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Clyde D. Stoltenberg  
*University of Michigan*

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# OVERVIEW: U.S.-KOREA AND U.S.-TAIWAN TRADE LAW ISSUES IN COMPARATIVE PERSPECTIVE

*Clyde D. Stoltenberg\**

Since the mid-1950s, the economies of Korea and Taiwan have achieved remarkable results, with annual growth rates of ten percent not unusual in some years.<sup>1</sup> During the past couple of decades, they have relied heavily on export trade, particularly with the United States, to maintain rapid growth rates and continued economic development.<sup>2</sup> In 1988, for example, Korea and Taiwan enjoyed a combined trade surplus with the United States of \$21.6 billion on total trade of \$68.4 billion.<sup>3</sup>

The U.S. trade relationships with Korea and Taiwan came under increasing scrutiny and pressure during the 1980s. With respect to imports to the United States from Korea and Taiwan, this pressure was manifested by a growing number of dumping and countervailing duty proceedings and the imposition of voluntary restraint agreements ("VRAs"). Pressures similarly increased to open the markets of Korea and Taiwan to exports from the United States; although neither Korea nor Taiwan was ultimately designated as a priority "Super 301" target, both came under close scrutiny in the process. At the same time, the very success of their economies has created new problems with which Korea and Taiwan must cope—among them are labor un-

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\* Clyde D. Stoltenberg is the Executive Director of the East Asia Business Program at the University of Michigan.

1. Many studies have documented and sought to explain the reasons for this economic success. Some of the more significant studies in the case of Taiwan are T. GOLD, *STATE AND SOCIETY IN THE TAIWAN MIRACLE* (1986); S. KUO, *THE TAIWAN ECONOMY IN TRANSITION* (1983); *ECONOMIC GROWTH AND STRUCTURAL CHANGE IN TAIWAN* (W. Galenson ed. 1979); S. HO, *ECONOMIC DEVELOPMENT OF TAIWAN, 1860-1970* (1978); C. LIN, *INDUSTRIALIZATION IN TAIWAN, 1946-72* (1973); and in the case of Korea, S. CHO, *DIRECTION OF KOREAN ECONOMIC DEVELOPMENT* (1981); E. MASON, M. KIM, D. PERKINS, K. KIM, & D. COLE, *THE ECONOMIC AND SOCIAL MODERNIZATION OF THE REPUBLIC OF KOREA* (1980); L. JONES & I. SAKONG, *GOVERNMENT, BUSINESS, AND ENTREPRENEURSHIP IN ECONOMIC DEVELOPMENT: THE KOREAN CASE* (1980); K. S. KIM & M. ROEMER, *GROWTH AND STRUCTURAL TRANSFORMATION* (1979); C. FRANK, K. S. KIM & L. WESTPHAL, *FOREIGN TRADE REGIMES AND ECONOMIC DEVELOPMENT: SOUTH KOREA* (1975).

2. See Barrett & Chin, *Export-oriented Industrializing States in the Capitalist World System: Similarities and Differences*, in *THE POLITICAL ECONOMY OF THE NEW ASIAN INDUSTRIALISM* 23 (F. Deyo ed. 1987).

3. Brooks & Brick, *A "Super 301" Trade Ruling: Too Early for Seoul and Taipei*, *BACKGROUND*, May 25, 1989, at 1 (Asian Studies Center).

rest, currency appreciation, and inflation.<sup>4</sup>

At the same time that U.S. trade pressures on Korea and Taiwan have increased, the system of law and regulation providing the basis for such interaction has itself come under review. Significant U.S. trade law amendments were enacted in 1984 and 1988, and the Uruguay round of multilateral trade negotiations under GATT was initiated in 1986. However, opinion remains divided over how the United States should proceed. During the past couple of years, the debate has sharpened "between those who favor free trade and those who opt for so-called managed trade, in which the government would play a bigger role in trying to cut the trade deficit and shape industrial policy."<sup>5</sup> The environment in which this debate is conducted is one in which authority over trade issues remains dispersed throughout the government and in which diplomatic and political considerations often still outweigh economic factors when trade questions are decided.<sup>6</sup> In recent months, our trade policy has achieved its goals in some areas<sup>7</sup> and fallen short in others.<sup>8</sup>

