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M. H. King  
*China Steel Corporation*

K. Casey Chuang  
*Far Eastern Machinery Company*

W. S. Lin  
*Tatung Corporation*

Alvin H. Tong  
*Acer Incorporated*

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## **PANEL DISCUSSION: THE IMPACT OF U.S. TRADE LAW ACTIONS ON BUSINESS DECISIONS IN TAIWAN**

### *Panelists:*

*M.H. King, Chairman, China Steel Corporation;*

*K. Casey Chuang, Chairman, Far Eastern Machinery Company;*

*W.S. Lin, President, Tatung Corporation;*

*Alvin H. Tong, Executive Vice President, Acer Incorporated*

### **M.H. KING**

In 1978, the deteriorating U.S. steel industry was unattractive to investors because of global overproduction, rising ecological standards and high labor costs. Unfortunately, the industry simultaneously faced keen competition from foreign producers. To stem the tide, many U.S. steel producers intensified their lobbying for protection against imports which were blamed as the direct cause of the deterioration of the steel industry.

At that time, the administrative and investigative procedures in unfair trade investigations were long and complex, so that the complainant generally had to wait thirteen months for any relief from the pressure of the alleged dumping or subsidies against which he filed the charges. The intensified lobbying led to the Solomon Report's recommendation of a speedier remedy, the so-called "Trigger Price Mechanism" ("TPM"), which automatically triggered an antidumping investigation if the price of any steel import entering the U.S. after April 30, 1978 was lower than a previously announced and periodically reviewed "Trigger Price." The TPM was the principal form of U.S. steel industry trade protection between 1978 and October, 1984, when the current Voluntary Restraint Agreement ("VRA") was introduced.

China Steel's blast furnace and steel-making plant began producing steel in July, 1977, shortly before the TPM was established. China Steel's annual capacity at that time was 1.5 million tons. Its product range was rather narrow, limited to heavy plate and long products. Good product image had yet to be established. China Steel (CSC) did not broaden its product line until 1981, when it began to produce thin sheets and plate. Thus, early on, CSC focused on establishing a prod-

uct image based on its limited product line and on putting its product on the market as soon as possible. CSC was burdened by a lack of competitiveness caused by its narrow product range. The company's production planning and scheduling were in a stage of infancy. Prices were determined by what the market in the consumer country (the R.O.C., U.S.A., Japan, or Southeast Asia) would bear. Unfortunately, the price set for the U.S. market was lower than the domestic price of steel, although higher than the price of steel sold to the U.S. by other countries.

Owing to lack of experience in production planning and scheduling, CSC delayed shipment on about 8000 tons destined for the U.S., thus causing the steel to arrive after the date of commencement for the trigger price mechanism. One may wonder whether CSC would have been subject to investigation if it had made the shipments before the deadline. In other words, under the pre-TPM procedures, would CSC have been deemed to have been "injuring" the U.S. steel industry or hindering new investment in the U.S. steel industry? It is hard to say. The final result was that the case was heard by three members of the International Trade Commission (out of a statutory membership of six, only five seats of which were actually filled). The vote was taken among only four members. A tied verdict (2-2) ruled that CSC had been dumping, based on CSC's effect on the limited West Coast steel plate industry.

What was the impact of this case on CSC's policy and practices? The dumping case occurred before CSC reached maturity and CSC was a victim of circumstances. However, it was a must for CSC to grow into a mature world-class steel company in order for it to continue to exist. Even as it was selling and shipping the allegedly dumped steel to the U.S., it was on its road to maturity. Whether the dumping case had occurred or not, CSC was on the way to becoming a world-class steel company. Based on the speaker's recollection of the decisions made, it may be said that at most the impact on CSC's operating practices and policies was to accelerate the process of reaching that goal.

Following the decision, there was a reduction in CSC's sales to the U.S. and a shift toward the more high-end products, for which quality differentiation took precedence over price differentiation. It is difficult to conclude whether these decisions were the result of the dumping case. Through competitive pricing in the domestic market, improved after-sale service, and intensive efforts in the area of quality improvement, CSC was able to command a larger share of the domestic market. Less steel was available for export, and the allocation of steel for

export to the U.S. naturally fell. This fact, coupled with the lower freight for shipments to neighboring countries, encouraged CSC to designate the product available for sale in neighboring markets.

What about the future? With the depreciated dollar and measures adopted by the U.S. steel industry to make it more competitive and to pull itself back into the black, I hope that the U.S. will become a free market for foreign steels, without any impediments such as VRAs and TPMs. At that time, CSC hopes there will be a stronger two-way trade in steel with the U.S., for the R.O.C. today is among the most open countries for steel imports. We hope the U.S. steel industry will refrain from urging the U.S. government to put up protective barriers.

