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**THE DEVELOPMENT OF THE FOREIGN
INVESTMENT ENCOURAGEMENT LAW
IN THE REPUBLIC OF CHINA***

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While the United States expended nearly \$23 billion of United States taxpayers' dollars between the end of World War II and 1949, we learned by trial and error how to export our mightiest resource: the secret of the dynamic relationship that joins resources, manpower and capital investment to ensure production and employment.

*An expansion of the present paper, providing a more complete exposition of the author's political views on the US-ROC experience, has been published: 123 CONG. REC. S6804 (daily ed. April 29, 1977).

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In creating the Economic Cooperation Administration through the ECA Act embodying the Marshall Plan, Congress sought to surmount the many obstacles preventing private enterprises and investment from going abroad, and adopted as a part of the Act the so-called Guarantee Clause for private investment abroad, offering to insure the investor for an approved American investment abroad against loss by (a) inconvertibility of foreign currency into dollars because of exchange and other restrictions, (b) loss through destruction by riot or revolution, and (c) war, for projects approved by ECA and the foreign government concerned on undertakings helpful to general recovery.¹

It so happened that the Foreign Affairs Committee of the House and the Foreign Relations Committee of the Senate approved and adopted a draft of the "Guarantee Clause" submitted by the writer in testifying as Chairman of the Foreign Investment Committee of the International Bar Association (and successively thereafter as Chairman of a corresponding committee of the American Bar Association and of the Inter-American Bar Association). This ECA program worked so well that by 1959, a program was developed to bring many delegations from underdeveloped countries to the United States in order for them to see the private enterprise system in operations by visiting chain stores, banks, factories, stock exchanges and other enterprises. Doubtless because of the above-mentioned background, the writer was asked by the Secretary of State to meet with each of these delegations during one day of their visit to the United States to examine the foreign investment encouragement (or discouragement) laws of their respective countries.

This sounds like an assignment requiring great learning in foreign and international law but in meeting with these delegations, having had advance briefing as to their laws and translations of the material parts, their legal restrictions on foreign investments were, generally speaking, so hopelessly impossible for a foreign investor to face or live with, that it was like shooting sitting ducks to tell the delegations (as diplomatically as possible!) what was wrong with their laws.

An alert and able group was from Taiwan.² The delegation returned to Taiwan to draft the Foreign Investment Encourage-

1. See "Guarantee Idea," *Fortune Magazine*, Nov. 1949, by the writer.

2. One member of the ROC group, the Honorable C. K. Yen, is now President of the Republic of China, succeeding the Honorable Chiang Kai-shek. Another member, the Honorable K. T. Li, became Minister of Finance and is now semi-retired, because of ill health, as "Minister Without Portfolio."

ment Law of 1959. The new law as drafted was adopted by the Legislative Yuan, the elected "Congress" of Taiwan.

Impracticability of some provisions of the law of 1959 soon became apparent. Request was made from Taiwan to Secretary of State Dulles to send the writer to Taiwan to help revise the 1959 law. I was invited to go as consultant to the State Department. While under great pressure in other legal business, I agreed to use my vacation time to go to Taiwan, accompanied by Mrs. Littell, a member of the Bar of Louisiana and the Supreme Court of the United States. We went together during our vacation time in the summer of 1960.

Without detailed discussion of the intensive redrafting period in Taiwan, it is sufficient to say that what became the "Foreign Investment Encouragement Law of 1961" took shape. The writer was the first "foreigner" to be invited to appear before the Legislative Yuan in order to explain the law, and he was also invited to the "White House" of Taiwan to see President Chiang Kai-shek for the same purpose. In the course of the latter discussion, the President said that he understood that I would like to visit Quemoy, which islands lying off the mainland of Communist China, together with Matsu, was under Nationalist control, but was under bombardment by the Communist People's Republic of China on alternate days.

I readily seized the opportunity afforded by the President's very kind offer to provide transportation by plane, and in a small government plane landed at Quemoy on a day when bombing was not scheduled. On that day and on the alternate days when the Republic of China from the mainland was not sending real bombs, the air force from Taiwan "bombed" Quemoy and Matsu *with leaflets* showing on one day the picture of clothes and their prices available in the free order of Taiwan, and on another day, yardage of goods needed in all households, readily available in Taiwan and the low prices of such merchandise, together with all manner of products, including food readily available in the steadily rising standard of living on Taiwan. I mention the incident because it dramatized graphically the force and effect of private enterprise as a weapon in the arsenal of free government.

