

EC Trade Policy, GATT and the ROC

by

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ABSTRACT

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This paper deals with the trade relations between the European Community (EC) and the Republic of China (ROC) on Taiwan. It gives some historical background, outlines how the EC makes trade policy and traces recent developments in EC-ROC trade. Given the EC's non-recognition of the ROC the question of management of (non)-relations arises. Largely the EC has managed its relations with the ROC through unilateral measures, including autonomously set quotas in the area of textiles and clothing and anti-dumping duties imposed on some ROC products. The national quotas that some member states imposed on some products until recently have now been abolished in connection with the completion of the EC's internal market. The EC has also used a non-governmental organization, Eurochambres, to conclude a couple of agreements with the ROC, and informal policy consultations have taken place. The EC now supports GATT membership of the ROC as long as the ROC accepts all the obligations this entails. ROC membership in GATT, or the new World Trade Organization (WTO) to be established, should allow for further pragmatic improvements in EC-ROC relations.

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Introduction¹

The purpose of this paper is to give a general overview of trade relations between the European Community (EC)² and the Republic of China (ROC).³ We will outline the main aspects of the EC's Common Commercial Policy and discuss its implications for third countries. We will look at the (non)-relations between the EC and the ROC, and how they seem to be developing at the moment. In terms of substance we will especially study trade in textiles and anti-dumping policy, which have been sensitive areas. Finally, since the ROC bid for GATT membership is one of the current issues and future ROC membership should allow for improved relations between the EC and the ROC, we will explore the issue of GATT membership and the attitude of the EC in this respect.

Since the EC has a Common Commercial Policy we are basically dealing with a bilateral relationship, which depends on decisions on both sides. But the member states play a certain role in EC policy making, so the relationship is a complex one. It is also a relation which is important for both sides, since there is considerable trade between the two. Seen from the ROC the EC is the third trading partner after the United States and Japan. For mere reasons of size the ROC is less important for the EC, but in terms on imports the ROC was the 10th trading partner in 1992, and number 20 in terms of exports.

The EC's Relations with the PRC and Non-Relations with the ROC

The general context of EC-ROC trade relations is very political. The so-called 'China problem,' the existence of two governments which claim to represent the same country, creates political

¹ The author would like to thank those EC and ROC officials who helped provide information for this paper. Needless to say that none of these officials bear any responsibility for the interpretations in this paper, which are solely those of the author. Also thanks to my student assistant Arno Smals and the staff of the library of the European Institute of Public Administration for their help.

² In this paper we will keep using the term European Community (EC), which is now strictly speaking only the first pillar of the Treaty on European Union (Maastricht Treaty), which also includes a second pillar on Common Foreign and Security Policy (CFSP) and a third pillar on Cooperation in Justice and Home Affairs. Given our focus on trade policy this can be justified. The wider political aspects of EC-ROC relations, which used to fall under European Political Cooperation (EPC) now falls under CFSP.

³ In EC legislation and trade statistics the ROC is referred to as Taiwan, so that term will also be used in this paper.

inhibitions and situations of difficult choices.

Current problems in EC-ROC official (non)-relations go back to 1975, when the EC established official relations with the People's Republic of China (PRC). This happened on the occasion of a visit to Peking by EC Commission Vice-President Sir Christopher Soames.⁴

A number of the EC member states had trade agreements with the PRC and most of them had established official relations with the PRC by then. The UK, the Netherlands and Denmark had recognized the PRC in 1950 and diplomatic relations were established. France established relations in 1964. This was followed by Italy in 1970, Belgium in 1971, and Greece, Germany and Luxembourg in 1972. (Ireland followed only in 1979).⁵

In 1974 the EC Council discussed trade relations with state trading countries, including the PRC. It was decided that bilateral trade agreements of the member states, which were expiring, should be replaced by EC agreements. This was in accordance with the Treaty of Rome establishing the European Economic Community (EEC), which foresaw a Common Commercial Policy. A draft text contemplating long-term non-preferential trade agreements, based on a reciprocal assurance of equal benefits and obligations, was sent to the state trading countries, including the PRC. The EC was offering most-favoured nation (MFN) treatment in respect of tariffs subject to exceptions. Agreements would also provide for Joint Committees and appropriate safeguard mechanisms. Existing national import quotas would be continued for 1975.⁶

Christopher Soames' trip to the PRC in May 1975 should be seen in this perspective of the EC's Common Commercial Policy. The status of Taiwan (ROC) could not be kept off the agenda.⁷ The PRC insisted that the EC formally and publicly declared that Taiwan was an integral part of China, and Beijing the sole government entitled to represent China. Christopher Soames made the following statement at a press conference on 7 May 1975:

I confirmed to the Minister that the Community ... does not entertain any official relations or enter any agreements with Taiwan. I explained that matters such as recognition of states did not enter into the responsibility of the Community. But I pointed out to the Minister that all the member states of the Community recognized the Government of the People's Republic of China as the sole legal government of China and have taken positions with regard to the Taiwan question acceptable to the People's

⁴ Harish Kapur, Distant Neighbours: China and Europe (London: Pinter Publishers, 1990), p.123.

