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The Republic of China's Response to Charges of Protectionism

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INTRODUCTION

As a result of its large foreign trade deficit, the United States is attempting to open up international markets for its goods. Taiwan, the Republic of China ("ROC"), is an obvious target for such United States endeavors, since it enjoys a very sizeable trade surplus with the United States. However, United States efforts to open up trade with the ROC have been frustrated by governmental controls over the ROC's economy. This has led the United States to charge the ROC with protectionism.

The United States Omnibus Trade and Competitiveness Act of 1988 is considered an anti-protectionist measure and has been used to force open foreign markets. Since the ROC relies heavily on the United States market, it cannot ignore the challenge of the new United States trade legislation. In March 1989, the ROC Executive Yuan promulgated a four-year plan entitled Detailed Action Plan for Strengthening Economic and Trade Ties with the United States ("Action Plan"). The Action Plan purports to respond to the United States' enactment of the Omnibus Trade and Competitiveness Act. The Plan's contents may provide the best and most recent indication of the ROC's official response to charges of protectionism. This paper will highlight and discuss the main points of the Action Plan.

REPUBLIC OF CHINA-UNITED STATES TRADE IMBALANCE

The ROC's large trade surplus with the United States is often pointed to as evidence of ROC protectionism. However, the surplus

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1. COUNCIL FOR ECONOMIC PLANNING AND DEVELOPMENT, DETAILED ACTION PLAN FOR STRENGTHENING ECONOMIC AND TRADE TIES WITH THE UNITED STATES (Executive Yuan, Republic of China, March 1989) [hereinafter ACTION PLAN]. The Action Plan was prepared in Chinese; however, the Council for Economic Planning and Development ("CEPD") prepared and publicly distributed an English version. All references to the Action Plan in this article will be to the English version.
2. Id. at 1.
has decreased in recent years. The surplus was US $19 billion in 1987, while in 1988, the surplus was reduced to US $14.1 billion. Further, as of the end of September 1989, the surplus slightly exceeded US $9 billion, resulting in a projected figure of US $12 billion for 1989.

The Action Plan states four objectives for balancing the ROC’s trade with the United States: (1) taking “effective measures to expand domestic demand and increase imports” so as to reduce the ROC-United States trade surplus by 10% annually; (2) diversifying the ROC’s export market so as to reduce dependence on the United States market to one third of its total export volume in 1992; (3) setting up a schedule to be followed by government ministries and agencies “to implement the policy to liberalize and internationalize [the ROC’s] economy;” and (4) seeking “comprehensive solutions to bilateral trade problems” with the United States “rather than piecemeal resolution of individual difficulties.”

The Action Plan proposes to expand domestic demand by adjusting the ROC’s overall economic development strategy. Government expenditures for education, medical care, social security, public health, and environmental protection are to be increased. State-owned industries will be required to increase their investment in capital equipment, antipollution controls, and expansion of energy facilities. Private industries will be encouraged to increase their investment in building new schools, pollution control, research and development, and high technology. Through these measures, trade-related industries will redirect a part of their resources into non-trade-related sectors of the ROC’s economy.

The Action Plan also contemplates increasing imports by encouraging public and private enterprises to expand their “buy American” and other trade missions to the United States. The ROC

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3. The precise figure as of the end of September 1989 is US $9,045,700,000, as reported by the Directorate General of Budget, Accounting & Statistics of the ROC Executive Yuan.
4. ACTION PLAN, supra note 1, at 1.
5. Id.
6. Id.
7. Id. at 1-2. The Tariff Reduction Schedule is presently undergoing discussion in the ROC Ministry of Interior.
8. Id. at 2.
9. Id. at 7-8.
10. Id. at 7.
11. Id. at 8.
12. Id. at 5.
government will also continue to assist United States promotional activities in the ROC. The government will sponsor United States Product Shows and provide free rentals at the Taipei World Trade Center for trade representative offices of U.S. state governments.

The ROC Ministry of Economic Affairs has formulated a plan entitled the Five-Year Plan to Diversify Markets and Balance Trade, which the Action Plan will "most seriously enforce" in order to lessen ROC dependence on the United States market. The Overseas Economic Cooperation and Development Fund, with a budget of NT $30 billion was also recently established. The Action Plan contemplates that this fund will be used for United States-ROC coordinated investment projects in developing countries.

