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THE IMPACT OF U.S. TRADE LAW ON GOVERNMENT POLICY MAKING IN THE REPUBLIC OF CHINA

*P.K. Chiang**

Since President Reagan signed the Omnibus Trade Act on August 23, 1988, the U.S. government has completed a series of investigations according to the provisions of the Act. Consultations aimed at forcing its trading partners to adjust their trade policies which are regarded as unfair to U.S. trade have also been held in the past ten months or so. Being one of the most important trading partners of the U.S. — both in terms of its overall trade volume and its surplus with the U.S. — the Republic of China on Taiwan (ROC) seems to have become a target of retaliatory measures implied in the Act. During the period from August of last year to this date, the U.S. has consulted intensively with the ROC on various trade issues. The possible implementation of the Trade Act seemed to have been implied throughout most of the talks. Therefore, the results of consultations often had an impact on the trade policy of the ROC. On the other hand, the adjustments that the ROC has made to cope with the new environment of the world economy have also been instrumental in formulating the ROC's new trade policy. All in all, the ROC's trade policy has been transformed, over the past twenty-five years, from an export-oriented one to the present one which encourages imports with a view toward balancing the two-way trade. In order to carry out this policy, the ROC has adopted a series of measures not only to expedite the liberalization of its market, but also to increase its purchases from the U.S.

THE PURPOSE OF THE U.S. TRADE ACT

Before I go deeper into this topic, I wish to examine the purpose of the U.S. Omnibus Trade Act and its legal background, from my viewpoint, to tell you how we assess the Act and the influence the Act is intended to have on the U.S.'s trade partners.

1. *Elimination of Double Deficits*

With the exceptions of the years 1974 and 1975, the U.S. has suffered trade deficits since 1971. These deficits, along with a federal

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budget deficit, have been the two major problems confronting the U.S. government in the eighties. They have not only reduced the employment level of the U.S., but also have affected the debt position of the U.S. government. As a result, protectionism was revived. Measures with protectionist sentiment, such as quota control systems, were regularly imposed. Trade acts such as the Trade Act of 1974 and the Trade and Tariff Act of 1984 have been introduced with a view toward opening foreign markets and enhancing the competitiveness of U.S. products. These laws have provided a complete set of legal procedures which serve as a basis for the U.S. government to enforce its actions to open foreign markets for U.S. products. In order to achieve effectively the goals set forth in the acts, the power of imposing retaliation upon trade partners was also granted to the Administration by the U.S. Congress.

2. Intensified Retaliation Against Exchange Rate Manipulation and Home Market Closure

The scope of retaliation and the application of the laws have been intensified with the worsening of the U.S. trade deficit. The Omnibus Trade Act of 1988 was thus enacted to strengthen the power of the existing laws and to speed up the recovery of the competitiveness of U.S. products. It is also equipped with instruments that aim to redress the U.S. position of trade imbalance by requesting the trade partners not to manipulate their exchange rate or accelerate the opening of their markets. The Act also expands the scope of its application by adding export targeting, denial of worker's rights, and foreign cartels to the list of "unreasonable" trade practices, and sets a timetable of three years for the removal of unjustifiable and unreasonable trade practices.

THE ROC'S POSITION TOWARD THE TRADE ACT

1. The ROC Advocates Free Trade

The ROC has always advocated free trade because it has benefited from the open trade philosophy so promoted in the international community. We appreciate the U.S. efforts in seeking a free and open world trade system as proclaimed in the Omnibus Trade Act. We fully recognize that a free and open world trade system helps to promote the growth of world trade and serves as a vehicle to enable each country to become competitive in manufacturing products on the principle of comparative advantage.

2. *The ROC Advocates Fair Trade*

We also support the idea of establishing a fair trade system under which all trading countries compete with each other on a fair basis. We are convinced that only through the establishment of a fair trade system can we promote our trade in an orderly manner. This again helps to promote world trade.

3. *The ROC's Reservation about the Act*

In view of the above, I want to point out that we share President Reagan's viewpoints, expressed in his statement when he signed the Act. He said it is possible that the Act could lead to an import fee that would be illegal according to international law and inconsistent with the U.S. goal of moving toward free world trade. He also commented that the language of the Act claiming to require the executive branch to negotiate with foreign countries on certain specified trade topics is inconsistent with U.S. constitutional principles. Finally, he disagreed with the provisions that assign specific authority to executive officials.