⁵ Harish Kapur, China and the EEC: The New Connection (Dordrecht: Martinus Nijhoff Publishers, 1986), p. 32.

⁶ Bull. EC 5-1974, point 2330, and Bull. EC 11-1974, point 1301.

⁷ Xiao Zhi Yue, The EC and China (London: Butterworths, 1993), pp. 6-7.

Republic.⁸

This position was confirmed by Sir Christopher Soames, when he answered an oral question on EC-PRC relations in the European Parliament on 18 June 1975.⁹

A trade agreement was concluded between the EC and the PRC in 1978 and a textile agreement was signed in 1979. Economic cooperation was increased further with the conclusion of a Trade and Economic Cooperation Agreement in 1985.¹⁰ Finally, in 1988 the EC Commission established a diplomatic representation in Beijing. In 1989 the relations cooled, first because of human rights problems in Tibet, later because of the Tiananmen Square events.¹¹ On the latter occasion the EC Commission released a statement in which it said that it was 'dismayed and shocked.' It went on:

It deplores the brutal repression of the people of Peking, so sorely tried. It would point out that cooperation between China and the Community can only suffer as a result and would risk being permanently affected if the policy of the Chinese Government were to start on a course which would put at risk the policy of openness and reform followed until now.¹²

The Commission expressed the wish that 'peaceful conditions will very quickly return in China.' It was also decided that Commission President Jacques Delors and Vice-President Frans Andriessen could not receive Zheng Tuobin, who was due to co-chair the meeting of the EC-China Joint Committee on 5 June that year.

Prior to establishing official relations with the PRC the EC had actually concluded a textile agreement with the ROC as late as October 1970.¹³ It expired on 1 October 1973. Since then there has been no official agreements between the EC and the ROC. When the Trade and Economic Cooperation Agreement was concluded between the EC and the PRC in 1985 the European Parliament was consulted, pursuant to article 235 of the European Economic Community (EEC) Treaty. The Parliament approved the Commission's proposal for a regulation concerning the agreement, having, inter alia, "regard

⁸ Quoted from Kapur, China and the EEC, p. 37 [the ref there: FBIS Daily Report, 9 May 1975, p. A-19.]. See also Bull. EC 5-1975, point 1201-1205.

⁹ Official Journal of the European Communities, No. C 157, 14 July 1975.

¹⁰ Council Regulation (EEC) No 2616/85 of 16 September 1985, Official Journal of the European Communities No L 250, 19 September 1985. See also 'Signing of the Community-China Cooperation Agreement', Bull. EC 5-1985, points 1.5.1-1.5.4.

¹¹ Xiao Zhi Yue, The EC and China, pp. 7-9.

¹² Bull. EC 6-1989, point 2.4.1.

¹³ Ibid., p. 6.

to the enormous potential offered by China's economic policies and conscious of the need to compete effectively to exploit that potential."¹⁴ But on the same day the Parliament also adopted a resolution on trade with Taiwan, where it pointed to Taiwan's "important foreign trade relations with over 140 countries and its position amongst the 20 largest trading nations of the world." The European Parliament therefore believed that "the Community cannot neglect the economic importance of Taiwan and should take full advantage of developing commercial and economic relations." In line with this the Parliament urged the Commission to "improve the existing commercial and economic relations with Taiwan and therefore to ensure that Taiwan is informed of planned trade measures and is treated in a comparable manner to other Far Eastern trading partners where EEC exports and imports are concerned."¹⁵

The Commission did not agree with the European Parliament in 1985. As a matter of fact during some years the Commission did not even unofficially talk with representatives of the ROC, at least not in Commission buildings in Brussels.