In addition to the above remarks, I have the following comments on the U.S. trade law. I believe that some amendment is necessary to make them compatible with the GATT, or more in conformance with the principles of fairness to the respondent.

First, the GATT says that dumping duties should be only so high as necessary to offset any injury caused by the dumped goods. However, under U.S. law, the full amount of the dumping margin is always assessed against imports, even if the full margin much exceeds the amount necessary to offset the injury. Many cases can be cited in which dumping margins are far in excess of the underselling margins. In this regard many scholars have held the opinion that collection of dumping duties in the U.S. exceeds the amount envisioned by the GATT.

Second, under U.S. law the Commerce Department does not offset sales above fair value against those below fair value. For most product lines, the price curve does not exactly follow the cost curve, and as a result some items may be sold at prices above dumping levels and others at prices below dumping levels. In these situations, the Commerce Department calculations will total up the dollar value attributable to dumping margins, but they will not offset that total dumping by the corresponding amount by which other products are sold in the U.S. at prices above fair value (i.e., non-dumping prices).

This situation has serious consequences. Every manufacturer in the world makes different profit margins on different items in his product line and it is the overall sales revenue which ultimately determines profitability. The manufacturer cannot aim for the same level of profit on every item in his line. The Commerce Department calculations, however, ignore this commercial reality by failing to credit above-fair-value sales as an offset against below-fair-value sales.

As a final point, I want to point out that in the dumping systems of virtually every other country besides the U.S., it is possible for foreign

respondents to reach settlements of dumping charges and thereby avoid the huge expense and disruption of trade that accompanies a dumping case. In the U.S., however, the rules for negotiated settlements are so cumbersome that it is virtually impossible for any dumping case to ever reach a negotiated settlement. In fact, the only situations in which this has occurred were in cases involving steel and semiconductors—both huge industries in which the macroeconomic effects were widespread.

In most U.S. dumping cases, settlement is simply impossible. It is not unusual for the legal fees for a single company in a dumping case to exceed \$250,000, and in complex cases the fees may well exceed \$750,000. In addition to the fees for the investigation, there are fees for consultants of various types (economists, accountants, etc.) and fees for annual administrative reviews.

The inability to settle dumping cases under U.S. law adds tremendous “frictional” costs to trade, and creates uncertainty in the marketplace. Thus, a dumping case may be used simply as a form of harassment, since the American petitioning industry is aware that a negotiated settlement is impossible. This, in the opinion of the speaker, is not fair to the respondent.

I will first introduce Dr. K.C. Chuang. Mr. Chuang is Chairman and Chief Executive Officer of the Far East Machinery Corporation. He also serves as Chairman of Logitech and Cimtek, two companies that he founded in 1974 and 1976. Dr. Chuang holds a doctor’s degree in materials engineering from the Massachusetts Institute of Technology, and before he joined Far East Machinery in 1972, he had worked with Bendix and IBM in the field of project engineering and management. In addition to his executive duties, he is Executive Director of the Chinese National Federation of Industries and serves as the chairman of the Taiwan Association of Machinery Industries, Chinese Society of Mechanical Engineers, and the Taipei Chapter of the Society of Manufacturing Engineers. And so, now I give you Dr. Chuang.

#### DR. K.C. CHUANG

Thank you, Mr. King. Much of what I would like to discuss this morning has been covered by Mr. McGowan,<sup>1</sup> so I would add only a

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1. Editors’ Note: Due to an extremely busy schedule, Thomas McGowan, of Kaplan, Rossin, and Vecchi, Taipei, was unable to include his remarks from the Symposium before our publishing deadline. We apologize for any confusion this causes our readers.

few more points. I would like to talk to you about steel products and machine tools — two fields in which I am engaged.

First of all, I would like to add a few details about how unfamiliar the suppliers from Taiwan are with legal procedures. It was rather ironic that the first case of antidumping against a Taiwan supplier actually was brought against China Steel, which is, in our opinion, the most sophisticated supplier. As far as I know, it was one of the few companies that managed to carry out the program to reduce the dumping margin from thirty-four to zero percent in four years. Very few other companies have managed to do so.

The second point that I want to raise addresses the direct relevance of the dumping margin to the quantity of supply from Taiwan. I was going to use a graph, but it does not show any relationships, so I thought it was perhaps irrelevant. The most drastic change in the supply of steel from Taiwan to the United States took place during the last two years, due to appreciation of NT (New Taiwan) dollars, rather than the rate of the dumping margin. Again, this indicates that the external economic condition is more important.