While echoing President Regan's viewpoints, I am not prepared to comment on the constitutionality of the Act. However, I wish to point out that the transferal of authority to decide unfair trade cases from the President to the USTR will no doubt insulate U.S. trade policy from taking into consideration the political and social background of the issues involved, and might damage good relations established in other fields with its trade partners.

My own experience of holding consultations with the U.S. indicates that some issues, such as trade in certain items with a small trade volume, ought not to become a concern for the U.S. However, issues of such kind have been raised often, and in some cases, have pushed the two sides into a corner, with resulting harm to the relationship of the two countries. It could have been even worse when section 301 was wielded as a weapon to seek compromise from our side. It often provoked emotional reaction from our people and made the problem even more complicated. Furthermore, the Act makes it easier for a U.S. industry to file an unfair trade case, and thus increases the number of U.S. industries willing to put more pressure on, and unreasonable requests toward, the U.S. government.

THE ROC'S TRADE POLICY

The ROC is not a member of GATT. However, a trade agreement was signed in 1978 between the ROC and the U.S. in which the ROC committed itself to trade with the U.S. within the framework of

GATT. As a result of that agreement, trade relations between the ROC and the U.S. have grown rapidly. In 1979, according to our customs statistics, ROC's exports to the U.S. stood at U.S. \$5.7 billion, while imports from the U.S. stood at U.S. \$3.4 billion. In 1988, our exports to and imports from the U.S. increased to U.S. \$23.4 billion and U.S. \$13 billion respectively, resulting in a trade surplus of U.S. \$10.4 billion in our favor. The ROC was the fourth largest supplier to the U.S. and the sixth largest market for U.S. products. In terms of trade surplus, we ranked second among the U.S. trade partners, next only to Japan. Our foreign exchange reserve had grown to U.S. \$75 billion at the end of August. The huge surplus and reserve certainly have not only resulted in potential trade friction between our two countries, but also have created an inflationary pressure on our economy. In coping with the enactment of the U.S. Trade Act, the ROC has taken a number of important measures to reduce our trade surplus with the U.S.

1. *The Liberalization of the ROC's Foreign Exchange Rate System*

On the liberalization of its foreign exchange rate system, the ROC has accelerated its pace to adjust its foreign exchange policy, even though the exchange rate of NT dollar against U.S. dollar significantly appreciated in 1986 and 1987. Since April 1989, we have relaxed many practices that control the flow of foreign exchange. The limit on annual foreign exchange inflow was raised to \$500,000 per entity in June of 1989, and again to \$1,000,000 in November. The exchange rate is determined freely in both the interbank trading and the retail trading over U.S. \$10,000 by a bid-asked quotation system. The former limits on daily fluctuations of the interbank rate are consequently rescinded. Now our foreign exchange trading system is similar to that of other major foreign exchange markets. All of the above measures provide a means for our foreign exchange system to redress our trade imbalance with the U.S.

2. *Market Liberalization: The Action Plan of the ROC*

On the liberalization of our market, the basic policy of my country is to transform our economic structure to increase domestic demand for imports and thereby generate the growth of our GNP and a reduction of our trade surplus. Toward this end, a plan entitled "The Action plan for Strengthening the Economic and Trade Ties with the United States" was promulgated by my country in January 1989. This plan outlines the basic policy that we are going to implement in the next four years to reach the following objectives:

- 1) Increase domestic demand's share of the GNP level to 93.7% and reduce total trade surplus to 4% of our GNP by 1992.
- 2) Reduce the volume of our exports to the U.S. to one-third of the volume of total exports.
- 3) Set up an implementation schedule to be followed by government ministries and agencies concerned, thereby ensuring that the public and the private sectors will pursue such policy and make necessary adjustments in an orderly manner.

Under the objectives of the Plan set forth above, the ROC has taken the following actions since January 1989:

1) *Tariff reduction.* In the Action Plan, we aim to reduce the average nominal duty rate from the present level of 12.57% to 7% by 1992. In terms of average effective duty rate, it will be reduced from the present 5.66% to 3.5%, which will be comparable to those prevailing currently in the industrialized countries. In August this year, we reduced import tariffs on a total of 4,738 items by an average of 23%, which will bring the present average effective duty rate down to a level even lower than the targeted 4.7% as set forth for this year in the Action Plan.

