 1963–71 with larger variations in quantum. Between 1971 and 1973 the rate rose to substantially above 20 percent a year, reflecting price increases, while the rate of increase in quantum remained at slightly above 15 percent. (c) The third stage began in 1974. In that year the value of Taiwan's imports rose very sharply as a result of the price increases of oil and other intermediate products, as well as stepped-up purchases in the preceding year. However, the recession led to a decline of real imports by 11.2 percent in 1975, followed by a substantial recovery in 1976.

MAJOR BENCHMARKS IN FOREIGN TRADE DEVELOPMENT

The transition of imports from one stage of development to another lagged behind that of exports, apparently for two reasons. First, imports fluctuated less than exports before 1963 because of the availability of substantial imports financed by U.S. aid. Second, although production and exports could not rise without increasing imports, the expansion of imports in the later stages was also an effect of the prior expansion of exports. The conservative and cautious policy makers who managed Taiwan's balance of payments apparently made sure that import expansion would lag slightly behind the growth of exports. They were apparently anxious to build up the country's foreign exchange reserves in the light of their experience with balance of payments deficits over a number of years. The first benchmark in the expansion of Taiwan's exports occurred in 1959, midway between 1958 and 1960 when major foreign exchange reforms were instituted. During these three years multiple exchange rates were abolished step by step, and the
differential between the official and free market rates was successfully narrowed. The premium of the free market rate over the official rate, which stood at NT$24.78 to one U.S. dollar in 1957, declined from 54.9 percent in that year to only 9.6 percent in 1961. The official rate in 1961 was NT$40.03 to one U.S. dollar while the free market rate was NT$43.89. Minor fluctuations occurred during the intervening years between 1961 and 1966, when the second phase of Taiwan’s export development ended. However, by 1966, the two rates were virtually at par, NT$40.10 being the official rate, and NT$41.00, the free market rate. The removal of multiple exchange rates and the effective devaluation of the New Taiwan dollar were approached in a very gingerly manner, and even this cautious approach was not adopted until the price level had become sufficiently stabilized during the preceding years. While price inflation was rampant in 1951 and 1952 — wholesale prices rose by 66 percent in 1951 and 23.2 percent in 1952 — the rate of increase had dropped to 7.2 percent in 1957 and 1.4 percent in 1958. Without this prior development and the restoration of confidence in a stable currency, the foreign exchange reforms could not have been instituted; nor would they have been so successful in promoting exports and in doing away with the price distortions and inequities the multiple exchange rates had engendered.

Establishment of the necessary prior conditions for economic reform was in a very significant measure also a result of U.S. aid. During 1951–55, U.S. aid amounted to 47 percent of Taiwan’s gross capital formation and 43 percent of total imports; these ratios fell to 34 percent and 36 percent respectively in 1956–60, and 17 percent and 19 percent respectively in 1961–65. Absence of either of these two conditions — exchange rate reform and U.S. aid — would have made a critical difference.

The benchmark separating the second and third stages of Taiwan’s export growth occurred in 1965–66. Having already liberalized its regulations governing investment by overseas investors at the time of the earlier exchange reform, Taiwan took


additional steps in the same direction in January 1965. The first Export Processing Zone was established at Kaohsiung, and a sharp increase in direct investments from abroad followed immediately. The cumulative total of foreign direct investment approvals rose from $93.1 million at the end of 1964 to $134.7 million a year later. By 1973 the corresponding total had risen to $1,287.1 million; it was $1,405.2 million in 1975. The data in Table 1 will provide a historical perspective in capsule form.

Table 1. Foreign Investment Approvals
(U.S. $ million)

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<th>U.S. Investors</th>
<th>Investors from Japan</th>
<th>All Countries</th>
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LIBERALIZATION OF FOREIGN TRADE, EXCHANGE AND CAPITAL INFLOW: THE DOMESTIC AND WORLD ENVIRONMENT

The history of Taiwan's foreign trade expansion points indisputably to the importance of appropriate domestic economic measures. Exports became profitable as a result of the 1958-60 reform which directed the attention of private business toward export promotion, away from the hidden subsidy of licensed imports at artificially low foreign exchange rates. The export processing zones (EPZs) successfully attracted foreign investors to Taiwan; not all of them located their plants within the zones. Encouragement of direct foreign investment in general, both inside and outside the zones, was undoubtedly instrumental in solving the very important marketing problem on which export expansion depended. Once established in Taiwan, the foreign firms outside the zones also supplied their products to Taiwan's domestic market where demand was expanding with the very

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8. These data are from the Foreign Investment Commission, Ministry of Economic Affairs, Republic of China.
economic growth to which export expansion contributed most decisively. The EPZs apparently served a path-breaking function, providing this initial attraction to induce foreign investors and other businessmen to come to Taiwan, and encouraging domestic firms to locate the items solely to promote exports.

As of March 1977, there were 10 sole U.S.- and 68 sole Japanese-owned firms in the EPZs. In addition, there were 68 joint ventures composed of U.S.-Japanese interests; 4 composed of U.S.-Japanese and other interests; 9 composed of U.S. and other interests; and 51 composed of Japanese and other interests. Still other investors, many from Hong Kong, are also located in EPZs. Thus many Japanese, Hong Kong and other firms export to the United States, as well as to other markets, from Taiwan.

An earlier incomplete count shows that as of 1974, 14 U.S. firms had been established within EPZs.\(^9\) In addition, 313 American firms were located outside the zones. Of those outside the zones 250 firms, or 80 percent, were established after 1965. It was in 1965 that foreign investment rules were further liberalized and U.S. aid to Taiwan officially came to an end. A more recent count based on 1976 data shows that there were 63 additional U.S. firms on the later list that were not on the 1974 list. A number of these, if not all, must have been established after 1974. All the 63 are located outside the EPZs.

Figure 4 presents a vivid illustration of the rise of Taiwan's exports and imports in current dollars. However, neither effective marketing with the aid of foreign investors nor unilateral reform on the part of Taiwan would have sufficed had not the demand for Taiwan's exports expanded considerably during this period. Figure 5 shows that the share of the U.S. market in Taiwan's exports for the first time surpassed that of Japan during 1966–67. The shares of the two countries became about equal in 1962. Before 1962 Japan's share had been consistently higher. However, the emergence of certain new agricultural exports from Taiwan to Japan again pushed up Japan's share between 1962 and 1966. The crossing of the two lines depicting the respective shares of the United States and Japan as buyers of Taiwan's exports in 1966–67 (Figure 5) signaled the rise of the role of new exports of manufactures from Taiwan. Their appearance was a direct outcome of the increase in foreign direct investment.

\(^9\) Calculated from directories of U.S. and Japanese firms. The figures are not all inclusive.
Figure 5

Percent Shares of the United States and Japan as Markets of Taiwan's Exports
1953-1975

Benchmark dates
Between 1966 and 1973 U.S. general imports rose from an index of 100 to nearly 400 (see Figure 6). During the same period, Taiwan's exports to the United States rose much more sharply, from an index of 100 in 1966 to 1377 in 1973. This nearly 14-fold increase was partly a reflection of the greater competitiveness of Taiwan products on the U.S. market, but the increase was also aided by the general expansion of U.S. imports. Furthermore, Taiwan's exports to the United States had been so small that the large increase scored during this period could in most cases be better tolerated by Taiwan's competitors. Given the competitiveness of Taiwan's products and the increasing U.S. demand for imports, the existence of U.S. as well as Japanese firms in Taiwan, both making exportable goods for the American market, contributed significantly to Taiwan's expanding share in U.S. imports.

In the case of Japan, Taiwan's exports to Japan in general increased after 1966 pari passu with the expansion of Japan's import demand as a whole (see Figure 6). Taiwan's exports to Japan did not rise in as extraordinary a manner as did Taiwan's exports to the United States. Japanese direct investments in Taiwan probably contributed as much to the increase in Taiwan's exports to the United States as they did to increase exports from Taiwan to Japan.

SENSITIVITY OF FOREIGN DIRECT INVESTMENT TO POLITICAL EVENTS

The rate of foreign direct investment in Taiwan was apparently very sensitive to political events, as is to be expected. The rate of U.S. investment in Taiwan dropped in 1971 and 1972 probably as a result of the ROC's international setbacks during those years and doubt about its future status (Figure 7). Between 1972 and 1973 there was a sharp increase in new U.S. investment in Taiwan, which seemed to reflect some recovery of confidence on the part of U.S. investors. However, the increase was smaller in real terms if price increases are discounted. Investments fell again in 1974 because of the general recession and postponement of investment plans by many firms.

The flow of direct investment from Japan, including investments by "overseas Chinese" residents in Japan, rose steadily during 1965–70, immediately after the establishment of the export processing zones (Figure 8). The rate of flow fell in 1972, reflecting the same concern felt by U.S. investors. Following Japan's
Indices of Growth of Taiwan's Exports to
(a) the World, (b) The United States, (c) Japan versus the
Growth of U.S. General Imports and Japan's Imports
from the World, 1966-1976

Figure 6
Figure 7

U.S. Direct Investment in Taiwan

- World wide recession
- U.S.-Peking Rapprochement
- Establishment of EPZ
- Foreign Exchange Reform
- Shelling of Quemoy

$ Thousands

|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|
Japanese Direct Investment in Taiwan, 1953-1975

- Establishment of EPZ
- U.S. Rapprochement with Peking
- World wide recession

Figure 8
transfer of diplomatic recognition from Taipei to Peking in 1973, another decline of new Japanese investment in Taiwan occurred in 1974 and 1975 although the cause of the decline is again somewhat ambiguous because it coincided with the recession.10

STRUCTURAL CHANGE OF TAIWAN'S ECONOMY AND FOREIGN TRADE

As the economy of Taiwan develops further, not only will there be an increase in GNP and the volume of trade, but the domestic sector of the economy should expand even faster. Such a development would reduce the “foreign trade ratio” — defined here as the ratio of foreign commodity trade to GNP plus imports — which was as high as 60 percent in 1973. In this connection, the case of Japan presents an appropriate illustration and comparison. During 1908–17 the Japanese “foreign trade ratio” averaged 29 percent.11 It declined to 20 percent in 1950–54. The Japanese ratio has always been much smaller than that of contemporary Taiwan because of the latter's smaller size. To put it in another way, Japan’s very large GNP has dwarfed the tremendous size of its foreign trade. Because of its smaller size, Taiwan probably will have for a long time a much higher foreign trade ratio than Japan. However, Taiwan is clearly fast approaching the point when it should begin to expand the domestic sector of the economy by “filling out” the many linkages which its export-oriented economy has already succeeded in developing. Even during 1972–74, domestic sales were already accounting for over 40 percent of the sales of enterprises owned by overseas investors in Taiwan.12

In the case of Japan, the ratio of export of goods and services to GNP remained at a fairly stable level of 10 to 11 percent during 1955–73 — in comparison with about 20 percent in the 1930s — while per capita GNP grew by leaps and bounds.13 The percentage

10. According to Taiwan statistics, Japanese direct investment approvals, including applications by “overseas Chinese” residents in Japan, declined 14.4 percent between 1973 and 1974, from $48.9 million in 1973 to $41.9 million in 1974. Another 37.5 percent drop was registered in 1975. On the other hand, Japan’s overall direct investment to foreign countries declined even more during 1973-74, from $3.5 billion to $2.4 billion, or 32.5 percent. Japan’s Direct Investment Overseas, Present State and Future Outlook, Keidanren, Tokyo, March 1976.
12. Private communication.
The contribution of export to economic growth from 1921-25 to 1934-38 was estimated at 39 percent as compared to only 17 percent in 1955-71. The decline of the export to GNP ratio and of export as a component of growth in the post-World War II period was accompanied by a dramatic change in the structure of exports. The proportion of such labor-intensive exports as textiles and clothing, food, beverage and tobacco, etc. dropped from 65 percent of total exports in 1955 to 43 percent in 1973. Meanwhile, the share of R and D-intensive (e.g., optical and precision instruments), capital-intensive, and high-wage exports (e.g., automobiles, consumer electronics and so forth) rose sharply. If the Japanese experience is any useful guide, the continuation of Taiwan's GNP and export growth will also have to be accompanied by an increase in value-added in export, as well as a reduction of import content per dollar of export. Rising wage rates and an increasing share of exports originating from domestic enterprises as compared to exports by foreign enterprises will make these changes both necessary and possible.