Import Duties and Commodity Tax

High import tariffs have been viewed as the ROC's principal import barrier. Therefore, the Action Plan contains a Tariff Reduction Schedule. This schedule specifies a graduated reduction of the average effective duty rate from 5.66% in 1988 to 3.50% by 1992, and a graduated reduction of the average nominal duty rate for all products from 12.57% in 1988 to 7.00% by 1992. If the Tariff Reduction Schedule is implemented, import tariffs will basically be at a par with those of major industrialized nations by 1992.

On the other hand, the ROC imposes a domestic commodity tax on specified items. This tax has a discriminatory effect on imported goods of a similar nature, most notably automobiles and cosmetics. For example, the commodity tax on imported cars ranges from 25% for cars with engines of less than 2,000 cubic centimeters to 60% for cars with engines above 3,600 cubic centimeters. The largest car man-

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13. Id. at 6. The ROC Ministry of Economic Affairs has been implementing various strategies to diversify its export markets since 1980. At present, the Five-Year Plan referred to in the Action Plan is still under discussion in the Ministry of Economic Affairs.
14. The notation "NT" refers to New Taiwan dollar.
15. ACTION PLAN, supra note 1, at 6. At present, the bill to establish this Fund, as proposed by the ROC Executive Yuan, is undergoing its first reading by the ROC Legislative Yuan.
16. Id. Recently, the United States Treasury Department proposed that the ROC participate in the "Brady Plan" to help reduce Third World debt through voluntary debt reduction by commercial banks. ROC Central Bank of China Governor Samuel Shieh conditioned any such participation, however, on United States support for the ROC's bid to join the General Agreement on Tariffs and Trade. See Yang, Bennett & Javetski, The Other China Is Starting To Soar, U.S. BUS. WEEK, Nov. 6, 1989, at 62.
17. ACTION PLAN, supra note 1, at 12.
18. Id.
ufactured locally has a 3,600 cubic centimeter engine, whereas a substantial proportion of foreign-made cars have engine sizes larger than 3,600 cubic centimeters. This size differential results in a de facto additional import duty on larger foreign cars. The Action Plan does not address this issue.

**IMPORT CONTROLS AND RESTRICTIONS**

The United States has criticized the ROC's non-tariff barriers. Particularly cumbersome is the ROC's extensive and bureaucratic import licensing system which frequently requires approvals by more than one government agency and provides occasion for discriminatory treatment. The Action Plan purports to "simplify" import procedures. In particular, the government is to introduce a "negative list" where import licenses will be required only for those items listed.

**Agriculture**

Although the ROC government has come under intense pressure from local farmers, the agricultural sector is exempt from the government's overall liberalization program. The Tariff Reduction Schedule in the Action Plan specifies a graduated reduction of the average nominal duty rate for agricultural products from 25.99% in 1988 to 19.82% by 1992. The Action Plan also states that the ROC will continue to review the proposal to liberalize importation of agricultural products. It states in general terms that investments will be made to "improve [the ROC's] agricultural infrastructure," and that production will be adjusted so as to improve the market for ROC agricultural products.

However, the Action Plan does not mention United States criticisms of the ROC's restrictive standards and testing requirements for agricultural imports. These include the ROC's amino nitrogen test for determining the purity of imported fruit juices as well as other registration and labelling requirements for imported products. Nor does the Action Plan address the ROC's indirect subsidies of local crops through incentives, such as the government's purchase guaran-
tees for portions of local produce and packaging and storage and shipping assistance, provided through marketing cooperatives and farm associations. 24

**Services**

The Action Plan pledges that there will be a "gradual opening" to foreign investment in the services sector of the ROC market, namely in the areas of transportation, banking, insurance, and securities. 25 The ROC Ministry of Communications has agreed "in principle" to allow air cargo terminals outside airports, 26 to amend regulations pertaining to inland transportation so as to allow licensing of United States truck trailers, 27 and to revise the ROC Highway Act to permit foreigners to engage in the inland trucking business. 28

In the area of banking, the Plan states that the ROC Banking Law is being amended to permit foreign bank branches to take savings deposits. 29 Currently, foreign banks may only establish one branch each in Taipei and Kaohsiung. The Action Plan does not improve this situation much, however, stating only that establishment of branches in other places in the ROC by foreign banks "will be considered . . . when Republic of China nationals are allowed under [ROC] law to incorporate new banks." 30