2) *The relaxation of import control and the simplification of import procedure.* In the Action Plan, we committed ourselves to review and to liberalize restriction on certain imports that were previously subject to import restrictions. We also planned to establish a "Negative List" under which only specified items are required to obtain import licenses for importation to the ROC. Items so specified in the list will be reviewed from time to time and be reduced to a minimum in line with the GATT rules by which import restrictions apply only for the reasons of national security, human health, pollution and defense. Based on these commitments, we have so far lifted import restrictions on a total of 556 items since January 1989. A total of 240 items of agricultural products have also been included.

3) *The opening of the ROC's service industry.* Recognizing the service industry's importance in future international trade, my government has also implemented a series of liberalization programs to open our service market to foreign competition. The programs cover all the areas including transportation, banking, insurance and securities. With respect to transportation, we will gradually open our aviation and inland markets to the extent that foreign companies are allowed to operate air cargo terminals outside of the airports and that foreigners will be permitted to engage in the business of trucking. In banking, we have recently amended our Bank Act and will consider permitting foreign bank branches to accept savings deposits under that Act.

3. *Increased Protection of Intellectual Property Rights*

The so-called Special 301, which provides legal protection for intellectual property rights (IPR), is another provision that influences developing countries the most. In May 1989, the ROC was designated as having failed to provide adequate protection for intellectual property rights, and was included in the priority watch list which required countries listed to make improvements within five months. Realizing the importance of this issue, my country has made it clear in the Action Plan that the strengthening of intellectual rights protection is also a national goal. Toward achieving this goal, we have amended our laws in regard to the protection of copyright, trademark and patent rights. Efforts have also been made to educate the public on the importance of IPR protection. Talks on how to enhance our actions effectively to prevent IPR infringement had also been concluded with the U.S. during the period when the USTR reviewed the May watch list. On November 1, 1989, the USTR announced the result of its review and removed the ROC from the priority watch list to the ordinary watch list, a sign reflecting the ROC's performance on the protection of intellectual property rights.

4. *The Diversification of Our Markets*

As mentioned above, we are the U.S.'s fourth largest supplier, and we are the sixth largest buyer of U.S. goods. Our two-way trade with the U.S. represented 30% of our GNP in 1988. To reduce our dependence on the U.S. market, we are making great efforts to diversify our market from the U.S. to other countries.

5. *Actions Focusing Particularly on ROC-US Trade*

We believe the measures that we have taken help to ameliorate the trade imbalance between the ROC and the U.S. According to our customs statistics, in October 1989, our trade surplus with the U.S. amounted to U.S. \$10.2 billion. Compared to the surplus for the same period of the previous year (excluding gold), this reflects a reduction of 10%. However, we have also noticed that our trade deficit with Japan has increased by 13%, reaching U.S. \$5.7 billion. It seems that Japan is a free rider of our liberalization program. This leads us to believe that the appreciation of the New Taiwan dollar and the opening of our market do not provide a complete solution to our trade surplus problem with the U.S. We have therefore taken some other steps focusing particularly on ROC-U.S. trade. One of the steps is a proposal to establish a Free Trade Area agreement between the U.S. and the ROC.

Such an agreement, aimed at the removal of all trade barriers between our two countries, would provide the U.S. with a far better chance than other countries in our market. Other steps that we took to provide the U.S. with a better chance of selling products in our market are as follows:

a) *Assistance in Promoting U.S. Products.* To assist the U.S. in promoting sales in our market, my government has included in our Action Plan certain measures especially designed for U.S. businessmen. These measures include the Fix Relending Facility under which our EXIM Bank provides American exporters with loans to help them market their products in Taiwan. We have also sent special procurement missions to the U.S. to identify possible supply sources. So far fifteen such missions have been sent to the U.S. since 1978, leading to purchases of over U.S. \$11 billion. We also sponsored trade shows and encouraged the participation of U.S. companies to introduce their products in the ROC's market. U.S. Products Shows, which serve this purpose, were held twice since December, 1988, and have generated an amount of U.S. \$14.8 million in business opportunities for U.S. businessmen.

b) *Limit the Source of Supply to the U.S. Only.* There are some other measures that are regarded by our other trading partners as discriminatory and not in conformity with GATT principles. At present, only the U.S. and European countries are permitted to export their cars to Taiwan. Moreover, some procurement projects by government agencies or public enterprises are limited to U.S. and European countries and, in some cases, even limited to U.S. suppliers only. All this explains one thing: we are doing everything possible to increase our imports from the U.S.