However, upgrading of the technological content of Taiwan's products in general, including exports, an increase in the ratio of skilled to unskilled labor in the labor content of these products, and a gradual rise in their capital content will take time. Nor can they occur without the sustained infusion of new technology, much of which will be embodied in capital equipment. Thus there will have to be more direct foreign investment, more licensing arrangements between Taiwan and foreign firms, and more joint ventures between Taiwan capital and new technology from abroad. Between 1972 and 1974 exports by Taiwan enterprises registered a 53.4 percent increase in value; however, the share of foreign enterprises in total exports increased from 22.3 percent to 29.2 percent. This means, therefore, that foreign businessmen will have to help in marketing an increasing amount of new exports.


Figure 9 shows in a scatter diagram the close correlation \((r = +0.966)\) between the volume of cumulative direct U.S. investment and Taiwan's export to the United States. A similar correlation exists between total direct overseas investment in Taiwan and Taiwan's total export.

It follows from the above that at this stage of its development the continuation of direct foreign investment and technological inflow are indispensable to the economic viability of Taiwan. Furthermore, the flow of goods, people, capital and technology must not be impeded or subjected to delay in any way. On the contrary, they must expand further and be quickly responsive to changing conditions. Finally, as the volume of Taiwan's exports increases, further expansion needs to be accompanied by greater commodity and geographical diversification in order to minimize the effect of protectionist sentiments in the importing countries. Thus a primary condition of Taiwan's economic viability is the maintenance of the freedom of the high seas, the freedom to travel to and from Taiwan, the freedom to communicate between Taiwan and the rest of the world, and the ability to enter new markets and to diversify — including upgrading — into new exports. Taiwan needs the traditional open-door policy of the United States in which the door will swing open both ways.

**IMPACT OF ALTERNATIVE US-ROC RELATIONS ON THE ECONOMIC VIABILITY OF TAIWAN**

How alternative US-ROC relations will affect Taiwan's economic viability will depend, in the first instance, upon their effect on the factors mentioned in the preceding paragraph.

**A. Direct Foreign Investment**

A statement of the American Chamber of Commerce in the Republic of China, dated August 25, 1976, raised a number of questions about the future status of American business in Taiwan if diplomatic recognition is extended to Peking. Will American business continue to enjoy national treatment in the hands of the ROC government? Will there be nationalization? If so, what will be the level of compensation? Will the various insurance schemes against inconvertibility and expropriation offered by the U.S. government and its agencies (e.g., OPIC) continue to be valid? What will be the proper procedure for resolving questions, or settling disputes, that may arise in present and future contracts or in the course of doing business (e.g., in case of oil spills by one
Correlation of Cumulative Value of U.S. Direct Investment in Taiwan and ROC Exports to the United States

Figure 9
party's tankers in the territorial waters of the other). Whether continuation of relations between the two countries as they now stand will remove the uncertainty that has inspired these questions is by no means sure. It will depend upon how long the present status is expected to last. If the present condition is expected to be transitory, investors will tend either to stay away or to avoid heavy or long-term commitments. This attitude would tend to increase Taiwan's dependence on (i) loans, (ii) export earnings, and (iii) licensing arrangements for the acquisition of capital goods and foreign technology. Conceivably Taiwan may then be faced with a higher debt service ratio, and its balance of payments position may deteriorate, which would in turn affect its credit standing.

If relations between the two countries are downgraded and U.S. diplomatic recognition of Peking takes place, many of the questions that inspired uncertainty among American businessmen in Taiwan will become immediately relevant. Even if efforts are made by either the ROC or the U.S. government to allay fears, and even if none of the untoward developments mentioned by the American Chamber of Commerce actually transpires, fear of loss will not go away entirely. A process of gradual withdrawal by U.S. business interests may begin. Such a debilitating process can be avoided only if the governments of both countries can offer joint assurances, which would seem to require a degree of mutual trust and good will that may not be consistent with the initial assumption of the downgrading of their bilateral relations.

Only in the two-China case, which presupposes a reaffirmation of the current de facto situation on a more or less permanent and de jure basis — that is, at least as far as the United States is concerned — will the above uncertainties be removed. Long-term large commitments would then involve no more than the usual business risks. In view of Taiwan's past economic performance, these risks would be less than in most other developing countries. As Taiwan's economic structure changes gradually in the directions noted earlier, economic vulnerability to external influence will also diminish. This process of progressive improvement will be in direct contrast to the progressive deterioration of the previous case.

B. Current Exports and Imports

If US-ROC relations remain as they are, Taiwan's external trade can continue to expand as long as its products remain competitive and the world economy — the U.S. and Japanese
economies in particular — remains reasonably prosperous. However, even under present conditions, there have been repeated PRC-inspired efforts to isolate Taiwan internationally. One of the latest examples was the attempt in 1976 by members of the INTELSAT to replace the ROC with the PRC in its membership, which could become a prelude to an attempt to deny the ROC access to the INTELSAT Indian Ocean satellite for direct communication with such countries as Spain, the Federal Republic of Germany, Italy, France, Austria, Switzerland, the Netherlands, the United Kingdom, Saudi Arabia, Singapore, Malaysia and Indonesia.

If US-ROC relations are downgraded and the legal status of Taiwan can be questioned, both private organizations and governments will be in a position to raise issues that are disruptive of Taiwan's foreign trade. For instance, would Taiwan continue to enjoy MFN status in the United States and other markets? Would Eximbank facilities continue to be available to private and public ROC firms? Would Taiwan benefit under the General Preference Scheme of tariff reductions? Would ROC flag ships and aircraft be able to function in foreign countries without interference and delay? Would ROC government and private interests be able to exploit resources in the deep sea and on the continental shelf under whatever protection international law normally provides? Would ROC fishing vessels be able to operate in ever-widening areas as they do now? (One experimental voyage to the South Polar region for shrimping was completed early this year.) Can visa applications by ROC businessmen and other travelers be processed quickly? Would contractual obligations between ROC and other nationals be enforceable and in what court? Perhaps some of these questions cannot be answered without court tests. In other cases, administrative interpretations of ambiguous regulations and statutes may be necessary. In either case, delays will be unavoidable. As a matter of fact, delays can be easily created, which alone may raise the cost of doing business with Taiwan and by Taiwan businessmen, with the attendant adverse effect on profit prospects. Such tactics can be adopted by

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15. An example of such delay, which borders on deliberate harassment, is the recent case in San Francisco where the acceptance of a gift from the city of Taipei to the city of San Francisco in the form of a pavilion to be erected in Golden Gate Park has been held up by the San Francisco Planning Commission's insistence that the donors file an environmental impact report to show how the aesthetic quality of the park would not be adversely affected.
Taiwan's political detractors. They can also be initiated by business rivals. Only in the case of the two-China alternative can the risks noted above be minimized.

C. Taiwan's Economic Response

One of the factors that will affect confidence on the part of foreign investors and traders who deal with Taiwan is the latter's response to the uncertainties and challenges posed by US-ROC relations. For instance, following the unfavorable international political developments in 1971-72 and partly as a response to them, the ROC government has further liberalized its rules governing foreign remittance and travel. Import restrictions have also been liberalized. Conceivably, a similar response could be forthcoming if US-ROC political relations are downgraded, or in spite of such a downgrading. However, a diametrically opposite response could have been made in the past, and it would be no less possible in the future. This possibility is greater if a major adverse economic impact, or the rapid worsening of an initially minor impact, is envisioned by ROC policy makers. In such an eventuality, Taiwan may turn inward with the result of stricter foreign trade and exchange controls, rising defense expenditures and a slow-down of economic growth and foreign trade. The issue involves weighing short-run gains against long-run disadvantages. So far Taiwan has kept its economic policies focused on long-term gains. However, short-run risks could loom too large to be ignored.

D. Third Country Policies and Responses of Private Individuals

Threats to curtail the freedom of access between Taiwan and the rest of the world in terms of communication, travel by air and sea, freight transportation, national markets, legal redress, and exploitation of marine and undersea resources are unlikely to materialize in the near future as a result of the direct physical intervention of the PRC as long as the latter's capacity to do so is limited. Implementation of such threats by Peking at this time will require the cooperation of other governments or private organizations and individuals that take advantage of Taiwan's particular international status. While concrete actions can be instigated by Peking, they can also be initiated by the individual interests of third parties. Hence the policies of countries other than the PRC and ROC can play an important role. Will they be
willing to be a party to the infringement of the freedoms mentioned above with respect to Taiwan or any other economic entity regardless of the latter's *de jure* international political status? Will they permit their own citizens to engage in discriminatory practices that aim at the economic isolation of Taiwan? U.S. policy and leadership in this regard are of vital importance and can affect the attitudes of other countries. The following examples in 1976 will serve as illustrations.

1. A message was delivered to the president of the National Council for US-China Trade by a member of the PRC Liaison Office in Washington in May 1976 to the effect that U.S. firms might find their trade with the PRC adversely affected by their membership in a recently formed US-ROC Economic Council. The message ostensibly originated from the China Council for the Promotion of International Trade in Peking and was duly passed on by the president of the National Council to the latter's members in a memorandum for their attention, dated May 11, 1976.

2. According to a *Los Angeles Times* report on September 8, 1976, several U.S. firms had been targets of PRC discrimination in their trade probes because of their attempts to do business with both Taiwan and the Mainland. This point was made amply clear to them by the PRC. A less clear case was reported by the *Wall Street Journal* on September 14, 1976, concerning the refusal of Mainland China banks to cash American Express travellers checks for visitors, presumably because of the company's relationship with the ROC.

A directive by President Ford to the then Secretary of Commerce, officially released by the White House on October 7, 1976, during the heat of the presidential campaign, reaffirmed our national policy of opposition to boycott actions against "nations friendly to us" and made Arab boycott request reports filed by U.S. companies with the Department of Commerce available to the public. The kind of implied request by Peking that U.S. firms intending to sell to the PRC not engage in various relationships with the ROC would seem to fall under the purview of U.S. Export Administration Regulations paragraph 369.2 and paragraph 369.3 requiring reporting within 15 calendar days of receipt of the request. A California law (A.B. No. 3080) has specifically made it unlawful to exclude persons or corporations from business transactions on the basis that the party conducts or has conducted business in a particular location or on the basis of sex, race, creed, color, etc. On the national level several anti-boycott
bills with provisions of economic penalties for offenders are now in the Congress. It remains to be seen whether the same principles would in fact apply to discriminatory measures practiced by the PRC aimed at US-Taiwan economic relations.

POSSIBLE IMPACT OF ALTERNATIVE POLICIES ON U. S. ECONOMIC INTERESTS

The foregoing discussion attempts to identify the economic consequences of alternative U.S. policies for Taiwan. From the standpoint of the United States the relative desirability of the three alternatives depends on which of them would on balance further U.S. objectives the most. What are the fundamental U.S. economic interests in the present context? In the short run, one might include stable and expanding markets for U.S. exports and sources of supply of U.S. imports and protection of existing U.S. investments abroad. The major long-run U.S. international economic objectives are economic security of the countries concerned, expansion of world trade and economic growth of per capita income in the developing countries, and safeguarding of new investment opportunities for American investors. The relative weights assigned to these objectives vary somewhat with the decision-maker's perceptions, their relation with other noneconomic objectives, and the specific circumstances in which the choices present themselves. There are, therefore, always some uncertainties regarding the relative importance of different U.S. objectives at any given time. By and large, however, these do represent the basic U.S. economic interests.