In this context of dynamic change and increasing competition, it becomes even more important for us to know what the impact of our trade law structure is on both our trading partners and ourselves. Peter Ehrenhaft has complained that "we really don't know what the effect of our trade laws is, and we have been afraid to find out."<sup>9</sup> Although there are not many of them, the recent studies which do exist examining the impact of our trade laws in the context of particular bilateral relationships often reveal aspects in which the laws' effects were not exactly intended or expected.<sup>10</sup> In some cases, the immediate

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4. See, e.g., Clifford & Moore, *Squeezed by Success*, FAR EASTERN ECON. REV., Mar. 16, 1989, at 84-85; Hoffman, *Taiwan Braces for an Export Crisis*, N.Y. Times, Dec. 13, 1988, at D1, col. 3; Chira, *Now, Korea Must Face Its Success*, N.Y. Times, Sept. 29, 1988, at D1, col. 3.

5. Farnsworth, *Study on Trade Fails to Reach a Consensus*, N.Y. Times, Dec. 19, 1989, at D2, col. 3.

6. Farnsworth, *Why Trade Remains a Jumble*, N.Y. Times, Jan. 29, 1989, at C4, col. 3.

7. For example, in December the Bush administration announced that "countries providing two-thirds of the steel imported into the United States had signed agreements to end government subsidies such as low-cost loans and export incentive payments that help their steelmakers." Farnsworth, *Pacts to Ban Subsidy of Steel Set*, N.Y. Times, Dec. 13, 1989, at D1, col. 6.

8. At the same time that accords to end steel subsidies were being signed, the head of U.S. Memories (the proposed cooperative venture among competing U.S. computer memory chip manufacturers formed for the purpose of reducing the dependence of America's computer companies on Japanese component suppliers) announced that the venture was scaling back its fundraising goals to keep the project alive. Pollack, *U.S. Chip Plan Short of its Goals*, N.Y. Times, Dec. 13, 1989, at D1, col. 3. The effort has since failed. Pollack, *Memory Chip Cooperative is Officially Declared Dead*, N.Y. Times, Jan. 16, 1990, at 27.

9. Symposium—*American Trade Policy: Actors, Issues, Options*, YALE L. & POL'Y REV. 15 (Special Issue No. 1, 1988) [hereinafter *Symposium*].

10. C. PRESTOWITZ, *TRADING PLACES: HOW WE ALLOWED JAPAN TO TAKE THE LEAD* (1988); A. RUGMAN & A. ANDERSON, *ADMINISTERED PROTECTION IN AMERICA* (1987) (U.S.-

goal of a trade provision may have been met, but the longer term impact on U.S. competitiveness may have been less salutary.<sup>11</sup>

Our symposium constitutes an attempt to respond to some of these issues by examining the impact of U.S. trade law on our economic relationships with Korea and Taiwan. It builds on recent literature comparing the approaches Korea and Taiwan have taken toward economic development—similar in their emphasis on exports and the U.S. market, but different in many other particulars.<sup>12</sup> It seeks to explore these issues from the standpoint of all the players involved.

Obviously, the legal and regulatory structures of the United States, Korea and Taiwan governing foreign economic and trade relationships provide the foundation for resolution of disputes and enforcement of policy. Judith Hippler Bello, in her keynote observations on the outlook for the GATT Uruguay Round and prospects for the future, provides a good starting point for the more particularistic analyses to follow. Warren Maruyama addresses key U.S. legal provisions in his

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Canada): J. WHEELER & P. WOOD, *BEYOND RECRIMINATION: PERSPECTIVES ON U.S.-TAIWAN TRADE TENSIONS* (1987); D. YOFFIE, *POWER AND PROTECTIONISM: STRATEGIES OF THE NEWLY INDUSTRIALIZING COUNTRIES* (1983).