Currently, two United States life insurance company branches

24. Historically, the ROC government has negotiated annually with local farm cooperatives and associations on matters such as purchase guarantees and marketing of ROC-produced agricultural goods.
25. ACTION PLAN, supra note 1, at 4-5.
26. Id. at 4. Even though the Plan set August 1989 as the target date, the ROC Ministry of Communications reportedly stated that Regulations Governing Air Cargo Terminals (which would allow foreigners to establish air cargo terminals in the ROC) would be promulgated by early November 1989.
27. Id. The ROC Ministry of Communications reportedly decided to allow ROC branch offices of United States commercial carriers to apply for inland truck trailer licenses. To date, however, no ruling or order to this effect has been reported in the ROC Ministry of Communications Bulletin.
28. Id. Representatives of the ROC Ministry of Communications agreed to submit a proposal to the ROC Legislative Yuan to amend the ROC Highway Law, in order to open for one year the inland trucking business in the ROC to United States ocean carriers for continued transportation of goods over land. To date, however, no proposal to this effect has been reported in the ROC Legislative Yuan Bulletin.
29. Id. Actually, in order for foreign banks to take savings deposits in the ROC, the ROC Banking Law must be amended. Regulations promulgated by the ROC Ministry of Finance applicable to foreign banks, which currently do not include savings deposits within the scope of businesses in which foreign banks may engage, must then be revised to give effect to the Banking Law amendment.
30. Id.
and two property insurance branches can be established in the ROC per year. No branches of United States mutuals are allowed.\textsuperscript{31} United States insurance companies are also prohibited from establishing subsidiaries and joint ventures with ROC noninsurance enterprises. Here as well, the Action Plan merely states that the ROC government “will consider” permitting United States firms to establish subsidiaries and joint ventures “when Republic of China nationals are allowed under [ROC] law to establish new insurance companies.”\textsuperscript{32}

At present, foreign entities may not participate directly in local securities transactions. They may act only through the purchase or sale of securities by way of mutual funds.\textsuperscript{33} The Action Plan states only that the ROC will “gradually open” its securities industry and alludes to an increase in channels for the ROC’s own investment in foreign securities.\textsuperscript{34}

**Investment In General**

Currently, some 55 industries are prohibited from foreign investment on the basis of a negative list which includes most agricultural activities, national defense industries, real estate, and public utilities.\textsuperscript{35} The negative list restricts foreign investments in other industries, such as mining, pharmaceuticals, and medical services.\textsuperscript{36} In addition, foreign investments seeking favored treatment require prior approvals by relevant agencies of the ROC government.\textsuperscript{37} Tax incentives are provided for investments in high technology and large-scale capital-intensive industrial sectors.\textsuperscript{38} The Action Plan leaves these areas untouched.

The Action Plan does state however, that a bilateral agreement

\textsuperscript{31} Id. at 5. The quota is an internal policy guideline of the ROC Ministry of Finance.  
\textsuperscript{32} Id. This prohibition is also an internal policy guideline of the ROC Ministry of Finance.  
\textsuperscript{33} See ROC Executive Yuan, Regulations Governing Investments in Securities by Overseas Chinese and Foreign Nationals, Decree No. Tai (72) TsaI 9642 (1983).  
\textsuperscript{34} Action Plan, supra note 1, at 5.  
\textsuperscript{35} Negative List, supra note 20.  
\textsuperscript{36} Id.  
\textsuperscript{37} See generally Industrial Development and Investment Center, Taipei, Statute for Investment by Foreign Nationals (ROC) (1989).  
on investments and technology transfer with the United States "merits serious study" and that a working draft will be prepared by the ROC government for discussions with the United States. Also, as part of its overall adjustment of economic strategy, the Action Plan states that the ROC will invite foreign participation in public construction projects in the ROC and will increase importation of foreign construction equipment, materials, and engineering consulting services.

### Intellectual Property

There has been long-standing criticism of rampant intellectual property pirating in the ROC and the inadequacy of both ROC law and enforcement measures for protecting United States intellectual property rights holders. Recent attention has focused on infringement of United States copyrights by proprietors of the ROC's "MTV" parlors and videotape rental shops. The Action Plan states that the ROC government "will investigate all allegations of infringement of intellectual property rights asserted by United States businesses" and "will maintain close contacts with private anti-counterfeiting organizations."

