

Maryland Journal of International Law

Volume 3 | Issue 1

Article 16

Remarks by Discussants

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Recommended Citation

Edward A. Laing, R. D. Webster, & Preston M. Torbert, *Remarks by Discussants*, 3 Md. J. Int'l L. 113 (1977).

Available at: <http://digitalcommons.law.umaryland.edu/mjil/vol3/iss1/16>

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COMMENTS**EDWARD LAING**

Taiwan is doing some very interesting things with other developing countries. Taiwan has offered technical assistance and has had exchanges and visits with other developing countries. These kinds of contacts with the rest of the developing world, who have seats in the UN, may help Taiwan in the future.

My reading and discussions with Dr. Li lead me to conclude that a lot of the success of Taiwan has to do with a very stable and interesting legal order. One thing that interests me is that Taiwan seems to steer a middle course between the over-technicalization of the legal practice of the U.S. and a somewhat oversimplified legal practice of the PRC. The legal regime in the ROC has contributed rather significantly to the ROC success.

One of my areas of interest as a teacher is the protectionist forces in the United States, at which I am now quite bothered. They are doing things against the interests of the developing countries. Protectionist trends in the ITC and elsewhere in the U.S. are apparently likely to continue, and unfortunately these trends are backed up by some ambiguous legislation, *e.g.*, the Trade Act of 1974.

The Trade Act has loopholes that can be used by protectionist forces in the U.S., but I hope they will not continue to be used to the disadvantage of the developing countries. For example, the ITC "clear glass" case in 1971, an anti-dumping case concerning Taiwan, was based on statistics relating to Japan. This was one of the more extreme actions of the ITC in this area. I hope that the ROC's success in trade in the last few years will not lead protectionist forces to hurt Taiwan.

Finally, I hope that international organizations will realize the inadvisability of Taiwan's non-participation in them. It would only be to the benefit of the entire trading world if Taiwan were to participate in these international organizations.

Professor Oldman thanked Professor Laing for his comments and turned the floor over to R. Daniel Webster, Legal Advisor to Chairman Daniel Minchew of the U.S. International Trade Commission.

[The following is a summary of Mr. Webster's comments, together with additional remarks submitted for publication after the conference.]

COMMENTS

R. DAN WEBSTER

I would like to talk briefly about two recent decisions made by the ITC that may have significant impact on Taiwan.

The first is the footwear case. In this case the ITC found that footwear was being imported into the United States in such

increased quantities that it was a substantial cause of injury to a domestic industry. The ITC recommended that a tariff rate quota system be imposed over a five-year period. The quota level would be established at 265,000,000 pairs per year with all shoes imported above that level to be assessed a tariff of 40 percent annually, then reduced to its original levels at the end of that period. The quota level for the ROC was 88,000,000 pairs. This is to be contrasted with imports of 110,000,000 pairs in 1975. The President exercised his authority to provide other relief under the Trade Act of 1974, and notified the Congress that he was attempting to negotiate orderly marketing agreements. Negotiations are now underway.

In the television case, the Commission found that color TV's were being imported from Japan into the U.S. in such increased quantities as to be a substantial cause of serious injury to the U.S. color TV industry. An increase in tariffs on color TV's was recommended to the President. While the President has not formally announced his decision, indications are that he will attempt the same orderly marketing agreements as in the footwear case.

The ROC is the second leading supplier of U.S. imports of television receivers. I would suspect that the President will attempt to negotiate orderly marketing agreements with the ROC, as he is presently doing with Japan.

There are certain advantages to orderly marketing agreements which the President opted for in the footwear case and which the Commission does not have in its authority to recommend. The orderly marketing agreement process allows the President to negotiate with the supplying country a level of imports and possibly by doing so arrive at an agreement which has less disruptive effects on both parties. There is the additional benefit to the U.S. in that it is not required to give compensation under the general agreement on tariffs and trade.

ADDITIONAL COMMENTS

Considerable discussion has taken place as to whether the U.S. International Trade Commission is properly fulfilling its role in administering sections of the Trade Act of 1974 and previous legislation amended by that Act. Most of the controversy centers on the administration of section 201 of the Trade Act, which provides the mechanism for relief to domestic industries seriously injured or threatened with serious injury by increasing imports.

This provision, known as the import relief section or "escape clause," spells out the criteria the Commission must use to determine eligibility for relief, and then to provide relief to remedy the injury.

The most common criticism — that the Commission is recommending relief which will be damaging to consumers or cause serious international political repercussions — shows that we at the U.S. International Trade Commission have not done an effective job in educating the public and, in some cases, the bar, as to our role in the overall trade policy network.

First of all, we are an independent agency, not a part of the executive branch. Our funds are not reviewed by the Office of Management and Budget, and, as far as I know, we are the only agency in the U.S. Government of which this is the case. The reason is simple. The Congress, in attempting to exercise its constitutional authority, under Article I, Section 8 of the Constitution, to regulate international trade, decided to create an agency which was totally independent from the executive branch so that decisions could be made based on economics, rather than politics.

The criteria for eligibility for relief from imports were relaxed with the passage of the Trade Act of 1974. Under the Trade Expansion Act of 1962, the Commission had not in a single case been able to find a domestic industry eligible for import relief. It was a conscious effort on the part of Congress, not the Commission, to relax these criteria.

