

**IMPLICATIONS OF THE TAIWAN RELATIONS ACT  
FOR US-ROC ECONOMIC RELATIONS:  
PROBLEM AREAS AND POSSIBLE IMPROVEMENTS**

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**Outline of the Taiwan Relations Act**

As the TRA was intended to declare the policy of the United States to Taiwan, it is beneficial to return to these first principles in assessing U.S.-Taiwan affairs.<sup>1</sup>

Section 1 of the Act simply sets forth the title of the legislation.

Section 2 sets forth the findings and declarations of policy on which the Act is predicated. The purposes of the Act are twofold:

- (1) to help maintain peace, security and stability in the Western Pacific; and
- (2) to promote U.S. foreign policy by authorizing the continuation of commercial, cultural and other relations between "the people of the United States and the people on Taiwan."<sup>2</sup>

Section 2 further declares it to be U.S. policy:

- to preserve and promote commercial, cultural and other relations between the people of Taiwan and of the United States<sup>3</sup>;

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<sup>1</sup> P.L. 96-8, 22 U.S.C. §3301 *et seq.* The principal portions of the legislative history are reproduced at [1979] *U.S. Code Cong. & Adm. News* 36 (Senate report) and 95 (House report). An analytic compilation of the legislative history, including the House, Senate and Conference reports and the floor debates, is available: Lester L. Wolff and David Simon (eds.), *Legislative History of the Taiwan Relations Act* (Jamaica, N.Y.: American Association for Chinese Studies, 1982).

<sup>2</sup> 22 U.S.C. §3301.

<sup>3</sup> The language "people of Taiwan" and "people of the United States" was adopted to avoid the appearance of government-to-government relations between the United States and Taiwan. See generally Wolff & Simon, *supra* note 1, at 9-42.

- to declare that peace and stability in the Western Pacific are in the political, security and economic interests of the United States;
- to make clear that the U.S. decision to establish diplomatic relations with the People's Republic of China (PRC) rests upon the expectation that the future of Taiwan will be determined by peaceful means;
- to consider any effort to determine Taiwan's future by other than peaceful means to be a threat to peace and security in the Western Pacific and of grave concern to the United States;
- to provide Taiwan with defensive arms; and
- to maintain the capacity of the United States to resist the use of force or coercion that would jeopardize the security or the economic or social system of the people of Taiwan.<sup>4</sup>

In addition, the findings and declarations section reaffirms the U.S. objectives of preserving and enhancing human rights in Taiwan.

The remainder of the Act articulates the consequences of these policies and the framework for implementation.

Section 3 contains the security provisions of the Act:<sup>5</sup>

*First*, the United States will make available to Taiwan such defense articles and services as are necessary to a Taiwanese self-defense capability;

*Second*, the President *and Congress* shall determine the nature and quantity of such defense articles and services “*solely* upon their judgment of the needs of Taiwan”;<sup>6</sup>

*Third*, the President is directed to inform Congress promptly of any threat to Taiwan.

Section 4 continues the applicability to Taiwan of those U.S. laws referring to foreign countries or similar entities, secures Taiwan's ownership rights in its pre-derecognition property, continues in force all US ROC treaties not terminated

<sup>4</sup> 22 U.S.C. §3301.

<sup>5</sup> 22 U.S.C. §3302.

<sup>6</sup> *Id.* (emphasis added).

in accordance with law, and prevents the Act from being construed so as to support the expulsion of Taiwan from any international organization.<sup>7</sup>

Section 5 of the Act ensures the continuation of Overseas Private Insurance Corporation (OPIC) insurance for Taiwan.<sup>8</sup>

Section 6 of the Act provides for the establishment of the instrumentality for American relations with Taiwan, namely, the American Institute in Taiwan.<sup>9</sup> Sections 7, 8 and 9 make further provisions regarding AIT, and Section 10 relates to the Taiwanese counterpart of AIT, namely, the Coordination Council for North American Affairs (CCNAA).<sup>10</sup> Section 10(b), in particular, requests the President to authorize the CCNAA to have the same complement of offices and personnel in the United States as were previously enjoyed by the ROC embassy and consulates,<sup>11</sup> while Section 10(c) authorizes the President to extend to CCNAA personnel such privileges and immunities as he deems necessary, subject to reciprocity by Taiwan.<sup>12</sup>

Section 11 of the Act governs separation of U.S. government personnel for employment with AIT.<sup>13</sup>

Section 12 contains reporting requirements.<sup>14</sup> This section provides for reporting to Congress of all AIT-CCNAA agreements and provides for semiannual reports to Congress, for a two-year period, of U.S.-Taiwan economic relations.