One very important point is that, in most cases, people really have no market share in mind, so when they first sell to this country, they just quote and then sell. Now, if they were hit with an accusation of dumping, our experience shows that the true dumping then takes place. In other words, if you have a cancellation of an order, then you are stuck, and some steel products, like tubular goods, are very bulky and costly to keep in stock. So, now you really have to dump the goods, and you can either sell domestically very cheap, or you can export to other countries. In the case of some steel products, like tubular goods, the domestic specifications differ. We use ISO international standards in Taiwan, whereas, in this country, the standard is ASTM. Therefore, whatever we have intended for export would not meet the specifications of our domestic market. Moreover, the ASTM specifications are usually more demanding. In other words, it usually would cost more. But to sell them in the domestic market, you get only the domestic price, and therefore, it is true dumping. So, dumping actually took place *after* we were accused of dumping, and not so much before.

One more point that I want to bring up involves the computer tape. Somehow, the Commerce Department has a different computer system than ours. Practically none of our tape matches their machine, and they say that it is not possible for them to convert the tape. The tape is unusable, and it is therefore up to them to determine our constructed value.

One more very important point is that we have very high hidden costs in the domestic market. Additionally, in our typical distribution system, we will be paid five to six months after shipment of goods. Small firms cannot get financing from banks, so they have to rely on private channels to actually cash the check, and they have to pay sometimes as much as three percent per month interest. Moreover, domestic sales are very vulnerable to delinquent payment, or even to the bankruptcy of the purchaser. All this must be included in the domestic sales prices. A typical export, on the other hand, involves little credit risk. Because L/C provides the seller with cash right away, there is a substantial difference between the costs of domestic sales and the costs of exports. A cursory price comparison does not reveal these differences, and is therefore illusory.

Another important observation, which Mr. McGowan did not address (although he referred to it briefly) is what we call "cyclist entrepreneurs," those who operate without profit, but only maintain cash flow. They are willing to operate with no profit because the land of their plant site appreciates in value much more than they could possibly make from their business. Typical cyclists must simply keep on pedaling, or else they fall, as they would fall off a bicycle.

In the steel business, cyclists are common. They hold on to a large piece of land, and simply continue exporting at no profit. It is ironic that, even at no profit, cyclists seldom are able to produce quality goods for the domestic market; they are therefore very often export oriented. When the Department of Commerce comes to investigate, there are no domestic sales to use as comparisons. Absent such comparisons, the cyclists have a better chance of escaping the dumping accusation. It is interesting that the people who do actually dump seldom are accused of it.

The impact of antidumping actions can be very severe. In a case involving pipe fittings, the dumping margin started at thirteen to eighty percent, with twenty-nine percent to others. Four companies were involved. After the investigation, the dumping margins were actually increased, ranging from 37 to 138 percent. This, of course, severely damaged the industry and, according to the latest survey (the finding was made only on September 21 of this year, but orders are often cancelled while an investigation is taking place), the pipe-fitting people say that they have decreased production from 4500 tons to 700 tons. The number of manufacturers has dwindled from twenty to only five, with a reduction of employees from thousands to only about 600. They expect that exports will amount to less than four percent of their previous capacity, for a total of only about one million dollars.

One more subject that I want to address is the Voluntary Restraint Agreement (VRA) on machine tools. I am not familiar with the legal aspects, so I do not know whether a VRA amounts to a trade law enforcement mechanism. But it has had a very severe impact on the machine tool industry in Taiwan. The VRAs hit us totally by surprise, which we think was unfair. The Reagan Administration targeted four countries for the VRAs in 1986. We were requested to roll back our U.S. exports of six kinds of machine tools to our 1985 market share. Since Taiwan had a very small market share of two of these six items, we were asked to sign VRAs on four items.

This morning, someone asked our Vice-Minister how Japan, Korea and Taiwan are different. I would like to take this opportunity to point out that Taiwan has no formal diplomatic relationship with the U.S. In that sense, I think we are very often discriminated against, in comparison with the other two countries. The so-called VRAs provide a good example. The USTR handed us a draft of the arrangement and, from the very first meeting, threatened us with unilateral quotas if we did not agree to the arrangement. In Taiwan, we call these "*involuntary* restraint agreements," for they cannot be said to be voluntary. When the second negotiation took place in Tokyo (Washington, D.C. was the location of the first negotiation) we were so close to the deadline that we had to sign. We tried to persuade the USTR people to give us the same treatment as the other three countries — Germany, Switzerland, and Japan — but we were unsuccessful. Later we discovered that only Japan and Taiwan signed the agreement. Germany and Switzerland threatened to sue, and were ultimately able simply to ignore the U.S. One thing we found out after we signed the agreement was that, at the time of negotiations and signing, the U.S. government did not really have the authority to impose a unilateral quota or import restriction without signing a VRA first. I think it is unfortunate that our people were not adequately aware of the applicable law. When Congress finally provided the Executive with authority to impose unilateral quotas, we had already signed the VRA and thus could no longer object to the threatened quotas.