US-PRC VERSUS US-ROC TRADE

Since 1971 the United States has been trading with the PRC and Taiwan at the same time. A no-change policy or a two-China policy would probably have little short-run effect on US-ROC trade prospects but might increase U.S. direct investment in Taiwan. The PRC could be antagonized by such stands and divert its U.S. trade to elsewhere, other things being equal, if shifts are possible. Downgrading of US-ROC relations, together with diplomatic recognition of Peking, may also create a similar but reverse situation in which the United States may lose in its trade with Taiwan and gain in its trade with the PRC. To provide some background information for discussion of the possible tradeoffs, Figure 10 compares U.S. exports to, and imports from, the PRC and Taiwan in 1971-76. The comparison shows two distinctive
Figure 10: Comparison of U.S. Exports to, and Imports from, the ROC and the PRC, 1971-1976.
features. First, US-ROC and US-PRC trade are of very different orders of magnitude. Two-way US-ROC trade in 1975 was $3,602 million, almost eight times the US-PRC trade of $462 million. In 1976, the respective totals were $337.3 million for US-PRC trade and $4,527.3 million for US-ROC trade, or 13 times larger. The enormous difference suggests that Taiwan is at present a far more important market for U.S. exports and source of supply of U.S. imports than the PRC. A 10 percent loss of trade with Taiwan would have to be compensated by a 130 percent increase in US-PRC trade. On the other hand, a total loss of US-PRC trade could be made up with a 7.4 percent increase in US-ROC trade. Second, U.S. exports to the PRC were more erratic than U.S. exports to Taiwan. For instance, there was a sharp drop in U.S. exports to the PRC in 1974-75. In part this was a result of overcommitment by Peking in the early 1970s. In part it was due to a shift of its grain purchase to suppliers. In any event, Peking makes no secret of its position that trade is a legitimate economic tool to be used to enhance its diplomatic and political leverage, as has been made abundantly clear in Teng Hsia-ping's speech before the United Nations General Assembly on April 10, 1974. Therefore, in expanding exports to the PRC, one must be prepared to face the constant risk of abrupt shifts.

At any rate, a sustained increase in US-PRC trade cannot be based on a shift of PRC trade from other partners to the United States, but rather on growth of the PRC's total trade. The crucial question is, therefore, the trade potential of the PRC. Since Peking's imports depend on its exports, trade potential, in the long run, means essentially export potential. In the two decades up to 1970, PRC exports grew at the rate of two to three hundred million dollars a year, a small amount compared to Taiwan's current level. When the PRC began to export oil in significant quantities in 1973, it was widely believed that this new export would provide the key to an upsurge of exports. There was indeed an upsurge during 1970-75, but it was due largely to price increases during this period. More important, it is questionable whether the PRC's oil exports could indeed play a leading role; they have not lived up to expectations thus far. Whether their growth has been restricted by internal supply or demand conditions, or by the leadership's change of plans, is not entirely clear. However, one external factor is significant in limiting the contribution of the PRC's oil exports to its foreign exchange earning power. Peking began exporting oil at a time when the oil crisis triggered world-wide inflation and recession. As a result, the prices of the PRC's imports rose much
faster than those of its traditional exports (i.e., exports other than oil). That is to say, the terms of trade became adverse to the PRC so far as traditional exports were concerned. This was offset by the rise in price of its oil exports. The net effect is that the increase in export capacity in real terms was rather limited. In addition, two recent events would probably delay export growth somewhat. These were the Tangshan earthquake, which inflicted heavy damage on a major coal production center, and the need for foreign exchange to pay for the large number of plants contracted earlier.

PRC earnings from exports to the U.S. can increase if Peking is granted MFN status, which would enable suppliers of these products to promote them more vigorously even if their dollar prices were to remain unchanged. Greater sales are possible, of course, if prices are reduced somewhat although lower prices are by no means contingent upon MFN status since there is no direct relationship between external prices and Chinese domestic cost.

When we compare the types of U.S. imports from the PRC and Taiwan, as shown in Table 2, one interesting feature emerges. What the United States buys most from Taiwan it buys very little from the PRC, and vice versa. This suggests that Taiwan and the PRC supplement each other as sources of U.S. imports. The PRC provided mostly crude materials, food, chemicals and some manufactured goods. Taiwan supplied large amounts of machinery and transportation equipment and manufactured goods. The implication of this complementarity for the United States is that it would be difficult to replace one source of supply with the other. To make up for the loss of a supplier, it might be possible to restructure the other's exports or to turn to a third source. But restructuring exports is not a simple task and the question remains as to whether the country's comparative advantage would justify such a drastic change economically. As for the possibility of a third supplier, the alternative is certainly feasible. To a degree, South Korea or Hong Kong could partially take the place of Taiwan. But again, there is the question of the terms of trade. When there is less competition among the suppliers, the terms of trade generally work against the buyer. This brings us to the problem of the PRC and Taiwan as alternative markets for U.S. exports.

Table 3 shows U.S. exports to the PRC and Taiwan by commodity groups in 1971-76. The picture here is quite different from U.S. imports. Both the PRC and Taiwan buy more or less the same group of U.S. products. Both are competing for U.S. exports.
Table 2.
U.S. Imports from Taiwan and PRC, 1971-76 (Million U.S. $)

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<td>Total imports</td>
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<tr>
<td>Taiwan</td>
<td>817.4</td>
<td>1,293.5</td>
<td>1,772.5</td>
<td>2,107.6</td>
<td>1,946.0</td>
<td>2,958.4</td>
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<td>4.9</td>
<td>32.3</td>
<td>64.0</td>
<td>114.7</td>
<td>158.3</td>
<td>201.9</td>
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<td>Food, live animals</td>
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<tr>
<td>Taiwan</td>
<td>54.2</td>
<td>84.1</td>
<td>85.3</td>
<td>111.9</td>
<td>192.4</td>
<td>142.0</td>
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<td>1.5</td>
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<td>6.0</td>
<td>13.5</td>
<td>14.2</td>
<td>23.8</td>
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<td>Taiwan</td>
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<td>—</td>
<td>0.3</td>
<td>0.4</td>
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<td>0.09</td>
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<tr>
<td>PRC</td>
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<td>2.8</td>
<td>1.8</td>
<td>0.3</td>
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<td>Crude materials, inedible (except fuel)</td>
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<tr>
<td>Taiwan</td>
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<td>11.1</td>
<td>13.9</td>
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<tr>
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<td>2.2</td>
<td>12.3</td>
<td>14.6</td>
<td>16.3</td>
<td>17.6</td>
<td>38.5</td>
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<tr>
<td>Mineral fuels, lubricants, etc.</td>
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<tr>
<td>Taiwan</td>
<td>—</td>
<td>0.4</td>
<td>2.1</td>
<td>0.4</td>
<td>3.4</td>
<td>0.01</td>
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<tr>
<td>PRC</td>
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<td>—</td>
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<td>0.1</td>
<td>—</td>
<td>neg.</td>
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<td>Oils &amp; fats, animal, vegetable</td>
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<tr>
<td>Taiwan</td>
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<td>0.1</td>
<td>0.1</td>
<td>0.5</td>
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<tr>
<td>PRC</td>
<td>—</td>
<td>—</td>
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1972-75: Far Eastern Economic Review (Hong Kong), July 2, 1976, p. 44.
Table 3.
U.S. Exports to Taiwan and PRC, 1971–76 (Million U.S. $)

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<td><strong>Oils &amp; fats, animal, vegetable</strong></td>
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<td>0.3</td>
<td>0.4</td>
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See Sources, Table 2 supra.
It would be to the advantage of the United States to have two buyers rather than one. On this account, the two-China case is perhaps preferable to others simply because it offers the U.S. more options so far as export markets are concerned.

LONG-RANGE U.S. INTERESTS: INTERNATIONAL STABILITY AND GROWTH

The oil crisis has brought into sharp focus the need to insure economic security for all countries in an international environment characterized by growing interdependence through trade, flow of technology and investment. It is a declaratory policy of the United States to pursue this goal.\textsuperscript{16} Any abrupt move by the United States that causes serious disruption and tension in international economic relations is therefore contrary to U.S. interests and to what it has been preaching to the OPEC countries. By this criterion the no-change policy would obviously be less disruptive than the other alternatives, particularly in the short-run. As we have noted above, diplomatic recognition of Peking and withdrawal of recognition of the ROC would probably generate an economic shock in Taiwan with adverse effects on its growth rate and perhaps even its viability.

In its struggle for economic survival, Taiwan may resort to rather drastic measures such as devaluation to offset a possible export decline, and stricter control of the free flow of goods, people, information and capital — a series of measures that probably would not hurt the U.S. economy seriously but nonetheless could have destabilizing effects in the region. The two-China policy might also generate a shock, but it is likely to be a political rather than economic shock, and would have its main impact on the PRC. If we look beyond the immediate future, the potential disputes over resources on the continental shelf could be further complicated by an additional claimant. But the emergence of Taiwan as an independent state has positive elements. The current trend toward expanding trade and international flows of technology and investment might continue as risks and uncertainties subside. They may even accelerate in the event of diplomatic recognition of the PRC and Taiwan at the same time.

If indeed the latter occurs, a two-China policy would help to attain the long-range U.S. objective of assisting the developing

\textsuperscript{16} Address by Henry A. Kissinger, delivered by Daniel P. Moynihan, at the Seventh Special Session of the United Nations General Assembly on September 1, 1975.
countries to raise their living standards. A no-change policy would probably have neutral effects, if we accept the premise that Peking could expand its trade and technology transfer as much as it can under the present arrangement. By contrast, diplomatic recognition of Peking is likely to bring about economic stagnation if not a decline in the Taiwan economy.

For Japan, U.S. diplomatic recognition of Peking has yet another unfavorable effect. Like Taiwan, Japan depends heavily on the free flow of raw materials and fuels. It is therefore important that no precedent be established so that shipping and trade involving Japan would be disrupted. Since diplomatic recognition might lead to economic warfare and possibly military confrontation between Taiwan and the PRC, it would be in Japan’s economic interest that the United States adopt another alternative.

Dr. Sigur thanked Dr. Wu for giving us quite a bit to think about and discuss in the coming hour and a half or so. He was particularly grateful that Dr. Wu brought in the Japanese dimension, because he thought as we discussed the whole question of US-ROC relations and involvement with the PRC, we had to keep in mind that successive presidents of the U.S. over the past several years as well as the present incumbent, Mr. Carter, had stated over and over again that the fundamental American relationship in the Asian Pacific is the U.S.-Japanese alliance. Therefore we must understand how important this was in any discussion that we had on events in Asia.

Dr. Sigur then introduced Dr. Robert Heuser of the Max Planck-Institute at Heidelberg to speak. He said that he need not tell the participants very much about that institute since all of us knew of that famous institute. Dr. Heuser was going to speak on the legal aspects of trade with, and investment in the Republic of China in the experience of the German Federal Republic (FRG).

Dr. Heuser sketched the history of FRG-ROC trade relations up to 1976, when Germany was the ROC’s third-ranked trade partner, following the United States and Japan. He noted also the growth of German capital investment in the ROC, especially in the last few years. Lack of diplomatic relations between the two countries, according to Dr. Heuser, is not a substantial impedi-
ment to trade. Government investment guarantees are available to the German investor in spite of the lack of an FRG-ROC "investment protection agreement"; however, because of the short-term nature of most German investment in the ROC and because of, among other things, the ROC's internal investment protection scheme, German investors rarely take advantage of these guarantees. Dr. Heuser also noted that protection with regard to trademarks and patents is available, but that protection against infringement of copyrighted textile designs remains unsatisfactory. Dr. Heuser concluded by discussing the effects of the EEC common commercial policy on FRG-ROC economic relations. To date, the common commercial policy has only affected German textile imports from the ROC. However, the effects of protective measures undertaken by the EEC remain an important matter of concern.

[The following is the text of the paper prepared by Dr. Robert Heuser.]