The success of the Republic of China in bringing the fruits of the private enterprise system to Taiwan achieved a record in economic progress, temporarily interrupted by a world recession in 1974-75, but mounting to a gross rate of 10% annual increase in contrast to 7.2% in the ten years preceding the Foreign Investment

Encouragement Law (1953-62). While great credit must be given to the performance of the high productivity of the Chinese worker in the Republic of China's economy, and sound government management, American policy in encouraging foreign investments with its own guarantees of security, plus the incentives offered by the Chinese law, the percentage of gain in gross national production in 1976 attained 11.86%, surpassing the target of 6.4%. The Gross National Product was \$17,145 million. In realistic terms, after allowance for inflation, the increase was 11.86%, compared with 2.4% in 1975.

Above all, getting down to the lives of individual citizens of Taiwan, the per capita income was \$809, or an increase of 14.6% over 1975.

All of which was aided and precipitated by a flow of private investments from abroad from the United States, the overseas Chinese, Japan, Europe, and a number of other countries.³

Following the exodus of the Nationalist government from Mainland China in 1949 to Taiwan, there was a brief period in which world opinion was that Mainland Communist China represented the wave of the future, but under the dictum of President Chiang Kai-shek that "self-help was the best help," the government of the Republic of China on Taiwan grew to spectacular success. As Ambassador James C. H. Shen from the Republic of China to the United States stated to the 20th Century Club in Hartford, Connecticut, on December 2, 1976:

The United States has played a major role in Taiwan's economic growth from its beginning. At a time when Free China was in dire need of help of many kinds, the United States provided us, shortly after our government was transferred to Taipei, with a liberal economic assistance program. Such aid continued for a period of 15 years, from 1950 to 1965, totalling US\$1.5 billion, which contributed considerably toward stabilizing Free China's currency and

3. Statistical reports and releases of the U. S. State Dept., 1965-77. "Free China Weekly," Feb. 27, 1977, p. 3; "Free China's Strategy for Prosperity," Address by James C. H. Shen, Ambassador of the Republic of China to the United States, before the 20th Century Club, Hartford, Conn., Dec. 2, 1976; "U.S.-ROC Economic Cooperation, Past and Prospects" by the Hon. Leonard Ungar, U.S. Ambassador to the Republic of China, Jan.-Feb. issue of *International Business*, March 9, 1977; Chinese Information Service release of Jan. 25, 1977.

helping to build up Taiwan from an agricultural economy to a semi-industrialized society.⁴

The head of ECA aid to Taiwan from 1958 to 1960, Wesley Haraldson, said that the hard work of the Chinese people "fueled the rapid growth of Taiwan's economy. . . . I have never known a people who worked so hard as the people of Taiwan. It was amazing. And I never saw a hint of hanky-panky with our aid funds."

So successful was this cooperative program between the United States and the Republic of China that it stands as a monumental lesson to our foreign aid policy — namely, that self-help in the private enterprise system is the ultimate key to a sound economy. In 1965, the Republic of China was the first country to be dropped from our foreign aid appropriations.⁵

As Ambassador Shen rightly pointed out, American private industry took up where the American government aid left off, and in due time evolved specifically no less than 250 industrial projects, from the manufacture of automobiles to the production of plastic shoes, but with the largest segment being invested in electronic and chemical industries.

Our former American Ambassador to the Republic of China, the Honorable Leonard Unger, was lavish in his praise of achievements on Taiwan in his article in the January/February 1977, issue of *International Business*.⁶

Now, in overwhelming statistics and generalities as to the individual, we can note these sensational gains: The people in Taiwan are far better fed and clothed than in Mainland China. The individual calorie count exceeds 2,800 daily, up 37 calories for the past ten years, and the per capita daily consumption of protein has increased from 57.8 grams in 1962 to 74.8 in 1975.⁷

4. Speech by James C. H. Shen, Ambassador of the Republic of China to the United States, before the 20th Century Club, Hartford, Conn., Dec. 2, 1976, entitled "Free China's Strategy for Prosperity," p. 5.