Throughout the discussions, we argued that Taiwan produced relatively low-cost machine tools, did not take jobs away from the American manufacturers, and actually supplemented, rather than competed against, U.S. manufacturers. We therefore presented no threat to the national security of the United States. Of course, the U.S. insisted that Taiwan had tremendous potential, and argued that if it allowed Taiwan to grow at that pace, Taiwan would eventually replace Japan as

the main supplier of imported machine tools to the United States. They therefore insisted on targeting Taiwan for a VRA.

One issue that could have been very important is the subject that Mr. King discussed — intellectual property. Several Taiwanese machine tool manufacturers had to copy U.S. brands. Actually, this does not amount to counterfeiting in the intellectual property sense, because machine components are not consumer items. But the manufacturers can make machines identical to the U.S. machines to the extent that even the parts are replaceable. In other products, you would call that “second sources.” As used by these manufacturers, it is not an illegal second source. In the automotive industry, there are after-market replacement parts. As I know, a manufacturer can legally produce the parts that are compatible with the original parts. In the machine tools industry, however, this practice is resented by U.S. manufacturers. Thus, we suspect that one of the reasons that the U.S. was so forceful about the VRA on machine tools was due to the hostility on the part of the U.S. Machine Tool Association towards some Taiwan manufacturers.

The impact, of course, is very substantial because, in 1986, we were confident enough to sell some of the more sophisticated computer-controlled machine tools to the U.S. The statistics showed that we would double our market share in the U.S. in 1986. The VRA prevented this, however, by requiring us to roll back to our 1985 market share. Our main competition, of course, was Japan, and no statistics reveal an increase in market share as far as the Japanese are concerned between 1985 and 1986. Once again, the Japanese were found to be very well prepared for this VRA, which was under consideration for three years before Reagan finally announced it. At that time, we had never dreamed of Taiwan being a target country for a VRA on machine tools. In fact, when the U.S. announced that Taiwan was a target country, we felt very flattered for being recognized as a supplier of capital equipment rather than just consumer goods. However, the impact of the VRA on Taiwan's industry is very severe, because machine tools are Taiwan's main growth items both in terms of technology and market share.

After the VRA, of course, some companies tried to jump the gun, and they severely suffered as a result. One company's shipment of a large quantity of poorly-prepared machining centers resulted in its being left with a tremendous amount of stock in the United States. Indeed, as far as I know, even today — three years after we entered the VRA arrangement — the company still has 1986 stock. The company

erred both by failing to construct its machines properly, and by falsely anticipating a shortage that would result from the VRA.

As a result of the VRA, we have been forced to diversify our market. We have been particularly successful in selling to Europe, where our exports have doubled. The market share of our exports to the U.S. has been reduced from about fifty percent of our exports of machine tools to twenty-six percent. In a sense, the VRA is a blessing in disguise because it forced us to look toward the European market, which, by demanding higher quality, has forced us to produce goods of higher quality. We have been rather successful in doing just that.

One matter that concerned us about the VRA was our expectation that, whatever market share we surrendered (supposedly to the U.S. manufacturers) would ultimately be absorbed by non-VRA countries. This is what actually happened. We protested many times that we wanted the U.S. to check other non-VRA countries, but the U.S. responded that their intention was to hold import market share constant; they did not care which particular country's market share increased or decreased. In terms of competition, however, we are very concerned about certain countries' increasing market share. For instance, Mr. McGowan talked about Korea; we are very concerned that Koreans are increasing their U.S. market share. We believe that our main competitor in the future will be Korea.

The VRA is now coming up for review, and we are hoping that the U.S. government can be realistic. Mr. Reagan asked for the VRA on the basis of national security rather than the protection of U.S. industry. It is claimed that the U.S. has to be "war-ready," which means that it should have enough journeymen (*e.g.*, tradespeople and craftsmen) available in the event of a war. They say that they do not really care who makes the machine, as long as the machines are made in the United States. Japanese companies have therefore begun manufacturing machine tools in this country. Now the U.S.-based companies are continuing to lose ground. I was in Bridgeport yesterday, and I saw many large plants being closed, and some others in the process of going down the drain. Regardless of intentions, the result of the VRA has been protectionist. In our opinion, Taiwan is being hurt, while U.S. industry is not really being benefited. We hope that this will end.

As a concluding remark, at a time when the Berlin wall is being torn down, we hope the U.S. will be more realistic about the VRA on Taiwan-made machine tools as a national security issue. We hope the U.S. will stop tormenting her most loyal and obedient friends in Taiwan.

Thank you.

M.H. KING

Next, I wish to call on Mr. W.S. Lin. Mr. Lin is President of the Tatung Company. He is trained in both business and science, and has a bachelor of science in electrical engineering from the Tatung Institute of Technology, and an MBA degree from Washington University in St. Louis. He also serves as a Director on the Consultative Council for Electronics Industries. The principal business of his company, of course, is the manufacture and distribution of home appliances, electronics, and industrial equipment. The company is one of Taiwan's leading export firms in terms of volume and value. And so, I offer you now Mr. W.S. Lin.