LEGAL ASPECTS OF TRADE WITH AND INVESTMENT IN THE REPUBLIC OF CHINA ON TAIWAN: THE GERMAN EXPERIENCE

ROBERT HEUSER*

I. INTRODUCTION†

It is the purpose of this paper to show a pattern of economic relationship between two countries whose economies are greatly dependent on foreign trade but whose trading citizens have to deal

* Dr. iur., research fellow, Max-Planck-Institute for Comparative Public Law and International Law, Heidelberg; associated with Dr. Wellbrock and Partners, law office, Heidelberg.

† Abbreviations: ABl. = Amtsblatt der Europäischen Gemeinschaften (EEC Gazette); AHD = Aussenhandelsdienst (Düsseldorf); AWD = Aussenwirtschaftsdienst, Recht der Internationalen Wirtschaft (Heidelberg); BGBl. = Bundesgesetzblatt (Gazette of the FRG); Cosway-Ma-Shattuck = R. Cosway, H. P. Ma, W. Shattuck, Trade and Investment in Taiwan, Taipei 1973; DWD = (Die Aussenwirtschaft, Deutscher Wirtschaftsdienst, (Köln); F. A. = Freies Asien (Bonn); ILM = International Legal Materials; TIP = Taiwan Industrial Panorama.
without much governmental assistance because of the lack of diplomatic relations.

The information upon which this paper is based has mainly been obtained from Chinese and German legal sources, from relevant German journals and from interviews I had with Chinese representatives in Germany as well as with members of German institutes (including the German Ministry of Economic Affairs), finally with executives of German capital and merchandise exporting companies.

Let me make at the beginning some short remarks concerning the development of Chinese-German economic relations in general, providing you with some statistical data.

II. GERMAN-CHINESE TRADE AND GERMAN INVESTMENT IN TAIWAN: SOME HISTORICAL AND STATISTICAL DATA

The development of economic relations between the Federal Republic of Germany (FRG) and the ROC reflects the relevant pre-war experiences: a comparatively high trade exchange on the one hand and a comparatively small investment willingness on the other, a phenomenon — by the way — which can be observed in German foreign economic activities in general. Direct investments of German companies in developing countries are only one-half of the French, one-third of the British and one-ninth of the U.S. private investments in those countries.¹ The reasons for this are highly complex — experiences of expropriation and confiscation after two world wars, comparatively little training in dealing in and with non-European countries because of limited experience as an imperial power, may be mentioned.

A new beginning of ROC-German commercial interest after World War II came no earlier than the end of the fifties, increasing in the sixties, and taking on considerable volume in the seventies.

Taiwan's development in to one of the leading industrialized countries in the Far East within less than one decade, becoming able to offer her industrial products to the markets of South-East Asia, the Middle East, Africa, Europe and the Americas was

¹. See, e.g., E. Eppler, Wenig Zeit für die Dritte Welt, Stuttgart 1971, at 88. For a broader inquiry into the problem of direct investment in developing countries see Awni-Al-Ani, German Investment in Developing Countries, in: Intereconomics (Hamburg), No. 7, 1969, 219-221.
carefully observed in German commercial circles. It was noticed with satisfaction by potential German traders and investors that the ROC government promoted the economy of the country according to the principles of a free enterprise, supporting the extension of the private sector of the economy as well as a more active participation of private domestic and foreign capital, that the establishment of Export Processing Zones was of such great success as to become a model for other developing countries, and that the government was reorganizing the foreign-trade bureaucracy and simplifying investment formalities.

The comprehensive market studies undertaken by the Chinese Industrial Development and Investment Center (IDIC) regarding the development of industries emphasized six branches of industry as deserving preferential support: petrochemical, plastics, electronic, steel, watch-making and synthethic resin industries. It is clear that such emphasis would appeal greatly to German economic interests.

Since the end of the fifties the Federal Republic has played an active role in Taiwan's economy. Leading German producers of the chemicals industry are represented in Taiwan, and German experts of various industrial branches are advising domestic companies, many of which are producing under a German license. German industries have delivered — partly with U.S. financial assistance — a remarkable share of industrial equipment in Taiwan. German firms supply on a basis of long-term payment. Examples are the “Southeast Soda Ash Plant” in Suao, cement plants, machinery for cargo-ships, and projects in the field of traffic and communication and more recently in the field of petrochemistry.

Looking at some figures we realize the continuous growth of foreign trade between the ROC and the FRG. In 1954 Germany's

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3. In AHD vol. 22 (1968) at 190 “the excellent opportunities for foreign investment in Taiwan” (“a model case of economic development within the developing countries”) are stressed.

4. AHD vol. 26 (1972), at 952.

5. AHD vol. 23 (1969), at 40.

6. AHD vol. 22 (1968), at 536.
share of Taiwan's total imports was 2.46%, 4.74% in 1961, 5.1% in 1969 and 5% in 1976. Germany's share of Taiwan's total exports was 1.82% in 1954, 3.83% in 1961, 4% in 1969 and 4.7% in 1976. 

Expressed in absolute figures, the value of Taiwan's imports from Germany was US$4.3 million in 1954, 9.1 million in 1961, about 80.0 million in 1969 and 416 million in 1976. For more than a decade there has been a trade surplus for the ROC, with the single exception of 1974. (This is also the case regarding the U.S. but not Japan.)

A comparison with other major trading partners of the ROC shows that Germany ranks at third place after the U.S. and Japan, although there is still a broad gap between Germany and those two countries concerning trade exchange with the ROC. It would seem, however, that the ROC Government is attempting to intensify the trade with European countries in order to avoid dependence on any single country. The trade deficits with Japan are a particular object of concern, although Chinese specialists see clearly enough that the time of economic independence from Japan is "a long way off," and that the competitiveness of


8. In "Foreign Trade Development in the Republic of China," issued by the Board of Foreign Trade, Ministry of Economic Affairs (1976) it says that "our private enterprises have been urged to procure more sophisticated, high quality machinery and equipment from European countries..." (p. 11). And the Secretary General of the Council for International Economic Cooperation and Development of the ROC appealed in 1968 to European business men "not (to) give up Taiwan as a captive market for Japanese and American suppliers" (see S. Y. Dao, How to Strengthen Economic Relations between the Republic of China and Western Europe, in: Chronique de Politique Etrangère, vol. 21 (1968), at 709, 719). From May 25 to June 15, 1969, a "European Industrial Machinery Exhibition" took place in Taipei. It was sponsored by the Council for International Economic Cooperation and Development and the Free China Europe Industrial Institute. The share of German industry was more than 50% of the total participants (eight West European countries). In the summer of 1973 a Chinese trade delegation consisting of 13 representatives of Chinese companies visited the main commercial and industrial centers in Western Europe. With the support of the Government, Chinese commercial and industrial circles in Taiwan established in Nov. 1975 a "Society for the Promotion of Chinese-European Trade."

European products remains adversely affected by Europe's high labor costs and the distance separating Europe and Taiwan.

In contrast to foreign trade, the export of private German capital to Taiwan is rather limited in volume. Up to the present time little more than a dozen German firms have established themselves as government-approved direct investors in Taiwan. All but one are fully owned subsidiaries and are producing mainly in the fields of chemistry, electronics, optics and clothes. Most of them are situated in the Export Processing Zones, and only the few looking for a local market are outside the zones.

The development of German direct investment in Taiwan is expressed by the following figures: Starting from 1972, the total investment was US$3.7 million in that year, 4.1 in 1973, 5.3 in 1974, 6.6 in 1975, and up to June 30, 1976 already 6.9.

It is obvious that the gap between Germany on the one hand and Japan and the U.S. on the other is even wider concerning direct investment than it is in the case of trade. It is not surprising that the ROC government tries to reduce the domination of single countries in favor of a more balanced foreign investment situation. A special need for such a balance seems to be felt concerning investments in the fields of electronics and automobile parts. In March 1972 the Vice-Chairman of the Council for International Economic Cooperation and Development of the

10. One is a joint venture with local firms; another a joint venture with a Japanese firm. From the German experience it would seem that the ROC government does not follow the general trend in the developing countries towards emphasizing joint ventures. For an assessment of the contribution of joint ventures to the development of the South Korean economy see Chang Young Kim, Der Beitrag von partnerschafts. Unternehmen (Joint Ventures) zum Entwicklungsprozess. Dargestellt am Beispiel der Republik Korea, Ph.D. thesis, Köln 1971.

11. Source: Information from the Federal Ministry of Economic Affairs. See also Jahresbericht of the Ostasiatischen Vereins e.V. 1975/1976, p. 32. This is little less than investments in the Republic of Korea, only a third of those in Hong Kong, a fifth of Indonesia, a seventh of Singapore and less than a fifteenth of German investment in Japan. According to paragraphs 55 and 56 of the Foreign Economy Regulations (Aussenwirtschaftsverordnung) promulgated by the Federal Government in 1966, German capital exports are to be notified to the German Federal Bank and are published in the Federal Bulletin. All information concerning the investor is protected by a secrecy clause. The above-mentioned figures, of course, do not contain the quite considerable capital sums which are raised by German companies on the well functioning Asia-Dollar market.

12. Within the last 25 years the total investment of European countries was US$194,437,000 (i.e., 17.73% of all foreign investments), as compared to US$491,810,000 (i.e., 44.83%) of the US and US$246,632,000 (i.e., 22.48%) of Japan. Source: F.A. no. 3/1977 (Feb. 10, 1977), at 4.
ROC explained at the International Conference on Foreign Investment in Asian Developing Countries held in Hamburg the "Reasons and Motives for German Investment in Taiwan," clearly with the intention of appealing to potential German investors. An increase of German capital export to Taiwan is very probable. Negotiations concerning a big German investment project in the field of electronics have just been successfully concluded.

Let me now turn to the consideration of some specific legal problems which emerge in the economic relations between the two countries.

III. LEGAL ASPECTS OF TRADE AND INVESTMENT

A. The Institutional Framework

After July 3, 1941, when the Chinese Republic — then in Chungching — cut off diplomatic relations with Germany (the German government had two days before recognized the Wang Ching-wei government of Nanjing), and after the end of the Wang Ching-wei regime in 1945, Germany has never established diplomatic relations with the ROC. There are no agreements in force between the two countries. Consequently, the existing economic relations are of a purely private nature, little aided by governmental encouragement and international legal assistance.

In view of this situation the institutional framework for economic cooperation is merely of a private and — as far as Chinese representation in Germany is concerned — of a semi-official (if at all) character. The representation of ROC economic interests in the Federal Republic is institutionalized in the Far East Trade Service Center, which deals with trade relations

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14. On a governmental level there was only "technical help" for a short time at the end of the sixties, limited in volume (2.3 mill. DM) and dropping to none when diplomatic relations were established with the PRC. (Information from the Federal Ministry of Economic Cooperation to the author.)

15. But even less official than Japan-ROC relations, which are characterized by simply changing the label. Former diplomatic personnel now work in the "Japan-Taiwan Interchange Association" (offices in Taipei and Kaohsiung) and the "East Asia Relations Association" (offices in Tokyo, Osaka and Fukuoka). Both organizations concluded an agreement on Dec. 26, 1972 concerning "Commerce, economy and culture" (see China aktuell, Hamburg, Dec. 1972, at 14.)
between Taiwan and Germany, and the Asia Trade Center, which consists of three bodies: one responsible for purchase from all Europe, one dealing with investment services concerning all European investors, and one dealing with German-ROC tourism. Both Centers have their seat in Frankfurt/Main and have close contact with the ROC Ministry of Economic Affairs. Cultural and political information is offered by the Far East Information Service, with branches in Bonn, Hamburg and West Berlin.