Section 13 authorizes the President to prescribe rules and

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<sup>7</sup> 22 U.S.C. § 3303. See, e.g., the House of Representatives amendment to the IMF funding legislation, in the form of a "sense of the Congress" resolution that Congress would oppose funding for the Asian Development Bank if Taiwan were expelled from the ADB. *Asian Wall Street Journal Weekly*, Vol. V, No. 32 (August 8, 1983).

<sup>8</sup> 22 U.S.C. § 3304. This provision was amended in 1981 to extend OPIC coverage beyond the three-year period envisioned by the TRA. P.L. 97-65, 95 Stat. 1021 (1981); see Wolf & Simon, *supra* note 1 at 210.

<sup>9</sup> 22 U.S.C. § 3305.

<sup>10</sup> 22 U.S.C. § 3306-9.

<sup>11</sup> 22 U.S.C. § 3309(b).

<sup>12</sup> 22 U.S.C. § 3309(c).

<sup>13</sup> 22 U.S.C. § 3310.

<sup>14</sup> 22 U.S.C. § 3311.

regulations to carry out the purposes of the Act; rules promulgated or proposed before January 1, 1982 must be reported to Congress.<sup>15</sup> Section 14 provides for Congressional monitoring of the implementation of the Act, the operations of AIT, the relationship between the United States and Taiwan, and the implementation of U.S. policy in East Asia.<sup>16</sup> Finally, section 15 contains definitions, section 16 authorizes appropriations, section 17 is a standard severability provision, and section 18 establishes an effective date of January 1, 1979.<sup>17</sup>

Problems arising from particular sections of the TRA are discussed on the following sections.<sup>18</sup>

### The Taiwan Relations Act in the Courts

The TRA has not been subjected to much judicial scrutiny.<sup>19</sup> Indeed, the sole case overtly involving the Act is *Chang v. Northwestern Memorial Hospital*.<sup>20</sup> There, the plaintiff, a Taiwanese national, sued the hospital for malpractice; the defendant moved to dismiss on the grounds that the plaintiff was not a citizen of a "foreign state" recognized by the United States for purposes of diversity jurisdiction. The court upheld the plaintiff's right to sue.

First, the court affirmed that "[t]he generally accepted test for determining if a plaintiff can sue in the federal court is whether he or she is a citizen of a foreign state recognized by the United States government at the time of the commencement of the suit."<sup>21</sup> (In *Chang*, suit was commenced on January 12, 1979, 12 days after derecognition.<sup>22</sup>) The court

<sup>15</sup> 22 U.S.C. §3312.

<sup>16</sup> 22 U.S.C. §3313.

<sup>17</sup> 22 U.S.C. §3314-16, §3301 (note).

<sup>18</sup> To repeat the focus on this paper, arms control and security issues are not discussed herein.

<sup>19</sup> This discussion excludes the case involving the President's authority regarding recognition. See *Goldstein v. Carter*, 617 F.2d 697 (D.C. Cir. 1979), vacated because of nonjusticiable political questions, 444 U.S. 996 (1979).

<sup>20</sup> 508 F. Supp. 975 (N.D. 111. 1980).

<sup>21</sup> 508 F. Supp. at 977.

<sup>22</sup> 508 F. Supp. at 976.

then cited four bases for determining that the plaintiff had a right to sue in federal court.

*First*, the court cited Article VI, § 4 of the 1948 Treaty of Friendship, Commerce and Navigation between the United States and the Republic of China ensuring ROC nationals access to U.S. courts, together with President Carter's December 30, 1978 memorandum<sup>23</sup> which declared that "[e]xisting international agreements and arrangements in force between the United States and Taiwan" shall remain "in force."<sup>24</sup>

*Second*, the court cited section 4(b)(7) of the TRA, which states, "The capacity of Taiwan to sue and be sued in the courts of the United States . . . shall not be abrogated. . . ."<sup>25</sup> While the quoted section refers to "Taiwan," the court referred to the TRA definitional section for the proposition that "Taiwan" includes "the people on those islands" (i.e., Taiwan and the Pescadores).<sup>26</sup>