W.S. LIN

On behalf of the Taiwanese TV manufacturers, I would like to discuss some of our experiences and opinions with regard to proceedings under U.S. trade law.

Tatung Company has been involved in a color television ("CTV") Antidumping Administrative Review since 1983. Our experience during the past few years indicates that U.S. trade law practices have been complicated and unfair to the exporters' operations, and that U.S. customers might have suffered a great economic loss. After all, U.S. trade law has had no positive effect on either the exporter or the U.S. industry. On the contrary, it has created a number of negative effects.

First of all, U.S. customers lost their opportunity to select more brands at lower prices. The reason is that under U.S. antidumping law, the primary criterion in determining the dumping margin is the following formula:

$$\text{Dumping Margin Rate} = \frac{(\text{Home market net price} - \text{U.S. net price})}{\text{U.S. net price}}$$

Therefore, either a reduction in the home market price or an increase in the U.S. market price can eliminate the dumping margin. If we increase U.S. prices, however, U.S. customers will definitely lose their chance to buy inexpensive products. In fact, we have little difficulty in doing this, since the Taiwanese market is now more widely open to foreign products and is gradually becoming internationalized. Surely, the dumping margin will be less and less as time goes by.

Secondly, the original function of the U.S. antidumping law was to preserve more jobs for U.S. labor and maintain a considerable market for U.S. industry. The result has not been as expected. According to

the above-mentioned formula, if we reduce prices in the home market, then the dumping margin will be eliminated, and the U.S. market will not be changed. How can the labor union or the CTV industry of the U.S. improve itself by issuing an antidumping petition? Therefore, if the exporters adjust both their home market prices and U.S. prices, then the result will be harmful to the U.S. customers and will not benefit the industry or labor at all.

Thirdly, a U.S. antidumping proceeding could badly affect the flotation of U.S. market prices. Once the exporters' home market changes, for example, exporters will adjust their U.S. market prices at such time in order to avoid a dumping violation. Numerous exporters from different areas export their televisions to the United States. If exporters from any area have changed their home market price for any reason, the U.S. antidumping law has forced them to consider price changes in the U.S. market as well.

Fourthly, the U.S. antidumping proceeding forced us to select new geographic markets. Tatung, for example, established Tatung, Ltd. in the United Kingdom, where CTVs are manufactured to supply the European market.

We have also diversified our products exported to the U.S. market. The CTV sales ratio, for instance, is not as high as it was before the antidumping duty was levied. I believe that involvement in a U.S. antidumping law proceeding will influence our determination whether to invest in a manufacturing capacity overseas.

We have been doing well by ourselves in shaping our response to the existing proceeding without any further government involvement. Meanwhile, we try to do everything we can to avoid any other dumping involvement.

We hope the U.S. petitioner of the Antidumping Administrative Review stops its action and pays more attention to the improvement of its production capabilities rather than complain of others' product prices. Frankly speaking, we have no intention of selling our products without fair profits. Certainly, if we can sell our products at a price which is as high as that of the U.S. industry, we would be pleased to have such a profitable price. The price of the product, however, is not controlled by us. Rather, it is decided by the market.

Fifthly, I would like to point out that the purpose of the U.S. antidumping law is to eliminate unfair trade competition. Yet, the calculation of the dumping margin is unfair because the Commerce Department's regulation does not consider the actual market situation. First, the Commerce Department disregards the N.T. dollar appreciation which can have the effect of creating a high dumping

margin. Second, the regulation does not allow a negative margin to offset a positive margin; therefore, the calculation methodology is unfair and incorrect.

Suppose we have two CTV models in the U.S. market: one model is popular and sells at more than fair value; the other is going to be phased out and is sold at less than fair value. From the business point of view, we look at our CTV market as a whole rather than segregating some models as profitable and others as unprofitable. Besides, we need to phase out the old models in order to revitalize our CTV market. It is easy to understand why phase-out models are always sold at lower prices. Unfortunately, if we do so, we violate U.S. trade law.

Finally, we suggest that the U.S. authorities review these unfair criteria. In the meantime, we hope the Commerce Department will expedite all those antidumping proceedings which have long been delayed. Up until now, the Commerce Department has only announced the result of the First Review (1983-85) and the Second Review (1985-86). We have finished our responses to the Third Review (1986-87), the Fourth Review (1987-88) and the Fifth Review (1988-89), but the Commerce Department has unreasonably postponed the announcement of these review results. The long delay in the announcement of the antidumping review has caused us a lot of damage in the U.S. market and goes against the purpose of the antidumping law. Because we did not know how much dumping duty we had to pay, we could not calculate our costs or the so-called "fair value measurements" required by U.S. antidumping law.