THE PROSPECT OF ROC-U.S. TRADE RELATIONS

1. *The Preclusion of the ROC from the Super 301 List*

The U.S. has long been our most important trading partner, and the rapid growth of our trade with the U.S. has been a major factor in our fast economic growth. Despite our efforts to diversify our market to include other areas such as Europe and Japan, we expect the U.S. to continue to remain our most important trade partner. With the guidelines set forth in the Action Plan, I believe that our limited restrictions on imports of industrial products will be eliminated almost entirely in the very near future. The preclusion of the ROC from the Super 301 investigation announced in May this year demonstrated that the U.S. has positively recognized the ROC's achievement in this area. Trade

issues will, therefore, in my opinion, be focused more on agricultural and service sectors in the coming years.

2. Future Focus of the U.S.'s Interest in the Taiwan Market

With respect to agriculture, except for a few items that are by nature very sensitive and by which a large number of our farmers earn their living, most of our products are open to foreign competition, with the U.S. being our strongest competitor. Import tariffs on these products are also low. Because 15.3 percent of our population is engaged in agriculture on a limited amount of arable land, we still face certain difficulties in making expeditious steps toward liberalizing our agricultural market. We will, however, strive to abide by the GATT restrictions against actions that distort trade, and maintain an agricultural policy by which subsidies to our farmers will be based more on income support than on price support.

With respect to the service sector, I believe more trade in service products of which the U.S. is competitive will make the U.S. more interested in securing a good share of the Taiwan market. More American firms are expected to operate their business in the service industry in Taiwan. Our demand for service products will also increase because of the continual increase of our per capita income. Take tourism for example: in 1987 a total of 448,000 tourists from Taiwan visited the U.S. This number increased to 686,000 in 1988. The active involvement of American business in this area will certainly help reduce the imbalance of trade between our two countries.

THE ROC'S INTENTION TO BE A GATT MEMBER AND ITS IMPLICATIONS FOR THE ROC'S TRADE POLICY

1. The ROC Benefits from the GATT Spirit

The ROC started to proceed with its industrialization program very late in the 1960's. As an island economy with very scarce natural resources, the ROC depends heavily on its foreign trade to sustain its economy. The last three decades saw the ROC grow from an almost under subsistence-level economy to one that is now approaching the threshold of a developed country. The reasons behind the ROC's success are many, but the one dominating reason is that the ROC has always cherished the concept of free trade that has been promoted by the GATT. Valuable assistance rendered to the ROC by the developed countries within the GATT framework has also played an important role in helping the ROC expand its foreign trade. For example, the ROC profoundly appreciates the GSP treatment ac-

corded by countries such as the U.S., Japan, Australia, Austria and New Zealand for decades. Our exports to these countries have therefore been very competitive and successful.

2. *The ROC is Willing to Assume More International Responsibility*

With a view to sharing our success with the rest of the world, we think now is the time for us to pay for our success by assuming more international responsibility. Besides our willingness to render technical assistance and loans through such means as the International Economic Cooperation and Development Fund, which was established last year to provide a total of U.S. \$1.1 billion low-interest loans to developing countries for use in their development projects, we have decided to apply, when the time is appropriate,¹ for GATT membership to assume more international responsibility. We have to accede to the GATT as a developed country even though our per capita income had just exceeded U.S. \$6000 in 1988 — a level far behind the standard definition of a developed country. No doubt our trade policy will be greatly affected by the GATT principles once our application is accepted. We will then review our trade policy from time to time to follow the language and spirit of the GATT. This will assure our trading partners of the stability and transparency of our future trade policy. We sincerely believe our membership in GATT will be a contributing factor to the continuous prosperity of the world economy.

1. The ROC has formally submitted her application for GATT Membership on Jan. 1, 1990.