11. For example, a 1982 International Trade Commission ("ITC") study analyzing steel voluntary restraint agreements and television and footwear order marketing arrangements concluded that, as expected, the restraints had served the purpose of limiting U.S. imports of the subject products. United States International Trade Commission, *Economic Effects of Export Restraints* (USITC Pub. No. 1256, 1982). Because the volume of imports declined and domestic prices increased, domestic producers in the three industries were able to expand production to meet market demand, exerting a favorable impact on employment. *Id.* However, significant substitutability of exports occurred from nonrestraining countries with respect to products generated by the less capital-intensive industries, and the subsequent ability of the U.S. industries to compete with imports was mediocre at best. *Id.*

Similarly, David Yoffie has made a convincing argument for the proposition that although the textile Multifiber Arrangement and footwear Order Marketing Arrangement ("OMA") might initially have appeared to be disastrous for the NICs, they were ultimately not so restrictive and harmful as feared. During the late 1970s, in spite of the Multifiber Arrangement and the OMA, the value of textile exports from Korea and Taiwan to the United States increased 128% and 97.5%, respectively, and the value of shoe exports from Korea and Taiwan to the United States increased 53.1% and 85.5%, respectively. D. YOFFIE, *supra* note 10, at 166, 199. By raising prices, upgrading existing product lines and finding alternative buyers, *id.* at 159, less powerful exporting countries were able to turn to their advantage the adverse situation initially resulting from the imposition of such measures by the United States.

12. See generally Clifford & Moore, *Squeezed by Success*, FAR EASTERN ECON. REV., Mar. 16, 1989, at 84-85; Clifford, *Down Different Roads*, FAR EASTERN ECON. REV., Mar. 16, 1989, at 86-87; Clifford & Moore, *Overseas Attractions*, FAR EASTERN ECON. REV., Mar. 16, 1989, at 88-89; J. WHEELER & P. WOOD, *supra* note 10; THE POLITICAL ECONOMY OF THE NEW ASIAN INDUSTRIALISM (F. Deyo ed. 1987); MODELS OF DEVELOPMENT: A COMPARATIVE STUDY OF ECONOMIC GROWTH IN SOUTH KOREA AND TAIWAN (L. Lau ed. 1986).

For example, the proliferation of small- and medium-size companies in Taiwan stands in contrast to the comparatively larger business enterprises and combinations more frequently found in Korea (and Japan). Deyo, *State and Labor: Modes of Political Exclusion in East Asian Development*, in THE POLITICAL ECONOMY OF THE NEW ASIAN INDUSTRIALISM 182, 195 (F. Deyo ed. 1987). With respect to government-business relations, commentators have also pointed out distinct differences between Taiwan on the one hand and Korea (and Japan) on the other. T. GOLD, *supra* note 1, at 126; see also J. WHEELER & P. WOOD, *supra* note 10, at 14-19.

analysis of trade law actions involving imports from and exports to Korea and Taiwan. Paul S. P. Hsu, Lawrence S. Liu and David Lavery provide valuable analysis of the current state of international trade and investment regulations and developing jurisprudence in Taiwan and Korea, respectively. In view of the fact that most doctrines in trade law have been observed to originate in the United States,<sup>13</sup> an issue of particular practical and theoretical significance in this regard is the degree to which Korea and Taiwan may be following or departing from the American model as their own import control regimes evolve to respond to the new environment resulting from their rapid economic development.<sup>14</sup>

The legal and regulatory structures in Korea and Taiwan, of course, are a product of the political process in each country, and the symposium proceedings are greatly enriched by the observations of Vice Minister P. K. Chiang and Director Jong-Kap Kim addressing the relationship between U.S. trade law regulation and the development of responsive government policies in Taiwan and Korea, respectively. Jimmy Wheeler's analysis of how the comparative development strategies of Korea and Taiwan are reflected in their respective international trade policies brings the economist's perspective to bear on these issues.

An important player in U.S. trade law proceedings whose position is often overlooked in both commentary and scholarly analysis is the respondent. David Yoffie's analysis of the effective response to U.S. import control measures by the shoe and textile industries in the newly industrialized countries ("NICs") is a very useful contribution, as is Taeho Bark's product-by-product analysis of the economic consequences of voluntary export restraints in Korea.<sup>15</sup> Still, not enough has been done to analyze the impact of trade law proceedings on foreign manufacturers affected by them. As Peter Ehrenhaft has written,

For years, I have been urging the U.S. Government, if not independent scholars, to undertake a serious study of the impact of the antidumping law on U.S. trade. What effect did initiation of a case have on imports during the investigation? What further effect did an affirmative preliminary determination have on the volume of imports or their prices? More important, what effects were observed a year or two or ten after a final order was entered? How was the market changed? Did the injured U.S.