As for the criticism that the Commission has not considered costs to the consumer in its recommendations, or that we have not adequately considered the international implications of our "protectionist" policies, let me just say that I am pleased we have not. If we had done so, we would have been stepping well outside our authority and usurping the role of the President as outlined in the Trade Act. The Act provides that the President, after receiving our advice on the economic impact of imports on the domestic industry and our recommendation of relief which would remedy this adverse economic impact, will weigh this impact against such factors as consumer costs and international political ramifications and then make his decision. We do not take it personally when the President does not implement one of our remedy recommendations; if the law allowed us to consider other factors we may have reached the same conclusions.

Despite the outcry against the U.S. "protectionist" policies, there has been only one case since the Trade Act became law in

which the United States has placed unilateral restrictions on imported goods — that being the case involving specialty steels.

We at the USITC are comfortable in providing our advice to the President based on only the effect of imports on the domestic industry. By providing good economic advice in this one area, we avoid having to deal with political pressures that the Executive and Congress encounter daily, and we are able to give the President sound advice on one of the important factors he must consider.

Professor Oldman thanked Mr. Webster for his statement, and then introduced Preston M. Torbert, an American attorney practicing in Taipei with the law firm of Yahng & Roles.

[The following is the summary of Mr. Torbert's comments.]

COMMENTS

PRESTON M. TORBERT

The question which I believe people may be asking themselves is what am I doing in Taiwan. There are two functions which the U.S. lawyer fulfills in Taiwan. First, he advises on U.S. law, particularly advising U.S. clients engaging in transactions in Taiwan, either directly operating from the U.S. or through subsidiaries or joint ventures in Taiwan. The second function is as a liaison between Chinese attorneys and American clients.

The legal system of the Republic of China provides many contrasts and surprises for an American attorney. Perhaps one of the greatest contrasts is the importance of administrative law in the daily operation of the legal system. This will come as no surprise to attorneys from Washington, D.C., but for most American attorneys administrative law is a very minor part of their total practice. Mr. Chun Li's comments on investment, import and export procedures indicate well the extent of the government bureaucracy's role in managing trade and investment.

The administrative character of law practice is due in large part to the great authority exercised by the Executive Yuan, the executive branch of government. Statutes in the ROC are often broadly drafted grants of authority from the legislative to the executive branch to handle certain matters. The executive branch then drafts more detailed regulations and interprets them in the best interests of the country as it perceives them. One example of the executive branch's power to interpret is in the Regulations on Visas for Foreign Passport Holders which state that a foreigner should present "evidence of his purpose in coming to the ROC." Since mid-1976 the Ministry of Foreign Affairs fundamentally altered practice under these Regulations by interpreting this language to mean that all foreigners going to Taiwan to work must comply with other regulations which only refer to technicians. Accordingly, foreigners who are not technicians have found it impossible to get a visa through normal channels. Examples of harsh administrative interpretations are common in all areas, but particularly taxation. Of course, the immigration and tax areas are in large part administrative in the United States, too. The ROC legal system, however, appears to allow substantially more administrative discretion to its executive branch sub-departments than the American system. One result of this preeminent authority of the executive branch is a comparatively large degree of administrative supervision of the economy. Indeed, two surveys on U.S. corporate investment in Taiwan have mentioned excessive government "red tape" as the major complaint of the investors.

Of course, government involvement in the economy also has its positive side. Among these are the statutory incentives for investment mentioned by Mr. Chun Li. In addition to these, negotiated business assurances have also been an extremely important factor in attracting investments. These assurances by the ROC government to the investor have entailed such practices as promises to purchase a plant's entire output at a fixed price, a guarantee of raw materials supplies at a set price or the exclusion of competing foreign products from the Taiwan market. The ROC government has also played a positive role in trying to prevent unnecessary conflicts between Taiwan and American manufacturers by promoting education about foreign markets. After the recent misunderstanding concerning reclosable plastic bags made in Taiwan and exported to the U.S. which allegedly infringed an American patent, the government took steps to help inform Taiwan manufacturers about U.S. patent law to prevent future incidents of this kind.

An interesting aspect of Taiwan's exports to the U.S. and resulting trade disputes involves the nature of the parties. Mr. Myron Solter mentioned disputes relating to television receivers and solid-state watches made in Taiwan and exported to the U.S. It is interesting to note that a large percentage of these products made in Taiwan are made by subsidiaries of U.S. corporations. The disputes, therefore, are often not simple conflicts of interest between Taiwan and the United States, but disputes between American companies producing in Taiwan and American companies producing in the U.S.

Finally, in regard to the papers relating to the future of ROC-US economic relations, a change in U.S. policy toward recognition of the People's Republic of China would not necessarily cause any significant legal problems under ROC law. The ROC Constitution (Article 141) requires the ROC's foreign relations to be conducted on the basis of "equality and reciprocity." Recently the Premier and the Foreign Minister have made public statements indicating that they believe that the ROC's foreign relations include its relations with countries which do not have formal diplomatic relations with it. This constitutional standard of equality and reciprocity, therefore, should apply generally to ROC-US relations after a possible break in formal diplomatic relations. As long as the U.S. continued to conduct economic relations with Taiwan on a non-discriminatory basis, there is no reason to believe that the ROC would discriminate against American business. The practice of ROC-Japanese relations indicates that economic ties can continue without major difficulties after the rupture of formal diplomatic ties.

Professor Oldman thanked Mr. Torbert for his comments, then adjourned the session for 20 minutes. Following this intermission, Professor Oldman opened the session for questions and comments from the floor.