*Third*, the court cited the President's Executive Order of June 22, 1979<sup>27</sup> which included a savings clause relating to pre-existing US-ROC treaties and agreements.<sup>28</sup>

*Fourth*, the court had directed the plaintiff to obtain a determination from the U.S. State Department that the Executive Order of June 22, 1979 was not intended to alter the ability of Taiwanese nationals to sue in U.S. federal courts.<sup>29</sup> The Assistant Legal Adviser for Treaty Affairs of the State Department responded that the order

was not intended in any way to abrogate, infringe, or otherwise modify the right of natural and juridical persons from Taiwan to sue in the courts of the United States.<sup>30</sup>

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<sup>23</sup> Presidential Memorandum of December 30, 1978, 3195-01-M, 44 F.R. 1075 (January 14, 1979).

<sup>24</sup> *Id.*; 508 F. Supp. at 977-8.

<sup>25</sup> 22 U.S.C. §3303(b) (7).

<sup>26</sup> 22 U.S.C. §3314(2).

<sup>27</sup> Executive Order 12143, 44 F.R. 37191 (June 26, 1979), reprinted in Wolff & Simon, *Legislative History of the Taiwan Relations Act*, *supra* note 1 at 296-303.

<sup>28</sup> 506 F. Supp. at 978.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* In a footnote, the court sketches portions of the TRA and refers to "quasi-

The court's analysis is of interest, in part, because of the breadth of material on which the court relied in holding that the plaintiff had a right of access to the federal courts. While the TRA clearly gives Taiwanese access to federal courts, the court also examined two presidential documents and further required a State Department affidavit. It is, perhaps, of equal interest that the court did not refer to the legislative history of the TRA. While the court may have been justified in relying on the Act alone, its reliance on presidential orders implies that these latter documents are deserving of the closest scrutiny for possible contradictions with the TRA itself. Any future presidential documents would similarly require close scrutiny.

### AIT-CCNAA Agreements

Section 6(a) of the TRA specifies that the AIT shall conduct and carry out "[p]rograms, transactions, and other relations conducted or carried out by the President or any agency of the United States government with respect to Taiwan. . . ." <sup>31</sup> The AIT is a policy-implementing, rather than policy-making, entity; through its contracts and agreements with the Departments of State, Energy, Defense and Agriculture, with ExIm Bank, with the National Science Foundation and with the Federal Aviation Administration (among others), AIT chairs negotiating sessions or implements U.S. policy along the full spectrum of U.S.-Taiwan relations. <sup>32</sup>

Agreements between the United States and Taiwan (i.e., AIT-CCNAA agreements) are not published in the formal treaty publications of the United States. Instead, periodical

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governmental relations" between the United States and Taiwan through AIT in the context of *de facto* recognition of foreign states. *Id.*, n. 3.

<sup>31</sup> 22 U.S.C. §3305(a).

<sup>32</sup> See, "Oversight of the Taiwan Relations Act," *Hearing Before the Subcommittee on East Asian and Pacific Affairs of the Committee on Foreign Relations, U.S. Senate*, 96th Cong. 2nd Sess., May 14, 1980 at 10 (Committee print 1980) (Statement of David Dean). See also, R. Sean Randolph, "The Status of Agreements between the American Institute in Taiwan and the Coordination Council for North American Affairs," 15 *International Lawyer* 249 (1981).

announcements of the availability of AIT-CCNAA agreements and brief summaries of their subject matter are published in the *Federal Register*, and persons wishing copies of agreements are invited to send requests to the AIT.<sup>33</sup> While this system has obvious drawbacks with respect to facilitation of research, the number of agreements concluded between the AIT and the CCNAA indicates that there is no impediment to the actual conclusion of agreements.