5. See Neil H. Jacoby, *U.S. Aid to Taiwan: A Study of Foreign Aid, Self-Help and Development*, New York: Praeger, 1966.

6. "U.S.-ROC Economic Cooperation: Past & Prospects," by U.S. Ambassador to Republic of China, Leonard Unger, Jan.-Feb. issue of *International Business*; March 9, 1977, Chinese Information Service release.

7. *Supra*, note 4, p. 12.

Energies were not devoted entirely to material progress as indispensable for national survival, but every effort was made to fashion a viable free nation of cultural enlightenment and social justice, fostering democratic rule, cultivation of universal education, advancement of social well-being, promotion of public health and revitalization of Chinese culture.

In spite of the vulnerability of Taiwan as a subtropical country, normally spawning grounds for tropical diseases, Taiwan has succeeded in eliminating such Asiatic scourges as smallpox, malaria, cholera, typhoid fever and yellow fever. According to the World Health Organization, Taiwan has become "one of the healthiest places in Asia," increasing the life expectancy on Taiwan to an average of 66.7 years for men and 72.2 for women, as compared to 41 years for men and 45.7 for women in 1945. The Constitution of the Republic of China charges the government with the responsibility of providing universal education, beginning at the age of nine with free education for all children. The attendance rate of children of school age has reached an all time high of 99.3% — possibly unequaled elsewhere in the world.⁸

At the end of 1975, there were 3,400 schools of all levels, with an enrollment of 4.42 million students, or 27.4% of the entire population. Great strides have been made in the field of higher education; whereas there were only four college-level institutions in 1945, today there are about 100 universities and colleges.

A vital facet of national life on Taiwan has been the effort made to foster human freedoms under the rule of law. Visiting American jurists noted that significantly impressive progress has been made in maximizing the basis for the people's enjoyment of all fundamental human rights. The people there enjoy the rights of free election, freedom of expression, freedom of association, freedom of the press, freedom of religion, the rights of private ownership, free choice of education and employment, freedom of travel and the rights of a free judiciary.

The importance of the US-ROC economic interaction lies not so much in the outstanding growth which the ROC has experienced, as evidenced by the impressive statistics of the last fifteen years, but in the effect of that growth on the people of Taiwan and in the foreign policy lessons to be learned. As to the first lesson, the statistics do speak for themselves; there can be no

8. *Id.*

doubt that, as a people, the Chinese in the ROC enjoy a level of existence that exceeds that in virtually every other developing country. The ROC's present policy, of shifting from labor- to technology-intensive production, will undoubtedly increase the ROC's standard of living even further, as Taiwan moves beyond the developing countries and joins the developed countries economically.

But the foreign policy lessons are at least as important, especially from the U.S. point of view. Although the ROC remains strongly dependent on the United States as a trading partner, it is important that that dependence is grounded in trade for mutual benefit rather than on U.S. governmental largesse. The ROC's turn-around in this respect — from aid recipient to trading partner — is perhaps the most spectacular example of the success of the American free-enterprise system as expressed in American foreign policy. The American blend of public expenditures and private enterprise has ensured the survival of a nation that had teetered on the brink of absorption, has given Americans the benefits of a highly desirable trading partner, and has given the Taiwanese the benefits which accrue to a free and prosperous nation. It is important, in this period of re-evaluation of American policies with regard to China, to remember the successes and lessons of our experience with Taiwan. We must remember that the Chinese in Taiwan were willing partners in their development, neither subservient nor bullying, and that the key to the success of US-ROC relations has been and continues to be the strong community of interest and mutuality of respect between the two nations. Surely, the Republic of China, the great experiment and exemplary success of the free-enterprise system in American foreign relations, should not be delivered up as an expendable pawn on an impersonal chessboard in the maneuverings between the United States and the People's Republic of China: the loss would simply be too great, in terms of the personal stake of the Taiwanese, in terms of America's moral options in world politics, and in light of what would be the vast contradictions between America's express belief in free enterprise and its spurning the very people who most relied on that belief, the Chinese in the ROC.

Professor Oldman thanked Mr. Littell for his presentation setting the historical stage for the afternoon's session. He then

introduced Dr. Chun Li, who spoke on the lawyer's role in structuring trade and investment in the ROC. Dr. Li, who is an attorney in Taipei, outlined the principal tax advantages offered by the ROC for foreign investment and set forth the forms of corporate structure available to foreign investors, foreign traders, and enterprises wishing to establish resident agents on Taiwan.

[The following is the text of Dr. Li's paper.]