In the area of copyrights, the Action Plan advocates multifaceted remedies. It states the ROC soon will conclude talks with the United States on a copyright protection agreement. The ROC Ministry of Interior will prepare a draft bill by June 30, 1990, amending the ROC Copyright Law. Thereafter, the copyright enforcement rules will also be amended. The ROC Ministry of Interior Organization Act will also be amended to establish a Department of Copy-

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39. **ACTION PLAN**, *supra* note 1, at 6. As far as the authors are able to ascertain, there has been no movement to date within ROC government circles toward preparing a working draft for a bilateral agreement with the United States on investment and technology transfer.

40. *Id.* at 8.

41. *Id.* at 7.

42. *Id.* at 10-11.

43. *Id.* at 10.

44. *Id.* At present, the ROC Ministry of Interior has completed a working draft bill amending the ROC Copyright Law. Over the ensuing months, comment will be invited from legal scholars and interested persons. The Ministry of Interior plans to forward the working draft to the ROC Executive Yuan before June 30, 1990, for proposal to the ROC Legislative Yuan for enactment. As to enforcement rules, ROC legal scholars have expressed the view that amendment to the enforcement rules, promulgated pursuant to the ROC Copyright Law itself, without first amending the ROC Copyright Law, would constitute a violation of the people's democratic rights, insofar as the people's elected representatives would not have the opportunity to review any such amendments made.
A court specializing in protection and enforcement of intellectual property rights also will be established. Furthermore, an awareness program will be launched to educate both college students and police officers on the importance of copyright protection.

With respect to movies and videotapes, the Action Plan specifies that procedures will be improved for examining whether movies and films are being shown in an authorized manner. Movie distributors will be required to produce certificates of authorization from original producers when applying for licenses. Furthermore, funding will be provided to the Taipei Motion Pictures Dealers Association's Anti-Counterfeit Committee. In this regard, the Action Plan also mentions that radio and television stations will produce anti-counterfeiting programs to raise public awareness of such issues. Police will periodically inspect manufacturers and retailers to search for illegal videotapes.

The Action Plan mentions that "[n]ecessary amendments to the ROC Patent Law and the ROC Trademark Law are being contemplated." In particular, article 62-3 of the ROC Trademark Law will be amended so that counterfeit goods will be subject to confiscation whether or not such goods are the property of the infringer. Computerization will improve examination of trademark and patent applications. Regulations will be formulated whereby companies exporting goods bearing unlicensed trademarks registered outside of

45. Id. As far as the authors have been able to ascertain, there has been no movement to date within ROC government circles toward establishing a Department of Copyright within the ROC Ministry of Interior by way of amendment to the ROC Ministry of Interior Organization Law. On the other hand, funds have been allocated for certain reorganizations of government anti-counterfeiting committees. For example, the ROC Executive Yuan recently expanded the Anti-Counterfeiting Committee for the National Industrial Convention to form the ROC Committee for Protection of Intellectual Property Rights, allocating NT $16,000,000 for use by various ROC government organs, including the ROC Ministry of Interior.

46. Id. at 11. As far as the authors have been able to ascertain, there has been no movement to date within ROC government circles toward establishing a court specializing in protection and enforcement of intellectual property rights.

47. Id. at 10-11.

48. Id. at 11.

49. Id.

50. Id.

51. Id.

52. Id. The proposed amendment to article 62-3 of the ROC Trademark Law was enacted into law as of May 28, 1989.

53. Id.
the ROC may lose their export rights.\textsuperscript{54} The Action Plan also states that government anti-counterfeiting committees will be strengthened and that the government will "vigorously prosecute" patent and trademark infringements.\textsuperscript{55}

**CONCLUSION**

The Action Plan is, of course, only a plan, and its successful implementation over four years remains to be tested. Although multi-faceted, the Action Plan is by no means comprehensive. It does not address many trade issues and only addresses in general terms other issues which will require precise definition over the course of time. Finally, the Action Plan does not, as a matter of law, bind any government agency.

Nevertheless, the Action Plan remains significant as an officially-promulgated, overall policy statement by the ROC government. It covers and sets the direction for all organs of the Executive Yuan for the ROC-United States trade over the next four years. As such, its terms, however general, are worth spelling out in an ordered fashion, particularly as a way to respond to United States charges of protectionism.

\textsuperscript{54} Id. at 11-12. As far as the authors can ascertain, the ROC Board of Foreign Trade of the Ministry of Economic Affairs has not taken any measures to date to formulate or draft regulations concerning forfeiture of export rights for attempted export of goods bearing unlicensed, foreign-registered trademarks.

\textsuperscript{55} Id. at 12.