As far as German organizations are concerned, only the East Asia Association (Ostasiatischer Verein e.V.) of Hamburg and Bremen can be mentioned. This private association of German businessmen interested in the Far East was founded in 1900 and is engaged in the cultivation of trade relations with this region, including the ROC. The German economy is so far not represented in the ROC. The German Cultural Centers in Taipei and Kaohsiung are not prepared to be of any assistance in economic matters; there are no German banking and commercial institutions. Information concerning investment projects in Taiwan can be received, however, from the German Consulate General in Hong Kong.16

B. Does This Lack of Diplomatic Relations Have a Disturbing Impact on the Execution of Foreign Trade and Investment Programs?

1. Protection of Investments

Foreign direct investments can be protected by different legal means. The domestic legal order of the capital receiving country, the contract between the government of this country and the foreign investor, finally a bilateral or multilateral international legal order all may be concerned with such protection.

The lack of diplomatic relations between the Federal Republic and the ROC frustrates the development of a bilateral international legal order in favor of the protection of German investments. Since 1959 the Federal Republic has concluded with 37

16. In contrast to the German absence of economic representation in Taiwan, the Confederation of British Industries plans the establishment of an office in Taipei with a "residential manager," and British and Canadian banks will open branches in Taiwan. In 1974 an office of the "Australia-Free China Society," which represents Australian economic interests in Taiwan, was opened (see China aktuell Hamburg, May 1974, at 227).
developing countries so-called "investment-protection agreements." They are intended to assist in creating more favorable conditions for private investments through a guarantee of legal protection, especially against expropriation based on an international legal commitment. Whereas the government of the USA relies for this purpose on its traditional form of Treaties of Friendship, Commerce and Navigation, the German government chose with its "investment-protection agreements" a new way. It is characterized by being shaped for the special needs of developing countries and is confined to the protection of capital; it does not contain any provisions concerning commerce and freedom of settlement.

Such an agreement was of course not concluded with the ROC. Although German investors have confidence in the ROC legal order — German lawyers feel at home in a legal system which is shaped according to the civil law system and especially according to German law — there lacks the confirmation and attestation of the relevant contents of this domestic legal order by an international legal commitment. While the value of an investment-protection agreement might be contested, the non-consideration of the ROC within the agreement system of the German government leads to problems concerning the investment-risk guarantee which may be obtained by German citizens or companies under the German investment guarantee


18. The justification for such U.S. treaties was expressed as follows: "... to reduce the special hazards to which overseas investment may be exposed by reason of unfavourable laws or judicial conditions. Rigid exchange controls, inequitable tax statutes, or drastic expropriation laws are not conducive to the free flow of capital, and it is against obstacles of this kind that these treaties are directed," in: UN Doc. E/3021, at 40.

19. The standard contents of these agreements is mainly as follows: clause of non-discrimination (art. 2); provision against expropriation and for sufficient compensation (art. 3); guarantee of free transfer of capital and profits (art. 4); provisions concerning the transfers (art. 6, 7) and the jurisdiction in case of dispute settlement (art. 11).

20. See, e.g., Ingrid Delupis, Finance and Protection of Investments in Developing Countries, Epping, Essex 1973, at 34 f. She argues that investment guarantee agreements add "little or nothing to what would anyway apply under international law."
program\textsuperscript{21} (covering the risks of war, inconvertibility, and expropriation or confiscation). The main condition for receiving such a guarantee is the existence of an investment-protection agreement. The chief significance of such an agreement is therefore its link to the national guarantee scheme.\textsuperscript{22}

The problem resulting from this legal mechanism for the potential investor in Taiwan is as obvious as it is surmountable. According to information from the Federal Ministry of Economic Affairs, an \textit{ad hoc} declaration of the Chinese government (Ministry of Economic Affairs) presented to the German investor concerning legal protection is required and is sufficient for participating in the national guarantee scheme. This declaration must contain an agreement on the exclusive jurisdiction of the arbitration tribunal according to the 1966 World Bank Convention on the Settlement of Investment Disputes Between States and Nationals of other States (International Center for the Settlement of Investment Disputes, New York).\textsuperscript{23} Up to the present there exists only one investment case which produced such a declaration.\textsuperscript{24} Other German investors just don't take advantage of the Federal investment guarantee. They are aware that they are participating in Taiwan's export boom and that their investments will have amortized within about three years. The Federal guarantee thus does not appear to be of major importance.

In this context it may be interesting to take into consideration the results of a study of the Hamburg Institute for International Economics (Hamburges Weltwirtschafts-Archiv) concerning German investments in developing countries. Better support to be

\textsuperscript{21} See, e.g., paragraph 20 I, No. 3 of the Bundeshaushaltsgesetz of 1969, April 18, 1969, BGBl. 1969 II, 793 ff. Corresponding provisions are in the subsequent Federal Budget Laws.

\textsuperscript{22} This function of the treaties is also emphasized by E. J. Nwogugu, The Legal Problems of Foreign Investment in Developing Countries, Manchester, 1965, at 70: "These are important and expensive protective measures which provide a firm basis for the insurance of investments."


\textsuperscript{24} The legal nature of this \textit{ad hoc} declaration might be questioned. For this complex problem, \textit{see}, e.g., A.A. Fatouros, Government Guarantees to Foreign Investors, New York and London 1962, at 120 ff., 190ff., and K.-H. Böckstiegel, Der Staat als Vertragspartner ausländischer Privatunternehmen, Frankfurt 1971; \textit{see also} chapter 2 of Delupis (\textit{supra} note 20).
extended by West German diplomatic missions abroad and the conclusion of investment pacts and of agreements on avoiding double taxation were among the proposals which German companies who had answered the Institute’s questionnaires recommended for making it easier and more profitable to invest in developing countries.\(^\text{25}\)

2. **Trademark and Patent Protection**

The mutual protection of trademarks was not possible for a long time. The Chinese Trademark Law provides that “an application for registration of a trademark may be refused acceptance if it is filed by a national of a foreign country which has not concluded with the ROC a treaty of agreement for reciprocal protection of trademarks or which, by its national law does not admit of trademark application by nationals of the ROC” (paragraph 1, art. 3, Trademark Law of July 4, 1972). According to the German trademark law of January 2, 1968, a foreigner who has no fixed establishment in Germany is protected by the law only when the Federal Bulletin announces that the applicant’s home country protects German trademarks to the same extent as those of its own nationals (paragraph 35, art. 1). Thus neither trademark law states as a precondition for mutual protection the mere existence of treaty relations.\(^\text{26}\) Because the ROC is not a member of the Paris Convention for the Protection of Industrial Property (1891, repeatedly revised) or any other convention by which mutual trademark protection would be guaranteed without the above-mentioned announcement in the Federal Bulletin, this protection can only be achieved by undertaking the two one-sided measures provided for in the trademark laws of both countries. However, it was only in July, 1967 that the Federal Bulletin announced that German trademarks are admitted in the ROC for legal protection to the same extent as Chinese trademarks,\(^\text{27}\) thus expanding the protection of German trademark law to Chinese trademarks.

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25. See Awni-Al-Ani, *supra* note 1, at 221.

26. But this was the case before the revision of the ROC trademark law in 1958.

The situation concerning the protection of inventions is less complicated insofar as the German patent law does not discriminate between German and foreign applicants. Applicants who live abroad merely have the obligation to appoint a domestic representative (art. 16, patent law of January 2, 1968). The relevant provision of the valid Chinese patent law (art. 14) is identical with that of the cited trademark law, thus leaving patent protection for foreigners beyond the need of treaty relations.28

3. Copyright Protection of Designs

Another example for the execution of economic relations under the given circumstances is an arrangement concerning the protection of copyright in design, which was reached in summer 1976 on a private basis between the German and the Taiwan Textile Federation (TTF). For western merchants in East Asian countries imitation of designs is a matter of some concern. There is quite considerable imitation in Taiwan, but the legal measures of the domestic legal order are insufficient: there is neither a separate law concerning protection of copyright in design nor a special legislation concerning the repression of unfair competition.29

28. There are some German trademarks registered in the ROC. For figures concerning the patents issued to Germans see Cosway-Ma-Shattuck at 474, table 39.

For some comparative figures concerning applications of patents and trademarks of Asian countries in Germany see the following table:

<table>
<thead>
<tr>
<th>Country</th>
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<th>Trademark applications</th>
</tr>
</thead>
<tbody>
<tr>
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<td>4</td>
<td>12</td>
</tr>
<tr>
<td>Singapore</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>S. Korea</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Japan</td>
<td>4962</td>
<td>5122</td>
</tr>
</tbody>
</table>

Source: Information from the President of the German Patent Office (Munich) to the author.

29. See Teruo Doi, in: Cosway-Ma-Shattuck, at 462.
The above-mentioned arrangement between the textile federations took as its model a governmental agreement which was concluded shortly before (in June 1976) between the Federal Republic and Hong Kong. The principles of this agreement may be summarized as follows: The Federal government is entitled to present to the government of Hong Kong concrete cases showing imitations of German designs in the field of textiles and clothes. The Hong Kong government will examine—according to the law of Hong Kong—whether a German design was wrongfully reproduced. If this is the case, it will employ certain measures in order to avoid further infringement. If consultations between the Hong Kong government and the company involved show that the designs were given by a German ordering firm to the producer in Hong Kong without the title to use them, then the government of Hong Kong is prepared to communicate the name of the ordering firm at the request of the German government.

The arrangement between the Chinese and German textile organizations is based on similar principles. Measures to prevent an infringement of copyright in design, including communication of the name of the German ordering firm, are based on the private legal relationship between TTF and the respective producer. This, however, already shows the limits of the arrangement. It concerns only textiles; moreover, TTF can only communicate information it has received from its members. Therefore it is not surprising that, despite the many infringements in Taiwan, the practical relevance of the arrangement is virtually nil. Up to the present only two cases were communicated to the German Textile Federation.

4. Claims of a German Ordering Firm

Insuperable problems can arise if claims of a German ordering firm against the Chinese producer—e.g., because of deficiency in the quality of the supplies—are made. The lack of diplomatic relations and thus of an official commercial representation in Taiwan impedes the contact with Chinese companies and an examination of their soundness, thus increasing the ordering firm's risk. Moreover, more than two-thirds of the goods destined for export have to be checked according to the "Commodity Inspection Law." Article 8 provides that such commodities

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are to be inspected according to the CNS (China National Standard). A possible divergence from the European standard may result in claims by the European ordering firm. It is suggested that Chinese lawyers do not always handle such claims with sufficient emphasis, and that it is sometimes difficult to reach court decisions.

5. FRG Risk Guarantees

Finally, the Federal Guarantees regarding risks of manufacture (risk before shipping) and export (risk after shipping) which can be granted to German exporters may be mentioned.32 They are not affected by considerations concerning the nature of the state-to-state relationship.

C. Consequences of EEC Common Commercial Policy for FRG-ROC Trade

As far as trade is concerned, the membership of the Federal Republic in the EEC takes on significance. What are the consequences of the EEC foreign trade policy for Chinese-German trade?

1. The Commercial Policy of the EEC and Protective Measures as an Exception to the Principle of Unrestricted Importation

Articles 110 to 116 of the EEC Treaty deal with the common commercial policy of the community. The necessity for such a policy derives from the fact that the EEC is founded on a full customs union and therefore presents a common face to exporters from non-EEC countries.33 After the expiry of the transitional period for the implementation of the EEC Treaty, "the common commercial policy shall be based on uniform principles" (art. 113) with regard to both import and export policy.34 Under EEC Regulation 1025/70 a common system to be applied to imports
from non-EEC countries was established. Its basic principle is that of unrestricted importation. It means — together with its counterpart in regard to EEC exports — that foreign trade with third countries cannot be subjected to quantitative restrictions. In a case of emergency, however, this unrestricted foreign trade can be suspended for a specific period through an introduction of quantitative restrictions. Because of its exceptional character, these restrictions have to take place within narrow limits, particularly shaped by the principles of statutory reserve and of proportion. The institutions of the Community and the member states have only the right to issue specific protective measures when the statutory preconditions exist, i.e., when by the import situation the producers of same or similar goods within the Community will suffer a substantial damage. The Community regulations take the principle of proportion into account by factual, temporal and local limits. The type of “appropriate measures” (art. 11, Reg. No. 1025/70) can be: introduction of a license, fixing an import quota, issuing an instruction to stop all imports. A newer measure consists of so-called “agreements of self-limitation,” which result practically in an import quota system.