M.H. KING

Thank you, Mr. Lin. Next, we have Mr. Alvin Tong who is the Executive Vice President of Acer, Incorporated, Taiwan. He serves as the President of the New Business Development and Acer Ventures, Incorporated, which is a subsidiary of Acer, Incorporated, in Taiwan. He holds a doctoral degree and a master's of science in electrical engineering from the University of Minnesota. After he obtained his Ph.D in 1967, he spent thirteen years with IBM Corporation, working as an engineer and holding various management positions. After returning to Taiwan and prior to joining Acer in 1988, he held executive positions with such companies as Eastern Engineering, Asia Chemical Corporation, and New Development Corporation. I think he's well qualified to speak on the issue of computers, particularly with respect to the issue of Intellectual Property Protection. I give you Mr. Alvin Tong.

## A. TONG

Good afternoon, ladies and gentlemen. Before I start, I have to confess one thing to you. When our leader, Mr. King, assembled the three-member panel for you today, he had three people in mind — two excellent, outstanding young men have just spoken. The third one — yet another outstanding young man — was supposed to be Mr. Stan Shih, the Chairman and CEO of Acer, Inc., namely, my boss. Unfortunately, Stan's schedule didn't allow him to come to this part of the world, so I was Mr. King's second choice, and therefore, I will speak from the second-choice point of view. Another minor correction is that I joined Acer three and a half years ago. At the time it was called Multi-tech. We changed the name in 1988.

My presentation will be different in flavor from the ones that have been presented to you. Mine is more concentrated — entirely concentrated — on patents, copyrights, and trademarks. I speak here about these things very nervously because, by trade, I am an electrical engineer and do product design and sales and marketing. My good friend, Paul Hsu, my schoolmate from both high school and university, will hopefully bail me out if you have questions.

I will have four sections: a brief introduction; an update on the status of intellectual property rights (IPR) in Taiwan; then I'll tell you what I know best—the Acer experience in this respect; and I'll follow with a brief conclusion.

The introduction is focused on the Acer experience in the information industry. I'm not talking about the IPR in general.

## THE STATUS OF THE IPR IN TAIWAN

The macroenvironment is not very respectable. We have a bad image. I know, Dr. Chuang, that M.I.T., the school that you attended, is excellent. M.I.T. in Taiwan is getting better. We have global pressures, particularly from the United States. The laws — the IPRs — are relatively new in Taiwan, and the law enforcement agencies are very inexperienced. The urgency about the IPR protection is shared by government officials as well as industrial leaders, but it is only now slowly spreading to other levels.

However, much effort is expended in this area. There have been many revisions and updates of copyright, trademark, and patent laws. We're even introducing an Integrated Circuit Protection Act, which is probably on the floor of the legislature as we speak.

Numerous agencies, organizations, and task forces now exist to coordinate these laws and enforce them. One of the primary agencies is

the IPR Policy Coordination Committee, chaired by Vice Chairman of CEPD, Vincent Siew. The Committee consists of five ministry-level people out of eight, representatives of both the provincial government and the city government, as well as others.

The Anti-Counterfeiting Committee, organized under the Ministry of Economic Affairs, is one of the most powerful Committees. The Coordination Subcommittee for the Elimination of Copyright Infringement, acting under the authority of the Ministry of Interior, is another powerful Committee whose activities have increased tremendously since it started in 1985.

The Joint Inspection Task Force to Suppress Illegal MTV Operations is a very new task force which started in May, 1989. An IPR enforcement task force has also been created by the National Police Administration to work with both the Ministry of Interior and the MOEA to enforce the IPR laws. Our judicial system also plays an important role in IPR enforcement with both the Ministry of Justice and the Judicial Yuan taking active roles.

Private organizations also exist to enforce the IPR laws. The oldest one is the National Anti-Counterfeiting Committee, organized in 1984 by the ROC National Federation of Industries. With some guidance and new funding from the MOEA, the Committee is currently being expanded into what will be called the National IPR Protection Committee of the ROC.

The Taipei Computer Association has also been a superior force in the anti-counterfeiting actions. It has recently formed a computer product registration system. The newest system is called BIPA—the Brand Name International Promotion Association—and this also involves our chairman and CEO, Stan. It started in June, 1989.

### PROGRESS REPORT

How are we doing? There are some improvements. The record demonstrates a significant decrease in counterfeit goods. Agencies have increased their activities in suppressing illegal activities. Manufacturers are much more aware now of the protection afforded by IPR, and we have many campaigns on anti-counterfeiting activities. We have an "Anti-Counterfeiting Week," anti-counterfeiting programs on all three television channels, and similar educational programs in the schools. A "Trademark and Patent Information Center" has also been established.