Among the agreements concluded since January 1, 1979 are an air transport agreement, amendments to the textile arrangement, orderly marketing agreements on color televisions and footwear, and an agreement on transferring defense property relating to the termination of the US-ROC Mutual Defense Treaty.<sup>34</sup> In addition, AIT and CCNAA concluded an agreement implementing Multilateral Trade Negotiation matters,<sup>35</sup> an agreement on privileges and immunities of the courier system,<sup>36</sup> a scientific cooperation agreement,<sup>37</sup> and an agreement on privileges, exemptions and immunities for AIT and CCNAA personnel.<sup>38</sup>

Among these agreements, the air transport agreement<sup>39</sup> occupies a special place. In view of the TRA mandate that US-ROC agreements would remain in force unless terminated in accordance with law,<sup>40</sup> Taiwan sought to negotiate changes in

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<sup>33</sup> E.g., 46 F.R. 12918 (February 18, 1981). Selected agreements have been, and will continue to be, published in the *Chinese Yearbook for International Law and Affairs*, published under the editorial direction of Dr. Hungdah Chiu by the Occasional Papers/Reprints Series in Contemporary Asian Studies, Inc. for the Chinese Society of International Law - Chinese (Taiwan) Branch of the International Law Association. See 1 *Chinese Yearbook for International Law and Affairs* 192-255 (1981).

<sup>34</sup> Statement of David Dean in "Oversight of the TRA," *supra* note 32.

<sup>35</sup> 1 *Chinese Yearbook for International Law and Affairs* 196 (1981).

<sup>36</sup> *Id.* at 208.

<sup>37</sup> *Id.* at 231.

<sup>38</sup> *Id.* at 235.

<sup>39</sup> *An Air Transport Agreement between the [AIT] and the [CCNAA] (to Succeed all Previous Air Transport Agreements) (March 5, 1980)*, reprinted in 1 *Chinese Yearbook for International Law and Affairs* 210 (1981).

<sup>40</sup> 22 U.S.C. §3303(c).

U.S.-Taiwan aviation accords as amendments to US-ROC Air Transport Agreement of December 20, 1946, as amended.<sup>41</sup> However, during Vice-President Mondale's visit to the PRC in August 1979, the Carter Administration announced it would replace the 1946 Agreement with an "unofficial" agreement and further indicated it might effect such replacements for other US-ROC agreements.<sup>42</sup> In fact, the PRC had informed U.S. negotiators that there would be no US-PRC air transport agreement until the 1946 US-ROC agreement was terminated.<sup>43</sup> It was for this reason that the 1980 AIT-CCNAA air transport agreement was implemented as an AIT-CCNAA agreement rather than as an amendment to a previous treaty.

By way of a coda to the air transport matter, in the spring of 1983 Pan American Airlines, which had received route rights for US-PRC flights and had terminated its US-Taiwan flights, reinstated US-Taiwan flights asserting that its US-Peking flights were uneconomical. The PRC then revoked certain ancillary rights for Pan American.<sup>44</sup>

The air transport agreement epitomizes in several ways U.S.-Taiwan relations with respect to agreements. Substantively, there has been little problem in the actual negotiation of agreements. In regard to form, Taiwan has by no means formally acquiesced in the replacement of official relations by unofficial relations, but the evidence is clear that Taiwan will negotiate readily with the AIT. The PRC, on the other hand, has used its political leverage to affect the form of agreements, but has not had a visible impact on their substance (arms agreements aside). Finally, commercial considerations — as

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<sup>41</sup> 61 Stat. 2799; TIAS 1609; 22 UNTS 870, as amended on October 22, 1969, 20 UST 2985; TIAS 6773; 726 UNTS 320.

<sup>42</sup> See, Statement of Hungdah Chiu in "Implementation of the Taiwan Relations Act," *Hearings before the Committee on Foreign Affairs, U.S. House of Representatives, October 23 and November 8, 1979, 96th Cong., 1st Sess.*, at 70 (1979).

<sup>43</sup> Statement of J. Kenneth Fasick, Director, International Division, General Accounting Office, in *TRA Oversight Hearings, 1980, supra* note 32 at 5.

<sup>44</sup> See, "China Expected to Handle Pan Am Dispute Cautiously," *Asian Wall Street Journal Weekly*, Vol. V, No. 27, p. 3 (July 4, 1983).



witness Pan American's return to Taipei — have been of overriding importance, and trade relations have indeed prevailed over matters of form.

It is to these trade matters that we now turn.

### **U.S.-Taiwan Trade Under the Taiwan Relations Act**

In general, it is clear that Taiwan's trade with the United States has not suffered under the TRA. While Taiwan's economy has had problems, particularly in 1982, those problems are caused not by diplomatic conditions but by Taiwan's dependence on global and American economic conditions for its own economic well-being.