2. Protection Measures Regarding Imports from the ROC

The ROC was never officially linked with the EEC. Nevertheless, in 1971 an agreement was concluded concerning the trade in cotton. This agreement was based on the 1962 Long Term Arrangement Regarding International Trade in Cotton Textiles — Taiwan was a member of this arrangement — and introduced quantitative restrictions by fixing certain quotas for the importation of various cotton textiles. This ROC-EEC

36. There is the same mechanism in the GATT legal system.
37. Their compatibility with the GATT is doubtful; see, e.g., R. Zimmer, Zur Problematik von Exportselbstbeschränkungen, in AWD vol. 15 (1969), 297-300.
38. In 1963 the ROC government applied to the EEC Commission in order to accredit its ambassador in Brussels to the Community. It seems that the institutions of the EEC were about to express consent see AHD vol. 18, 1964, at 116) when at the beginning of 1964 the breaking off of diplomatic relations between the ROC and France took place, and the establishment of official relations with the EEC was never realized.
arrangement had a term of three years, but was respected from the end of 1973 until June 1975 through a unilateral decision of the EEC. From July 1975 the governmental agreement was replaced by a unilateral EEC commercial policy toward Taiwan, by introducing quotas in the field of textiles. ⁴⁰ This regulation followed lines similar to the 1971 agreement but was extended in its contents from cottons alone to all textiles. This extension caused a considerable change in the European-ROC trade relationship. Textiles presently make up more than one-third of the total exports from Taiwan to the Common Market. In the 1971 agreement only the comparatively small share of cottons was subjected to EEC import quotas, whereas the quotas concerning all other textiles remained to be fixed by the several member states. With the 1975 regulation the most sensitive part of the textile sector was put under EEC import restriction. During the last two years — in order to mention a pars pro toto — the EEC has introduced by regulations issued by both the Commission and the Council protective measures (usually import license requirements) concerning imports of textiles, canned mushrooms and pipe joints made from malleable cast iron for several EEC countries. There were also antidumping measures, e.g., concerning imports of bicycle chains from Taiwan. ⁴¹

I may add that the ROC does not enjoy — probably because of political considerations — the benefits of the Generalized System of Preferences for developing countries sponsored by UNCTAD, which the EEC adopted in July 1971. ⁴²

3. EEC Impact on FRG-ROC Trade

As far as the significance of EEC commercial policy for ROC-German trade is concerned, at present only imports of textiles

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⁴⁰ Regulation No. 1783/75 of July 10, 1975, ABl. No. L 182. The Taiwanese textile production was several times the subject of discussion in the European Parliament.


from Taiwan are restricted, in that a German import authorization is required.\textsuperscript{43}

IV. CONCLUSION

Let me summarize: The German economy is an important trade partner but is somewhat reluctant to employ productive capital; this, however, is gradually changing. The existing institutional framework is regarded as sufficient for the execution of trade and investment projects. The lack of diplomatic relations is not felt as a heavy burden. Existing difficulties, as in the case of claims, could be minimized by a more effective — of course, unofficial — German representation (banking and commercial institutions) in Taiwan, or, as in the case of the protection of designs, by additional private arrangements and by new Chinese legislation. The protection of direct investments in Taiwan seems to be on a firm basis, even without the investor's interests being secured under international law. The significance of protective measures based on EEC law for an assessment of the West-European markets and consequently for ROC industries remains an important matter of concern.

You will have realized that I have only mentioned those legally relevant aspects which develop on the surface of economic relations with the ROC, aspects which are more or less familiar to every lawyer dealing with foreign trade problems, and are not necessarily linked to a specific cultural background. Implications of cultural phenomena and their significance for international business transactions are not easy to analyze.\textsuperscript{44} Nevertheless, we all know that they should not be neglected if reliable legal counselling is to be achieved. Negotiations concerning a dispute settlement clause, for instance, take on a quite different significance when they concern a contract with, say, a French partner than in commerce with Chinese merchants who are well known for their ability to compromise, although we must be sensitive enough to realize where the cliché begins.

Only an insight into the socio-cultural environment of the trading partner renders a responsible commercial contact possi-

\textsuperscript{43} Based on EEC regulation 1439/74 of July 4, 1974 (see note 35 supra). See, e.g., Reg. No. 1782/75, ABl. No. L 182/1, of July 12, 1975; No. 3045/75, ABl. No. L 3045/75, ABl. No. L 303/26 of November 22, 1975.

ble. This includes a deeper concern with the legal systems involved. Chinese representatives in Germany have confirmed that a closer cooperation between Chinese and German lawyers could contribute in smoothing the way to a solution of trade and investment problems and in participating in arbitration and conciliation.

Dr. Sigur thanked Dr. Heuser and also expressed his appreciation to the three panelists for adhering to the time limit. He then invited the three discussants to speak. The first discussant was Mr. Ralph Clough of the Brookings Institution. Mr. Clough, Dr. Sigur pointed out, had served in the American foreign service and was acting ambassador (charge d'affaire) at the American Embassy in Taipei several years ago. Mr. Clough has written extensively on Asia and American policy.

Mr. Clough stated that Dr. Heuser presented clearly the obstacles to trade between West Germany and Taiwan, but showed how many had been overcome, permitting trade with the ROC to increase substantially. Mr. Clough presented some questions for Mr. Heuser: Do merchants have travel problems? Are trade fairs permitted? How does lack of diplomatic relations with Germany affect Taiwan's trade as compared to its trade with France and Canada, or compared to German trade with South Korea? Mr. Clough stated that Dr. Wu and Dr. Yeh make a strong case that United States economic interests in Taiwan would be best served by the adoption of a two-China policy, but do not take account of overall U.S. interests. For one thing, the paper may have underestimated the People's Republic of China's potential as a trade partner with the United States. Mr. Clough pointed out that in some years Japanese trade with the People's Republic of China exceeded its trade with Taiwan. He added that both the paper done by Dr. Wu and Dr. Yeh and the Chamber of Commerce paper discussed the adverse effects of normalization, but did not discuss possibilities for mitigating these adverse effects, as, for example, by legislation providing for continuing access to Eximbank loans.

[The following is the summary of Mr. Clough's statement.]

COMMENTS

RALPH N. CLOUGH

I would like to comment just briefly on the papers that have been presented, raising a number of points which may be useful to
discuss further in the question period. First, with respect to Dr. Heuser’s paper, it was a very interesting and unusual paper which dealt with materials that most American scholars are unfamiliar with. It brought out very clearly the obstacles to trade and investment growing out of the fact that the German Federal Republic has had no diplomatic relations with the Republic of China since World War II. For example, he points out the absence of a commercial representative to assist German merchants in handling trade disputes in Taiwan. But he also shows ways in which many of the obstacles have been overcome. For example, he points out that a unilateral declaration by the government of the Republic of China concerning legal protection for a German investor qualifies that investor for participation in the German national investment guarantee program. A third point that comes out in Dr. Heuser’s paper is that despite the obstacles which are presented by the lack of diplomatic relations, there has been an impressive growth in trade between Taiwan and the German Federal Republic.

Perhaps Dr. Heuser could respond to some questions in my mind concerning these relationships which he didn’t touch on. I wonder, for example, whether there are difficulties impeding travel by merchants or officials to and from Taiwan. What about trade fairs? Are these permitted? Further, I think it would be very interesting to do some comparative studies to see how lack of diplomatic relations affects trade between the Republic of China and the Federal Republic of Germany. For example, it would be interesting to look at the trade between the Federal Republic of Germany and the Republic of Korea, where diplomatic relations do exist, to see how much greater that may be and why. It might also be interesting to examine the trade between France and Taiwan during the period before 1964 when diplomatic relations existed between France and Taiwan to see how that compared with German trade, or to compare the trade with Canada before and after severance of diplomatic relations with Taipei to see how that trade compares with German trade in these periods.

The paper by Dr. Wu and Dr. Yeh and the statement of the American Chamber of Commerce in Taiwan cover many of the same problems. The paper by Dr. Wu and Dr. Yeh is certainly an excellent analysis of Taiwan’s economic development. It identifies very well those factors responsible for past development and those essential to Taiwan’s future economic development. I think the paper makes a very strong case that U.S. economic interests in Taiwan would be best served if the United States were to develop
a more forthright two-China policy. Downgrading the political relations between the United States and the Republic of China in the process of normalizing relations with the PRC would inevitably have some adverse effect on economic relations between the United States and Taiwan. However, how lasting or how serious that adverse effect might be is a matter for debate. Much would depend on how far the United States went in downgrading its political relations with the Republic of China.

I think that the paper may underestimate the potential of the PRC as a trading partner of the United States in the long run. Certainly, in the past Taiwan has been a good deal more important and probably will be so for some years. But looking farther ahead, much will depend on the kind of policies carried out by the Peking government. Certainly, Mainland China will always be a largely self-sufficient economy, just like the other big continental economies, the United States and the Soviet Union. But trade could grow substantially and provide more opportunities for American traders. It's interesting to note, for example, that despite the importance of Taiwan as a trading partner with Japan, there have been some years in which Japanese trade with Mainland China has been larger than its trade with Taiwan.

It was, of course, beyond the scope of Dr. Wu's paper to discuss the importance to overall U.S. interests of normalizing relations with the PRC. The problem currently before U.S. policy makers is to decide whether the potential gains from normalizing relations with the PRC would outweigh the potential losses in regard to interests in Taiwan. In reaching that decision they would have to consider how possible economic losses in regard to relations with Taiwan could be minimized. The American Chamber of Commerce and Dr. Wu's paper point out ways in which Taiwan's economy could be adversely affected by normalization of U.S. relations with the PRC and they identify a number of legal questions which would arise on normalization with Peking, but they do not consider ways in which the impact of this change might be lessened, as, for example, by U.S. legislation which retained guarantees of U.S. investment in Taiwan by the Overseas Private Investment Insurance Corporation, permitted the ROC to buy American military equipment; provided for continuing access by the ROC to Eximbank loans, and so forth.

These are very complex, difficult issues. I don’t want to get into a discussion of them here, but I would just point out that there seem to be two major factors in considering normalization of relations with Peking and its potential impact on Taiwan. One is
the psychological factor. It has been pointed out that past progress in Taiwan and future progress, too, depend a great deal on confidence, investors' confidence, in the future of Taiwan. Consequently, if the United States normalizes relations with Peking, it would need to take whatever action available to it to preserve confidence in the future of our relations with Taiwan. The second major area that needs to be considered — I've already touched on it — is the legislative questions that arise. There are a multitude of these which would affect American businessmen dealing in Taiwan. There are many ways in which they might conceivably be dealt with. All these factors have to be taken into account. One must try to strike a balance between U.S. interests in achieving normalization with Peking and retaining a satisfactory relationship with Taiwan. Thank you.

Dr. Sigur thanked Mr. Clough for his comments which touched upon some of the very fundamental problems with which we were trying to deal at this time. Dr. Sigur then introduced the next discussant, Mr. Talbot Linstrom, to speak. Mr. Linstrom, Dr. Sigur said, was from one of Washington's most prestigious law firms, Whitman and Ransom, and he himself had dealt extensively with legal questions involving economic relations between the United States and the Republic of China and other parts of Asia as well.