That is a quick update of what is going on now in Taiwan. Because of these intense efforts to publicize IPR in Taiwan, there are

probably more people in Taiwan who are aware of IPR protection than in the United States.

### THE ACER EXPERIENCE

Acer started in 1976 with eleven employees, five co-founders and \$25,000 (U.S.) in funding. In the last thirteen years, it has grown into a complete PC company. Acer has its own R&D, manufacturing, sales/marketing, and trading divisions, as well as educational and publishing operations. It is also an international operation which spans the globe. At the end of 1988, Acer had over five thousand employees, a substantial increase from the eleven employees of the company in 1976. Revenue in 1988 was approximately \$500 million (U.S.). Growth over the past five years has averaged approximately eighty-eight percent per year. Return on equity has also been very positive. Overall, for the last ten years, growth was approximately 100 percent per year. We now have a whole line of PCs, as well as peripherals, including monitors, keyboards, printers, and power supplies.

Our Research and Development (R&D) reaches across the Pacific, operating both in Taiwan and in the Silicon Valley, employing about seven hundred people. We spend about five to six percent of our revenue in R&D.

Through distributors, we sell in seventy-eight countries. Approximately one-third of our market is in the U.S., one-third in Europe, and one-third in the rest of the world. Ten percent of the market is in Taiwan; ninety percent is exported. Our target for this year is about three-quarters of a billion dollars in sales, and in 1990, we would like to be a one billion dollar company. In 1991, Acer hopes to be one of the top five PC suppliers in the world.

### THE ACER EXPERIENCE WITH INTELLECTUAL PROPERTY RIGHTS

The first experience involving intellectual property rights is the Apple II Case. The case arose in 1982, when very few people in Taiwan understood software or bios copyright. Acer (Multi-tech at the time) had shipped some Apple II compatible products to the U.S. The shipment was quickly discontinued when concerns arose about a bios copyright. We have since wanted to use this case as an educational tool for Taiwan, so we used ourselves as the example. We hired U.S. lawyers to come to Taiwan to conduct seminars for industries, for engineers, for professors, and, in some cases I believe, for legal counsel about the copyright in software and, in particular, bios. We thought

that by paying the expense for seminars, other people might avoid having to pay greater prices in the future.

Acer's second experience with intellectual property rights involved the copyright law for computer software. This happened during 1984 or 1985. The legislative yuan (the equivalent of the U.S. Congress) had only addressed the issue once. It normally takes three reads to pass a law in the yuan. The copyright law originally dealt only with music, tapes, books, and so forth, but not with computer software. So, with Stan and a variety of counselors (I think Paul Hsu here was probably one of them), originally formed this great group of people to start lobbying the legislative yuan, because they did not think the proposed copyright law could adequately represent the computer software industry. They actually hired people. They invited foreign companies, such as IBM. They hired lawyers. They also studied the copyright law of the U.S. and Europe. I believe they spent six months at work before they arrived at a very detailed proposal. The group then presented the new proposal to the legislators and, eventually, the new proposal on the software copyright law was passed without amendment. This case is yet another example of efforts by the public, with Acer's involvement, to try to establish a law that is suitable for computer software as well as other products subject to intellectual property laws. I believe this was probably the only instance in our country in which a law was read once, and was then completely changed.

In 1987, before we started to develop the IBM PS-2 compatible computers, we brought lawyers to Taiwan to help us set up the "clean room procedures" to make sure that we would not do anything which would infringe upon their bios. The licensing agreement was one that many companies in Taiwan sign with IBM; we pay royalties for the use of their patent rights.

Internally, Acer has held many seminars for all levels of people — managers, engineers, operators — about IPRs. "Clean room" procedures are strictly enforced for our programmers. The "clean room" procedure, for those of you who are not familiar with the term, is a procedure to help the software developers avoid contamination, thus insuring that they will not infringe upon other people's software. We also have patent incentive programs. It is very interesting to note that our engineers would often rather work than file patents. They are slowly learning to appreciate how important this filing procedure can be to the company. I worked for IBM for thirteen years in the U.S. and we were just crazy about filing patents for whatever we did. At Acer, we still have to twist the arms of our engineers to file a patent. So, we have lots of incentive programs for them, and those incentive

programs, of course, include money. The amount of money is about five times as much as what IBM paid us years ago, and we still can't get them to file. Still, that's one area where we are trying very hard to change. We also have IPR protection procedures within our company, including such things as a clean-desk policy, so as not to be infringed upon by others. All of these activities are intended to establish our own patent portfolio so that we can eventually negotiate and have cross-licensing with famous companies around the world.