At present, there are two principal problem areas in US.-Taiwan trade relations: the counterfeiting issue and the chronic Taiwanese trade surplus with the United States. The first of these problem areas appears to be moving toward amelioration, thanks in no small part to the work of AIT, through the implementation and expected enforcement of stricter anticounterfeiting laws in Taiwan. The second problem — Taiwan's trade surplus — seems less capable of resolution in the short term, for reasons having less to do with US-Taiwan relations *per se* than with the general direction of American industrial evolution.

In 1978, Taiwan's real GNP increased by 13.85%; that growth rate subsequently declined to 8.1% in 1979 and to 6.7% in 1980.<sup>45</sup> By 1982, Taiwan's real GNP growth rate had further declined to 3.8%. Clearly, the engine of Taiwan's growth decelerated in the late 1970s and beginning of the

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<sup>45</sup> All data from AIT statistics. See, e.g., "The New Era in East Asia," *Hearings before the Subcommittee on Asian and Pacific Affairs of the Committee on Foreign Relations, U.S. House of Representatives, 97th Cong., 1st Sess.* (Committee Print 1981), especially the statements of Walter Galenson (at 91-98) and David Dean (at 98-134) and Appendix 6 (responses by AIT to questions submitted in writing); *Foreign Economic Trends and Their Implications for the United States-Taiwan* (semiannual studies prepared by AIT) (hereinafter cited as *Economic Trends*, with date shown). Of the latter, the most recently available is a July 1983 preliminary draft.

1980s. In fact, in 1982 Taiwan's real GNP growth was below that of Singapore (6.3%) and South Korea (5.4%); its total industrial production actually declined by 1.8% in 1982, while exports fell by 1.8%, imports by 10.9% and the wholesale price index by 1.5%.<sup>46</sup> Taiwan had 25% excess industrial capacity in 1982, and virtually every segment of its economy either declined or stagnated in 1982.<sup>47</sup>

Nevertheless, the evidence is clear that Taiwan's economic performance since 1979 has not been the result of either derecognition or the passage of the TRA. Indeed, while derecognition caused a temporary psychological shock, the swift passage of the TRA reaffirmed the stability of the country and reassured investors and traders alike.

The reasons for Taiwan's deceleration of growth lie in Taiwan's strong dependence on trade. In 1982, for example, when Taiwan's GNP was \$46.5 billion, its total exports were valued at \$22.2 billion.<sup>48</sup> Thus Taiwan's exports are nearly half its gross national product. With over one-third of its exports going to the United States (\$8.8 billion in 1982), Taiwan's reliance on the health of the U.S. economy and the value of the U.S. dollar becomes self-evident.

Currently, it appears that Taiwan is fast emerging from the recession that began in 1980. For the first quarter of 1983, real GNP grew by 4.5%; in March 1983 industrial capacity utilization was at 77.3% (the highest rate since December 1981); and export orders for the first quarter of 1983 increased by 2.3% resulting in a volume of orders on hand at the end of March sufficient to sustain producers for 60 working days.<sup>49</sup> By contrast, outstanding orders in September 1982 amounted to 47 days' work and in December 1982 to 44 days' work. Currently, AIT estimates that Taiwan's real economic growth for 1983 will be about 6%, with a per capita GNP increase of 5.5% to about US\$2,684.<sup>50</sup>

<sup>46</sup> *Id.* at 3.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 4. See also, "Taiwan's Economic Recovery Buoying Business Optimism," *Asian Wall Street Journal Weekly*, Vol. V, No. 3, p. 1 (July 25, 1983).

<sup>50</sup> *Economic Trends*, July 1983, *supra* note 45, at 5.

The short-term investment outlook for Taiwan is not as robust as the outlook for trade. With industrial capacity utilization at 77.3%, there is sufficient idle capacity to allow substantial short-term growth of output with no further investment. Moreover, Taiwan's estimated US\$657 million budget deficit for the fiscal year ending in June 1983 has discouraged public spending as a means to stimulate the economy.<sup>51</sup> In 1982, fixed investment in Taiwan at constant 1976 prices fell by 2%, while the number of foreign investment approvals was down by 4%.<sup>52</sup>

Here again, derecognition and the TRA are not causes of the investment picture. Even with a 40% increase in long-term foreign loans drawn in 1982 (US\$1.9 billion vs. US\$1.4 billion for 1981), Taiwan's external debt totaled only US\$7.1 billion at the end of 1982. Taiwan's debt/service ratio at the end of 1982 was only 6.8%, compared to South Korea's debt/service ratio of over 20%. Similarly, at the end of 1982, Taiwan's per capita external debt was US\$385, compared to South Korea's per capita external debt of US\$980.<sup>53</sup>

Structurally, therefore, even after three years of poor economic growth, Taiwan retains a strong credit rating, and its investment climate is good.