Mr. Talbot Linstrom stated that law, economics, politics, culture and social realities are all inseparable. He stated that the papers presented indicate that from the standpoint of U.S. balance of payments, trade with the PRC has been more favored, because the greater proportion of our trade with the PRC consists of American exports, paid for in hard cash, rather than imports. On the other hand, while the Republic of China may be a large exporter to the U.S., it is also a major debtor of the United States, and hence has some leverage in negotiations — the larger the debt, the greater the economic advantage. He suggested that Taiwan might consider a reverse investment in underdeveloped Central American and Caribbean countries and in United States cities. He also suggested that as to nuclear and defense questions, an abrogation of the defense treaty might not be so bad, because
independent countries have a certain bargaining power and such treaties prevent self-help in terms of a build-up of a country's own defense mechanisms.

[The following is the summary of Mr. Linstrom's statement.]

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COMMENTS

TALBOT S. LINSTROM

I would like to begin my brief remarks by noting that, as I think both the papers and the prior discussant have indicated, law, economics, politics, military realities and culture are inseparable. Although I am here as an attorney, my comments will of necessity be broader in scope than just the legal aspects of the future relations between the United States and the Republic of China and the United States and the People's Republic of China. To the extent possible in the available time, I would like to cover all three of the papers presented here today. With respect to the paper submitted by the Chamber of Commerce, I think we ought to focus on some critical issues which have been briefly touched upon, and those are the nature of trade between the United States and the People's Republic of China and the nature of trade between the United States and the Republic of China. While trade is much, much larger in dollar terms between the United States and Taiwan, in terms of balance of payments, it would appear from the papers and, I think, on the basis of my own recollection, that in regard to balance of payments the PRC trade has been much more advantageous to the United States. There is currently a very large, it would appear — I don't have any exact figures immediately available — imbalance in trade between the United States and Taiwan. Taiwan is a major exporter to the United States for hard currency. A great portion of the total trade is Taiwanese exports to the United States, whereas in respect to the Mainland, the People's Republic, a great portion of that trade is going from the United States and is being paid for in hard cash. One of the points that the Chamber of Commerce made in its paper was that it does not expect — at least it's not currently the case — that the PRC will utilize American credit. A lot is being paid in cash. I am not sure in respect to long-term good relations
between nations that that is a net disadvantage. It may be a net advantage.

However, with respect to the future, the fact that the Republic of China has become a major debtor of the United States (I believe that the paper points out that it is the second largest user after Brazil of Eximbank-type credits from the United States and I think that includes both direct credits, guarantees and FCIA insurance) may give the Republic of China a very substantial — I don't want to use the word "weapon" — means of leverage in its future relations with the United States. This debtor relationship is not a disadvantage to a country. In economic terms it is generally an advantage, and the larger a debtor you become, the greater your advantage. This has been proven to be the case in respect to Yugoslavian financial relationships with both the United States and the European Community. Whenever the Yugoslavians have payment problems, they indicate to their creditor countries that they may have difficulty in meeting their payments. The result of that generally is an increase in credits available for purchasing goods in both the Community and in the United States. I am not suggesting this be done; I am only dealing here with potential realities of the future, and I think that that factor is certainly a net advantage to the Republic of China, and it's a net advantage in dealing with the United States both in political terms and economic terms.

Returning to the question of the proposition of the trade between the United States and the Republic of China and its future course, I think this has been gone into in some depth in Dr. Wu's paper. Imports from Taiwan to the United States in recent times have grown much more rapidly than our imports from the rest of the world. This, of course, has been to a great extent in the textile field and to a certain extent in shoes. I understand shoes were touched upon yesterday; textiles were an earlier problem. In both cases these rapid increases in imports from Taiwan to the United States have resulted in some type of trade-restrictive measure by the United States as a result of pressures both from U.S. labor and manufacturers. The same thing is happening now in the consumer electronics field. I think the major developments in this field have also been touched upon both in the International Trade Commission in the last month and in federal court two days ago in New York, the Customs Court, with respect to consumer electronics imports from Japan. But as Dr. Wu has pointed out, there is a very close relationship between Taiwan, Japan and the United States. Taiwan is a major supplier, not only of the
components that go into Japanese consumer electronics, but has itself been used by Japan to a certain extent as a supplier manufacturing source for finished consumer electronic product exports to the United States, a very good use and a very beneficial one in trade terms to the U.S. consumer. Taiwan has become, often through the aegis of Japanese trading companies, a major supplier of consumer electronics to the United States. This means it is directly involved in what is happening now. Perhaps if one looks at the future, Taiwan ought to consider what Japan has done in the U.S., and that is to reverse some of the investment and itself come into the American market and invest in the areas in which we have high degrees of unemployment and can utilize the management and technology that Taiwan itself is developing. It can also consider doing the same thing in the underdeveloped countries of Central America and the Caribbean, which have and will continue to enjoy very preferential economic relationships with the United States.

I might touch in the one or two minutes I have left on two other points in the Chamber of Commerce paper and which were covered peripherally by the prior discussant. These are nuclear questions and defense questions. It may not be a disadvantage to the Republic of China to be under the threat of the abrogation of the mutual defense treaty. What we have tended to learn in the world, all of us in this community of nations, is that independence gives a great deal more bargaining power. To the extent that Taiwan is closely tied to the U.S. by a defense treaty, it is hampered in its own development in the nuclear area. Political pressures are easily applied by the United States to prevent its purchase of nuclear materials from other countries, and at the same time similar pressures are probably applied to prevent Taiwan from developing its own defense capability. A nation the size of the Republic of China is perfectly capable of developing an extremely credible defense to protect its own interests in the future. To the extent it does so, it enhances its prestige in the world and its ability to deal as it should in the future as an equal both with the United States and with the PRC.

The Chairperson thanked Mr. Linstrom and commended him for touching upon, like Mr. Clough, some very fundamental issues which would certainly generate a great deal of discussion. Dr.
Sigur said that he thought that we all knew the importance of the Export-Import Bank to the economic relations between the United States and the Republic of China. Now we were very fortunate to have with us a Senior Counsel from the bank who dealt a great deal with these relations, Mr. Marvin Solomon, to be our third discussant. The Chairperson then invited Mr. Solomon to speak.

Mr. Solomon stated that Eximbank has the largest stake in Taiwan of any single institution, and cited the Eximbank's history of dealings with Taiwan. He said that Eximbank has been involved in the Republic of China at least since 1942, when it invested in the construction of the Burma-China Highway. From 1945 to 1948 loans were made to the ROC under the predecessor to the Marshall Plan. The PRC has no dealings with the Eximbank, largely because the PRC has an outstanding debt which it assumed when the ROC left the Mainland. Since 1965, the Eximbank's dealings with the ROC have been in the areas of financing power projects and petrochemicals, commercial aircraft, telecommunications and industrial projects. Other banks participate with Eximbank in making these loans.

[The following is the summary of Mr. Solomon's statement.]

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COMMENTS

Marvin Solomon

I am not going to direct myself precisely to the thoughts given by the speakers this morning, but to nevertheless make comments like them by first giving a little history and then a little bit of prognostication for the future involving the Export-Import Bank, which by the way, is the single institution in the world having the largest exposure in the Republic of China. We have an exposure of 1.55 billion dollars there.

Eximbank's first relationship with the Republic of China was in 1942 for the amount of 25 million dollars to build the Burma-China Highway. In 1945 to 1948, Eximbank's relationship with the ROC, on the Mainland, was as part of the Marshall Plan program and its predecessor programs, principally loans for locomotives, some old World War II Liberty vessels, and some electrical generating equipment. These loans were in the amount
of approximately 30 million dollars. When the ROC left the Mainland and went to Taiwan, the equipment was left behind and was used by the PRC, and Eximbank considered that since they were using the equipment they should be paying for these loans. Unfortunately they haven't paid for them. Consequently, Eximbank is presently blocked from making any form of financial assistance in the PRC for two reasons, the Foreign Assistance Act of 1962, as amended, and the fact that there is an outstanding indebtedness to Eximbank of the PRC. Between the late 1940s and mid-1965, Eximbank was not active in the ROC. This was the realm of the Agency of International Development and its predecessor agencies. Since 1965, Eximbank has been active in the ROC, principally in the areas of power, transportation, petrochemicals, heavy industry and light industry, and we had an actual exposure several years ago of $1.8 billion. This amount has dropped off to about 1.55 billion dollars, principally as repayments have been received.

One of the more interesting factors of our activity with the ROC is that we do not go to make transactions by ourselves. We have participation by commercial banks, usually American banks, but even in the past year or so, sometimes from Japan, Canada and Great Britain. In many of these transactions we are not guaranteeing these banks; they are just participating with us.

Even though most countries in the world recognize the PRC, the United States manufacturer does not have the ROC's contracts all to himself. He has to compete with manufacturers of other countries, and those manufacturers of the other countries have support from their official export credit agencies. So notwithstanding the fact that country X does not have diplomatic relations with the ROC, its official export credit agency is making most of the guarantees in the ROC. This more or less summarizes the past and the present situation concerning the Bank's dealings with the ROC.

The future: Last week we authorized official financial assistance to the ROC. Last month we had a team over in the ROC and we found that Eximbank may be getting approximately 2 billion dollars worth of business. I might add that since Eximbank does not provide 100 percent financing, we're talking about 1.2 billion dollars in the ROC's present Six-Year Economic Plan. As I pointed out, the Export-Import Bank as an official export credit agency is still competing with other export credit agencies; consequently Eximbank is looking forward to continu-
ing its excellent relationship with the ROC and its large corporations, banks and industries.

Dr. Sigur announced a coffee break for five minutes and then the session would be resumed for discussion.

The meeting adjourned at 11:05 a.m. and resumed at 11:15 a.m.

Dr. Sigur announced the resumption of the meeting and first called Dr. Heuser to answer several questions raised by Mr. Clough.

[The following is the summary of questions and answers.]

DISCUSSION

DR. HEUSER: I shall try to respond to Mr. Clough’s questions. First, as far as the problem of travel is concerned, there is no problem at all for private persons. Germans get letters of introduction at private ROC agencies such as Far Eastern Trade Center and use the letters to get visas at Taipei airport. With respect to Taiwanese-Chinese travelling to Germany, they, through travel agencies in Taiwan, get their visa at the German Consulate-General in Hong Kong. As far as official travel is concerned, I can only say that official travelers do not travel officially, neither from Germany to Taiwan nor vice-versa.

As to trade fairs, there was one trade fair held in 1969, and none since, perhaps for political reasons.

I found it very interesting to deal with the question of comparison of trade. In order to understand economic relations, you have to make a comparison with those countries which are economically similar in their structure, for example, Korea and Taiwan. For example, German trade with Korea is very similar in structure and in quantity to Taiwan. But we are realizing that investors seem now to prefer Taiwan. German investments in Korea are still a little bit more than in Taiwan, but this seems to be changing and Taiwan is getting more interesting to German
investments in spite of the fact that Taiwan’s labor costs are higher than in other countries in Asia or Indonesia. But German investors have appreciated very much the development in Taiwan.

As far as France is concerned, France has, as far as I know, no approved investment at all in Taiwan. Trade between France and Taiwan is also limited. After 1964, when France established diplomatic relations with the PRC the trade relations did not increase at all. On the other hand, at the same time West German trade increased with ROC. Summarizing, the status of diplomatic relations between European countries and Taiwan does not affect the quantity of trade with Taiwan.

DR. SIGUR: Thank you. We’ll be entertaining questions and comments from the floor. Are there any questions?

MR. LITTELL: I would like to ask you [apparently referring to Chairperson Dr. Sigur] certain questions.

Do you not think that we should take a position clarifying relations with Taiwan by eliminating all reference to it in the Shanghai Communique of 1972, which has virtually the effect of a treaty as it is being treated from administration to administration?

Secondly, not one word has been said in this conference about the danger of the excessive importation of opium, heroin, and derivative undermining products of which the PRC is the principal producer in the world. Not Turkey as one would suppose, but the PRC, over 65 percent. I did not touch upon this subject in my paper because it was not germane to the subject of private enterprise and investment, but it hurt my conscience. I think we should be alerted to that frightening problem.