The Brand Name International Promotion Association I mentioned earlier was recently formed by fifteen to twenty other industrial leaders, including Stan, to promote Taiwan's brand names. This promotional campaign is for all industries, not just for the information industry. Stan chairs this association. Just before I left Taiwan, I spoke to two other influential institutions in Taiwan. The first is "III" (Institute for Information Industry), which is responsible as a government agency, for the software development. The second is "ITRI" (Industrial Technology Research Institute), which is also a government institution responsible for hardware development in Taiwan. Acer is a third such entity, and the three of us initiated this "club type" association. We would like to promote intellectual property rights in this type of atmosphere throughout the information industry to promote our goals. We feel the time is right to do this now.

### CONCLUSION

Due to pressure from the U.S., we actually have stricter laws than you do in this country. There are imprisonment penalties if you infringe copyrights. I think we are more conscious than many other countries in terms of the IPRs, and we are now actively trying to establish patent portfolios. To be competitive, everyone needs to cut costs. Since we have to pay license or royalty fees for the use of others' patents, we are more conscious about cost reduction in every respect of the operation. In the process, it makes us more competitive, and it becomes a blessing in disguise even though we are spending more money to develop our products.

I came to this country Monday, to San Francisco, and I read an article in the *San Jose Mercury News*. It was written by Tom Peters. I'm sure many of you have heard of him, especially in business school. Tom Peters is the author or co-author of many books. I can remember at least three: *In Search of Excellence*, *A Passion for Excellence*, and *Thriving on Chaos*. He wrote the article after a ten-day visit to the Orient that included three of the four dragons—that is, Korea, Taiwan, and Hong Kong. The title of his article is "The Four Dragons

Are Vibrant with Energy.” In the article he described how impressed he was with the three countries. He also gave a talk in Taiwan where we all listened with great interest and admiration. He said he met a New York executive who often travelled between Taiwan and New York. The executive told him that every time he gets back to New York City, he finds Manhattan a sleeping city. In the article, he specifically mentioned Hyundai in Korea, and Acer in Taiwan. He called Stan Shih the “Steve Jobs of Asia.” He concluded the article by saying that compared to the four dragons, San Francisco and the Silicon Valley were like “ghost-towns.” You don’t have to believe him, but if you have not visited that part of the world—the Pacific Rim of the Four Dragons—I think it’s time that you did. I remember when I was here many years ago, we kept talking about how “the Russians are coming.” The Russians have not come yet, but look out, America, the Asians sure are!

Thank you very much.

#### M.H. KING

Thank you, Mr. Tong. At this point, I think it is in order for the moderator to make some summarizing remarks from what I have just heard. Undoubtedly, the three gentlemen that we have here today represent the leaders of their respective industries. So, I think what they say can be regarded as representative of each of their respective industries.

In Mr. Lin’s and Mr. Chuang’s remarks, I cannot help but detect a sense of bitterness and also a call for fairness in the treatment of respondents who are charged with dumping. I think the origin of that bitterness may be that we feel that some of the measures taken are not for equalizing the unfairness, for redressing the unfairness, but are more or less overkills, designed only to punish. We can even say that they smack of protectionism. The makers of law and the petitioners in their own right have the right to feel that the measures are fair and proper. But the people who are called on the carpet do not seem to feel so, and I think there is much room for communication and an exchange of ideas on both sides. I think maybe a session—symposium—similar to this one on the whys and wherefores of the rules and practices, as well as the feelings of the people who are affected by such antidumping and CVD actions, may be in order. Perhaps this is a project for some of you, or maybe the two programs which sponsored this conference, to have other symposia that can serve this purpose.

Earlier this morning, we heard the remark that this symposium is

focused on the impact of trade laws on the business decisions of two east Asian countries. It would be certainly interesting — if this has not already been done — to have a symposium on the impact of the trade law actions on the petitioners. Have they actually benefited? As I remember, the two conditions for levying antidumping duties are, first, that goods are sold at less than fair value, and second, that their sale has injured or prevented an industry from being established. Well, after the action has been taken, did they recover? Was the recovery due to the action taken? Was the revival of the United States steel industry because China Steel was found to be dumping, or did it occur because they did something for themselves? These are questions which I suggest can be subjects of further studies.

Regarding the IPR issue, I think, from Mr. Tong's remarks, we can definitely say that within the conscience of the people of Taiwan, we feel that violations are acts of theft and stealing. By Chinese—or by *any*—moral standards, this should be curtailed and stopped, and the laws that we have set up for the protection of intellectual property rights must be enforced.

There is a difference in the attitude of the press and mass media regarding the U.S. trade laws as they apply to manufacturing industries and those industries involving IPR. They tend to criticize the retaliatory, punitive, and rather inflexible ways of treating antidumping and countervailing duty cases. In the case of IPR, they tend to be in favor of strict enforcement of IPR regulations, which should also benefit the authors, composers, software writers and inventors of Taiwan itself. Although this may cause a rise in the price of goods involving IPR, it should become acceptable as income rises among the people.

Thank you.