Thus it is safe to say that the TRA has not had a demonstrably negative impact on Taiwan's economy. Indeed, there is reason to believe that there have been clear benefits flowing from the Act. While these benefits are somewhat intangible, there appears to be a general perception that the AIT has played a significant role in enhancing U.S.-Taiwan economic relations. While the AIT staff in Taiwan remains fixed at 50 persons (compared to an Embassy staff of 100 persons in 1978<sup>54</sup>), the very leanness of the AIT operation appears to have greatly increased its efficiency, while the uniqueness of

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<sup>51</sup> *Id.* at 9.

<sup>52</sup> *Id.* at 2.

<sup>53</sup> *Id.* at 9.

<sup>54</sup> Statement of David Dean in "Oversight of the Taiwan Relations Act," *supra* note 32 at 18.

its situation has increased its creativity. Each year since passage of the TRA has seen an increasing number of AIT-sponsored or AIT-coordinated trade shows for U.S. products in Taiwan.<sup>55</sup> Shows to be held in the near future include Process Controls (September 1983), Communications Equipment (February 1984), Pollution Control (April 1984), Electronics Industry Production and Test Equipment (May 1984), and Computers (June 1984).<sup>56</sup>

The holding of these U.S. products trade shows in Taiwan highlights the principal structural problem of U.S.-Taiwan trade: the chronic American trade deficit. In 1982, the United States suffered a US\$2.2 billion trade deficit on its Taiwan trade (U.S. exports of US\$4.6 vs. U.S. imports of US\$8.8 billion, making Taiwan the seventh largest trading partner of the United States for 1982).<sup>57</sup> The trade deficit of 1982 was 23.5% above the 1981 U.S. trade deficit of US\$3.3 billion for U.S.-Taiwan trade.<sup>58</sup> AIT estimates that the U.S. trade deficit with Taiwan will reach some US\$5 billion in 1982, with about a 1% increase in exports to US\$4.6 billion and about a 10% growth in U.S. imports from Taiwan to about US\$9.6 billion.<sup>59</sup>

Taiwan is taking numerous steps to reduce the U.S. trade deficit. It has attempted to diversify its export markets and has sent several "Buy American" missions to the United States since 1978, with overall purchases of over US\$6 billion.<sup>60</sup> In addition, in response to its chronic trade deficit with Japan, Taiwan temporarily banned the importation of about 1,500 consumer items from Japan in 1982.<sup>61</sup> However, the ban was lifted for most items after only six months, while the Board of Foreign Trade also terminated its efforts to attempt to persuade importers of major capital machinery investment to buy non-

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<sup>55</sup> See, *Id.* at 15.

<sup>56</sup> *Economic Trends*, July 1983, *supra* note 45 at 17.

<sup>57</sup> *Id.* at 11.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 12.

<sup>60</sup> *Id.* at 11-12.

<sup>61</sup> *Id.* at 12.

Japanese products.<sup>62</sup>

Taiwan has also fostered its European Community (EC) trade ties – not an easy task since European currencies have suffered greater devaluation against the U.S. dollar than has the NT dollar.<sup>63</sup> Nevertheless, Taiwan's trade surplus with the EC declined from US\$461 million in 1982, as Taiwan's imports from the EC rose by 15.1%.<sup>64</sup> Taiwan's increased purchases from the EC resulted in large part from deliberate Taiwanese trade strategies, including –

- the establishment of direct passenger flight service between Taiwan and the Netherlands in March 1983;

- the ending of two buying missions to the Netherlands, the first of which (in 1980) resulted in a contract for two submarines<sup>65</sup>;

- the 1983 lifting of the import ban on European cars with a displacement of 3,000 cc or more; and

- the creation of new European trade offices in Taiwan, including unofficial trade offices for Sweden, Switzerland and Denmark.<sup>66</sup>

Perhaps the most deeply imbedded factor restraining the growth in Taiwan's imports from the United States is Taiwan's practice of assessing import duties on a CIF basis, thus including ocean freight and insurance in dutiable value.<sup>67</sup> This practice tends to favor Japanese exports over those of the United States or the EC because of the relative proximity of Japan, which results in lower shipping and insurance costs

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<sup>62</sup> *Id.* at 12-13.