DR. SIGUR: I suppose as Chairman I might step out of that position for a minute and respond, though I would like the thoughts of members of the panel also. It seems to me that a clarification of our relationship with the ROC and the PRC could be beneficial, I think, if done properly. The problem, of course, comes from the confusion within the American government itself on this issue. The President, after all, has taken the position in the campaign in which he referred to the determination to maintain the independence and freedom of Taiwan. That is the statement that he used in his foreign policy debate with then-President Ford. I don’t think that he has officially ever retreated from that position. He has, I think, in the past couple of months made references on one or two occasions to the People’s Republic perhaps, but he has simply never retreated from that.
Congress of the United States, the House of Representatives passed a resolution in support of the continuation of American guarantees to Taiwan. This has never been repudiated. It's my feeling that if it were put to the House of Representatives for a resolution again on that issue, it would once again be strongly supported. I think all developments, as of now, indicate the strength that our government has, if it has the will and determination, to stand by our commitments to the Republic of China in Taiwan. I think that's the crux of the matter. When we negotiate with Peking, perhaps we are doing so now, on the question of diplomatic recognition or whatever we want to call it, the normalization process, I think that the American position, as you say, should be a tough one, a strong one: this is where we stand. If we intend to take a normalization position, it must be within the framework of the American commitment to an ally, in our interests in terms of our broad security and political and economic interests totally to retain the closest possible ties. I look at it, of course, from many sides in terms of our relations with the Soviets, with the PRC in Southeast Asia. When you get down to it and look at the complexity of all this, it would be destabilizing for the United States to retreat from its firm commitment to Taiwan. Whether the President has to come out fully and restate this again, whether it would be advisable for him to do so, is something I hope the other people on this panel might have comments about. Mr. Morell, can you speak on that issue?

Mr. Morell: This is more a political issue than I promised to speak of, but I certainly agree with you that the President has taken the position as you describe it. If he were to go further than that, he would be obliged to go into formalities and details which I presume he is not prepared to do at this time. I yield to Ralph Clough on this.

Dr. Sigur: Ralph, could you comment on that?

Mr. Clough: Well, I think the problem is pretty clear. The President on the one hand has said that he intends to pursue the process of normalizing relations with the PRC and on the other hand he has spoken of Taiwan; "independence and freedom" were the two words he used. Since then Secretary of State Vance has said that he regards the security of Taiwan as essential to the United States. So I think the problem is how to reconcile these two somewhat contradictory statements. This requires a lot of study.

Dr. Sigur: Anyone else have any comments?

Dr. Wu: I have some comments on some other points.
Dr. Sigur: On this particular point. What about the issue which was also raised about the drug trade? Anyone have any comments on it?

Mr. Morell: I cannot speak to this as a member of the government, and I cannot speak with authority; perhaps Ralph can. I know it's not a popular thing to say, but I have never seen a report in the U.S. government that would support the proposition that there is a substantial flow of opium from the PRC.

Dr. Sigur: Do you know, Ralph?

Mr. Clough: My understanding is that most of the production comes from the so-called "golden triangle," Laos, Thailand, and southern Burma. How much comes from there is anybody's guess.

Dr. King-yuh Chang: I would like to make two comments. First, I think that it is very difficult for citizens of the Republic of China to travel very freely in countries without formal diplomatic relations. For instance, in the case of going to a country without diplomatic relations with the ROC to attend an academic meeting. It would take months to get a visa because there is no official representative from those countries in Taiwan and you have to apply via other nations. It's very time consuming to get visas, and in this period of rapid change obviously our merchants who need to take care of their business very fast cannot do so because of the inconvenience of getting visas.

Secondly, I would like to comment on Mr. Linstrom's comment about the nuclear treaty and future security arrangements with the United States. I think that I myself consider the treaty and security arrangements with the United States to be a most vital issue in the ROC. We will not develop nuclear weapons. We need nuclear power but not nuclear weapons. We do not want that kind of freedom to develop nuclear weapons. Also in this, if countries need that kind of freedom, then obviously Japan, the United Kingdom, or Germany knows that with that kind of freedom it can abandon its treaty commitments with the United States.

Mr. Linstrom: The comment I would make I am inclined to express in terms of real politics and that is something that we in the United States on occasion tend not to do. I would stand by the point that sometimes, I am not advocating the abrogation of the treaty with the ROC or taking a position on it, just pointing out that sometimes treaties like this tend to create a dependence relationship that is not particularly healthy for the independence and strength, strong development, of one of the countries. And I
think that a careful examination of the relationships in the past twenty years in certain key areas, areas that I think of vital importance to the Republic of China, its independence and its stature in the world, may indeed have been hampered by this treaty and the way it has been utilized by the United States government to put pressure upon the government of the Republic of China.

DR. WEI: I want to talk about what Dr. Chang said. By the way, Dr. Chang is Chairman of the Diplomacy Department at National Chengchi University. You must see the consequences of your suggestions. We have seen a lot of creative ideas, we have no shortage of friends, friends to advance suggestions to get us out of this difficult situation. You mention our nuclear policy. Some of you have mentioned Russian intervention. You have mentioned about separation and independence. On all these matters after very close examination I see something very serious. A very important factor that I think we should keep in mind is that the ROC now and in the future is a normal political entity, normal in the sense that we conduct our business as a good member of the international community. We want to maintain our credibility and maintain ourself as a contributing member to the stability and peace in the world. That's a very important factor and that puts us in a position of no alternative: our survival is at stake. We cannot adopt any policy which will have more importance than that function, a function which changes all the rules of the game. We have not reached the point yet where we relinquish that function.

Let me come to a few more concrete comments. One reality is that many of us who are doing evaluations on the future of Taiwan are also involved in its future, such as the Export-Import Bank. You assess Taiwan's future, but what you do has got something to do with the future of Taiwan. The men whom we are dealing with have friends in Taiwan, some of them owners of large firms. They ask our opinion: Do you think I should move my factory to somewhere else? et cetera. You say, gosh, I don't know, we're trying to see Taiwan stabilize. He's the guy asking the question, what do you think of Taiwan? Should I move out? My opinion is that if you move out you hurt Taiwan's future. It's very simple. That large factory is itself determining in some way Taiwan's future, so I think this element should be kept in mind. Many of you U.S. scholars in important articles explaining Taiwan's future, good or bad, you yourself hold the function of injecting some variables into the thinking of people, which in turn will
decide in some way Taiwan’s future development. In any case, prudence and some sympathy are important in this area.

As to the suggestion that maybe Taiwan’s people should invest in the United States. That’s an interesting proposition. However, again, this will be dependent on the confidence that we have in the future of Taiwan’s prosperity and stability. If somehow people are still wondering about the future of Taiwan, then we have a very liberal policy toward them as merchants and entrepreneurs to invest in the U.S. If we allow a large number of factories and firms in Taiwan to move out to the U.S., what it would amount to is escape of very needed capital investment in Taiwan, where Taiwan is concerned. So all this is very important to feelings of confidence, of security, of continued existence as a normal state, a normal government. We are not honored, we do not feel comfortable, to be mentioned as “only people.” The ROC is a member of the international community. We are a government controlling a territory. We do not want to be regarded as a people only. We do not want to be transformed from a normal state, a normal government, into only a non-state entity, and only to be identified as a people.

**QUESTION [speaker unidentified]:** This question is directed toward Professor Wu. Historically, the U.S. investment opportunities in a country and their investments in the U.S. have not included the nationals of the country in top level management and policy-making positions. Does the U.S. follow that same policy with respect to investment in Taiwan, and if it does, are there any moves in Taiwan to include the people of Taiwan in policy-making positions? Or do you think that isn’t important? Will it have any bearing on future trade relations with the Taiwanese people?

**Dr. Wu:** I’d like to answer this question, but before I get there I’d like to take this opportunity to get off my chest a number of points, if you’ll bear with me for a moment. I would like to point out, as I think Dr. Chang has already hinted, that the question is not whether one can or cannot carry on trade without diplomatic relations. Trade can be carried on with countries without diplomatic relations with Taiwan. But if you look at the future there are certain changing conditions, one of which is the need for Taiwan to continue to increase its trade in circumstances in which many existing markets are taking protectionist attitudes. This means that for Taiwan to continue to expand trade it would be necessary to diversify by commodity, to diversify by market, it would be necessary to be very quick on the beat, to respond
quickly to changing conditions and go to markets where possibilities appear at the first hint of information. That means you have to be very quick, you cannot delay, and you have to have access. It's not a question whether you eventually can get in somewhere, but whether you can get there now. This is the first point.

Secondly, with delay, with uncertainty, suppose you could go to a certain place and then get a visa at the airport. But suppose you arrive at the airport and can't get in, something has happened, then what? Does not this kind of uncertainty increase your risk and increase your accounts? With that effect you are defenseless in these tenuous conditions.

The second point I'd like to make is that just as we have on the political ground the difference between Japan's applying the Japan formula while the U.S. and the ROC are still maintaining normal diplomatic relations, there is a difference between that and the U.S. applying the Japan formula when there is no third party maintaining this kind of relations. We've got to think not in what has been called partial equilibrium terms, where you change one factor and everything else remaining constant, but we have to think of conditions where you change one factor and everything else changes. You no longer can apply this example.

A third thing I'd like to mention. There was some reference yesterday, I believe, to the fact that the ROC is now able to finance its own investments and therefore a question was raised as to whether foreign investment is still necessary. I'd like to make some points in that connection. The first is that foreign investments have, as I mentioned in the paper, performed the function of export markets. You have got to be able to sell in an increasingly larger number of markets. That you can produce is one thing, but you've got to be able to sell your product. The second point is that with large infrastructure investments, such as those of the ten major construction projects, there is still the need for financing on a larger scale. This is the kind of borrowing in connection with Eximbank and so on that we are talking about. And thirdly, I would say that for businessmen interested in the ROC in the future, one should explore perhaps more the possibility of foreign technology and ROC capital, that is, joint ventures under some kind of licensing arrangements. These will present greater possibilities for the future.

In that connection I come to the question that was raised earlier. I believe that U.S. practice in Asia has been different from Japanese practice in the past. That is, American firms tend to
give more opportunities to local nationals at a higher level, and there are greater opportunities for advancement. Mr. Morell can correct me, but I don’t think there is an exception to this rule in the case of Taiwan.

Finally, let me just speak on the point raised by Mr. Clough on the prospects of PRC trade with the United States. In some studies that my colleagues and I have done in the past based on the records up to 1970 or so, we came to the conclusion that aside from price changes, the long-term trend in the growth of PRC exports (to the U.S.) was probably in the neighborhood of two to three hundred million dollars a year, and that this kind of export growth would never get very far unless Peking can develop new exports. And this was when people became excited when Peking began to export oil, but the prospects of Peking oil are somewhat more doubtful than once estimated. In particular, some recent events have created new problems at least for the next few years, one of which was the sharp setback suffered by the coal industry from the earthquake. As you know, the earthquake of July 1976 destroyed the Tanshan coal mines. These mines had a production in the neighborhood of 20 million tons a year, which roughly is equivalent to 10 million tons of crude oil, which is all that the PRC has been able to offer in export.

DR. SIGUR: Thank you. I think we’re getting past our hour here, and I did promise to allow Mr. Chao of the Chinese Embassy to correct something that he said.

MR. CHAO: This concerns a statement that I made concerning the Republic of China’s membership in GATT. Actually the ROC has never been a member, but has participated in GATT meetings as observer.*

DR. SIGUR closed the meeting with appreciation to Dr. Chiu, Mr. Simon, and their colleagues.

Reported by Joyce Seunarine

* Editors’ Note: The ROC provisionally applied to the GATT on May 21, 1948, but notified the Secretary-General of the United Nations of the cessation of that application on March 6, 1950. Multilateral Treaties in respect of which the Secretary-General Performs Depository Functions (List of Signatures, Ratifications, Accessions, etc. as of 31 December 1975) (U.N. Doc. St/Leg/Ser. D19), at 237. See discussion of Session II, supra at p. 121.
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