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13. Bronckers, Book Review, 21 J. WORLD TRADE L. 121 (1987).

14. Dumping proceedings initiated in Taiwan since 1986, for example, have involved a variety of products ranging from Indonesian plywood to Korean VCRs to American hepatitis B diagnostic kits.

15. D. YOFFIE, *supra* note 10; T. BARK, THE HISTORY, INSTITUTIONAL FRAMEWORK AND ECONOMIC CONSEQUENCES OF VERS IN KOREA (Korea Development Institute Working Paper No. 8917, 1989).

producers of the like products (that had to have been "injured" to permit the imposition of duties), recover from their hurt? If not, why not? No one asks; no one answers.<sup>16</sup>

In an attempt to pursue this line of inquiry, the symposium includes two panels of senior representatives of companies in Taiwan and Korea which have been involved in U.S. trade law proceedings or affected by them. Their prepared remarks and responses to inquiries address the effect of such proceedings on business planning and strategy. The Taiwan business panel includes representatives of several industries of current importance: M. H. King (steel), K. Casey Chuang (machine tools), W. S. Lin (consumer electronics), and Alvin H. Tong (computers). The presence of Young J. Kim and S.K. Lee to address the impact of such proceedings on the Korean consumer electronics and steel industries, respectively, not only reveals the Korean response but also provides some basis for comparison with corresponding industries in Taiwan. In addition to the overseas manufacturer/exporter, the American importer also frequently becomes enmeshed in such proceedings as a respondent. Although there is common ground in the responsive positions of exporter and importer vis-a-vis the petitioner, their interests may also differ in important respects, and Valerie Slater's contribution elucidates the importer's perspective.

Finally, any discussion of the U.S. bilateral trade relationships with Korea and Taiwan would be incomplete without consideration of the shifting global environment in which they exist. Commentators have observed that if the transfer of capital, factories and technology from Japan, Korea, and Taiwan to Thailand, Malaysia, Indonesia, and the Philippines continues at the current pace, trade within the region will soon surpass that with the United States and Canada.<sup>17</sup> The concurrent emergence of more clearly defined trade blocs in both North America, as a result of the U.S.-Canada Free Trade Agreement and possible initiatives including Mexico, and Europe as it moves toward removal of internal trade barriers in 1992, makes regional relationships increasingly important. Both Australian Prime Minister Bob Hawke and U.S. Secretary of State Baker have advocated creation of a consultative body along the lines of the Organization for Economic Cooperation and Development to promote closer Pacific ties.<sup>18</sup> The observations of Jean-François Bellis, Linda Lim, and Stanley Lubman

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16. Ehrenhaft, Book Review, 20 *LAW & POL'Y INT'L BUS.* 347, 352-353 (1988) (footnote omitted).

17. Kraar, *Asia's Rising Export Powers*, *FORTUNE*, Fall 1989, at 43 (Special Issue).

18. N.Y. Times, June 26, 1989, at D9, col. 4; R. BROOKS, *THE U.S. ROLE IN AN ASIA-PACIFIC ECONOMIC FORUM* (The Heritage Lectures No. 227, 1989).

analyze the impact regional developments are having on the U.S. trade relationship with Korea and Taiwan.

Commentators have characterized the U.S. approach to regulating imports as legalistic and judicialized "to a degree unmatched by other nations,"<sup>19</sup> and our trade policy as "mainly reactive."<sup>20</sup> In such a context, it is dangerous not to know what the effect of our trade laws is, and even more risky to be afraid to find out. We hope that our symposium, by bringing together concerned businesspeople, trade lawyers, and policymakers, contributes to the knowledge and understanding necessary to improving the trade relationship of the United States with both Korea and Taiwan.

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19. Koh, in *Symposium, supra* note 9, at 7.

20. Horlick, in *Symposium, supra* note 9, at 44.