<sup>63</sup> *Id.* at 13.

<sup>64</sup> *Id.*

<sup>65</sup> In connection with Netherlands-Taiwan trade relations, the first "Netherlands Technical Seminar" was held this month in Taipei. Among the topics discussed were Taipei's underground railway, mass rapid transit system, superhighways, harbors and air terminal construction. *Free China Weekly*, Vol. 24, No. 36, p. 4 (September 11, 1983). The Netherlands is Taiwan's third-ranked EC trade partner, behind West Germany and Britain. *Id.* At least five industry-specific Netherlands trade shows are scheduled to be held within the next nine months in Taipei.

<sup>66</sup> *Economic Trends*, July 1983, *supra* note 45 at 14.

<sup>67</sup> *Id.*

from Japan. While CIF valuation is not expected to be changed, Taiwan is phasing down its "customs valuation uplift" on imports (a percentage added to the value of imports before duties are assessed), reducing it from 15% to 10% in 1983 and pledging to eliminate it altogether in 1984.<sup>68</sup>

There remain other trade disincentives that place U.S. goods at a disadvantage in Taiwan. Imports of certain agricultural products are banned altogether, including frozen chicken, pears and peanuts, while there is a tariff increase in effect for orange juice concentrate.<sup>69</sup> Moreover, there have been strong requests for import restrictions against beef and apples, on both of which Taiwan has granted tariff concessions to the United States.<sup>70</sup> In addition, U.S. producers of pharmaceuticals have cited standards-related nontariff barriers restricting them from the Taiwan market.<sup>71</sup> Finally, there is a perception in Taiwan that many U.S. products, especially small-scale machinery, are overdesigned for the small-scale producing operations that predominate in Taiwan and that small and medium-size U.S. exporters do not give sufficient service and commitment to their Taiwanese customers.<sup>72</sup>

While the foregoing problems are real, they are clearly not related to derecognition and the TRA. To a large extent, they are simply the product of the vibrant interaction between the economies of Taiwan and the United States.

One final problem, not related to the TRA and in addition to the trade deficit problem, should be noted: commercial counterfeiting.<sup>73</sup> Alleging that Taiwan is the commercial counterfeiting capital of the world, several U.S. Congressmen have introduced legislation in the present Congress aimed at eliminating counterfeit imports,<sup>74</sup> while the U.S. International

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<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 15.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 14-15.

<sup>73</sup> See generally *id.* at 17-18.

<sup>74</sup> S. 875 and H.R. 2447, which provide treble damages for counterfeiting as well as criminal sanctions.

Trade Commission has commenced an investigation on the subject.<sup>75</sup> Taiwan has made major steps toward solving the counterfeiting problem, and AIT has played an active role, meeting jointly with the CCNAA and with members of the International Anti-Counterfeiting Coalition and attorneys for several U.S. industry associations.

The counterfeiting problem has broad implications for Taiwan. Its existence is a disincentive to certain types of foreign investment and technology transfer, since foreign firms risk the pirating of their technology.<sup>76</sup> At the same time, however, Taiwan's industry is poised at the point where local industries are able to benefit from skilled imitation, and counterfeiting makes affordable goods available locally.<sup>77</sup>

In January 1983, Taiwan implemented new trademark laws raising the maximum jail term for counterfeiting to five years and, more importantly, eliminating the defendant's option of buying his way out of jail by paying a nominal fine.<sup>78</sup>

Regarding copyright protection, in August 1983 the Executive Yuan passed new laws, yet to be approved by the Legislative Yuan, raising the maximum jail term to three years from two, increasing the maximum fine to US\$6,750 from US\$450, and eliminating the buy-out option.<sup>79</sup> New patent laws have also been proposed but are in a much earlier procedural stage.<sup>80</sup> Finally, in March 1983 a Taiwan intermediate court of appeals overturned a lower-court decision that had denied standing to an American computer company, Apple Computer, Inc., to sue for copyright infringement on software

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<sup>75</sup> ITC Investigation No. 332-158. See also, David Simon, "Legal Developments in US-ROC Trade from January 1, 1979 through October 31, 1982," *International Trade Law Journal* (to be published, autumn 1983).

<sup>76</sup> See *Economic Trends*, July 1983, *supra* note 45 at 17-18; see also, "Taiwan Crackdown on Fakes Beginning to Show Success," *Asian Wall Street Journal Weekly*, Vol. V, No. 37, p. 16 (September 12, 1983).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

rights in Taiwan.<sup>81</sup> Based on the national-treatment provisions of the 1946 US-ROC Treaty of Friendship, Commerce and Navigation, this decision granting standing in trademark cases to U.S. corporations not registered to do business in Taiwan has helped to diffuse tensions over the counterfeiting issue.

### Conclusions

The severance of US-ROC diplomatic relations in December 1978 caused a palpable shock to U.S.-Taiwan relations. The shock was rather short lived, however, as the swift passage of the Taiwan Relations Act reassured traders and investors alike. As a result, Taiwan has retained its position as a major trading partner of the United States, ranking seventh in total two-way trade in 1982. Thus on a macroeconomic level, there can be little doubt that the TRA has adequately protected U.S. and Taiwanese interests in bilateral economic relations.

The current problems and issues in U.S.-Taiwan economic relations are not linked to the TRA, but are the result of the strength, rather than any weakness, of U.S.-Taiwan trade ties. The principal problems on this count are the continuing U.S. deficit in bilateral trade and the general issue of commercial counterfeiting. The latter issue appears headed toward amelioration, but the trade-deficit problems will likely remain serious. As a result, Taiwan faces a substantial risk of protectionist measures from affected U.S. industries.

Regarding the TRA itself, few changes appear warranted. Researchers and practicing lawyers would not doubt benefit from publication of the full text of AIT-CCNAA agreements — if not in the formal State Department treaty series then perhaps in the *Federal Register*. This change could be accomplished by administrative procedures, without amending the TRA, but any such publication would doubtless be opposed

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<sup>81</sup> *Id.* The text of the decision will be published in 2 *Chinese Yearbook for International Law and Affairs* (1982).



by the PRC as evidencing official relations. A second TRA change that would benefit both scholars and practitioners would involve reinstatement of semiannual reports to Congress. Such an amendment would increase the transparency of AIT's operations and help to ensure meaningful Congressional oversight of U.S.-Taiwan relations, while deflecting the criticism that too many U.S. decisions regarding Taiwan are made by a small group of people operating outside public scrutiny.

In spite of the desirability of these changes, I do not believe the TRA should be opened for amendment at the present time. The Act is accomplishing its goals, and it would be preferable to avoid confronting the PRC with volatile TRA issues, even issues of form, in the months before a presidential election when the Administration is attempting to smooth out U.S.-China policy after numerous recent setbacks.

## 臺灣關係法對中美經濟關係的意義

西門大偉

### 摘 要

本文探討臺灣關係法對中美經濟之影響，並提出若干改進意見，以使其更臻完善。證據顯示，就當前政治與外交的情勢而言，臺灣關係法的架構確實適用於中美經濟關係。美國在臺協會與北美事務協調會的有關人士也一致認為，在目前政治、外交的重重限制下，該法也足以維繫及促進中美雙方的經濟關係。此外，一九七九年以來的貿易及投資統計數字，也足以證明中美商業關係的持續成長。同時，根據唯一與臺灣關係法相關的法院判例的見解，該法非但達到其立法目的，並且為該法一項重要條款之法律基礎，提出強而有力的辯解。

至於臺灣關係法尚待改進之處，本文不擬討論利害相關的三方（美國、中華民國、中共）的立場。筆者身為國際貿易律師，業務深受該法影響，因此就切身問題提出幾點改進的建議：第一，中美（即北美事務協調會與美國在臺協會）所簽訂的協議，應刊載在美國政府所編輯的國際條約及協定彙編，而不應刊載在聯邦政府公報；第二，美國在臺協會應定期舉行業務報告，以便所有對中美關係有興趣的學界、法界、政界人士，能夠獲得完整的資料，以判斷此法的運作情形；第三，美國應努力將有關中華民國的資料，重新臚列於世界銀行的出版品上。

雖然以上的建議可以經由行政措施來達成，然而筆者認為，鑑於美國當前的政治局勢，此時修改臺灣關係法是不可能且不討好的。