As late as October 1991 when the ROC's semi-official Central News Agency announced that there would formal talks between the EC and the ROC on intellectual property rights on November 21 and 22, without naming the venue, the Commission denied the announcement. "There are no formal negotiations between two entities which do not recognize each other," a Commission spokesman said. He admitted that there could be contacts, but there would be no negotiations.¹⁶

In April 1992 the Vice-President of the Commission, Martin Bangemann, visited the ROC in private capacity, as Chairman of the Friedrich-Naumann Foundation. While there Bangemann stated that the EC favoured simultaneous admission of the PRC and ROC to GATT. He also discussed the participation of EC industries in the major infrastructure projects launched by ROC. ROC Premier Hau Pei-tsun lauded the visit of Bangemann as highly significant.¹⁷ In October 1992 a member of the European Parliament, Carlos Robles Piquer (PPE) asked a written question to the Commission about this trip. The answer given by Bangemann on behalf of the Commission on 5 February 1993 was the following:

Since the establishment of diplomatic relations between the Community and China in 1975, the Community does not maintain official relations with Taiwan. Despite the absence of diplomatic relations, technical discussions between the Community and Taiwan are required on a number of commercial questions. Furthermore, the Working Party on the accession of Taiwan to GATT was set up on 29 September 1992.

¹⁴ Doc. A2-74/85, 11 July 1985. OJ No C 229, 9 September 1995.

¹⁵ Doc. 2-1765/84, 11 July 1985, OJ No C 229, 9 September 1985.

¹⁶ Reuter News Service, 31 October 1991.

¹⁷ Agence Europe 3 June 1992; China Economic News Service, Reuter Textline, 11 April 1992.

Bilateral trade between the EC and Taiwan has grown considerably in recent years. Total trade grew from ECU 3,8 billion in 1981 to ECU 16,5 billion in 1991. The EC's trade deficit with Taiwan reached ECU 5,5 billion last year.

Vice-President Bangemann paid a private visit to Taiwan last April. This does not modify the situation described above although private visits can play a useful role in improving relations.

Relations between Beijing and Taipei are an internal Chinese affair which does not involve the Community.¹⁸

In December 1992 the deputy chief of cabinet of Commission Vice-President Martin Bangemann, Paul Weissenberg, also visited the ROC as head of a 7-member delegation, which called on the Chinese National Federation of Industries and delivered two speeches. Weissenberg referred to the EC's single market, urging Taiwan businessmen to pay attention to unified product standards in order to gain easier access to the EC market. He expressed the hope that Taiwan would develop pragmatic bilateral ties with the EC.¹⁹

In reality there have been regular informal consultations between the EC and the ROC for some years. At first they did not take place in Taipei or Brussels. But the 9th ROC-EC Consultation took place in Taipei, 22-23 October, 1992. The agenda included multilateral issues, bilateral cooperation, and removal of trade barriers. Issues dealt with included the ROC and the Montreal Protocol dealing with pollution by CFCs, ROC and the Customs Co-operation Council, exchange of information in the environmental area, cooperation of small and medium size enterprises, scientific and technological cooperation, removal of tariff and non-tariff barriers in the textiles sector, anti-dumping procedures, taxation of Scotch and Irish whiskies, national treatment of European banks in the ROC, liberalization of the ROC's insurance sector, liberalization of EC import of meat and dairy products in the ROC, ROC's accession to GATT, mutual recognition of certificates, inspection of agricultural products, national measurement standards, patents and trademarks, the regulatory framework governing the European securities and future markets after the 1992 single market, customs cooperation, and income tax exemption on shipping enterprises. The ROC invited the EC to consider establishing a representative office in the ROC, to allow young graduates from the ROC to take part in the Commission's training and service programme, to abolish restrictions on officials' visits to the ROC, and designate officials in charge of relations with the ROC in the Commission's Directorate General responsible for

¹⁸ "Written Question No 2410/92," Official Journal of the European Communities No C 141 (19 May 1993), p. 30.

¹⁹ China Economic News Service, Reuter Textline, 10 December 1992.

external relations (DG I).²⁰

The fact that the consultations took place in Taipei for the first time was seen as a "political breakthrough" on the ROC side.²¹

According to the China Economic News Service the EC did not commit itself to backing the ROC in its bid to become a signatory to the Montreal Protocol. Nor did the EC commit itself to an agreement on small and medium size enterprises. According to the same source Hugo Paemen, head of the EC delegation to the consultation meeting did say that the EC was willing to help Taiwan join GATT and other multilateral international organizations if the island was able to open up its market to the EC. According to Sheu Ke-sheng, ROC chief negotiator, this would include removal of non-tariff barriers to trade. The EC rejected the proposal to set up a trade office in Taiwan, but said it would consider this after Taiwan joins GATT. Some exchange of trade information and inspection technology on ordinary products as well as cooperation between patent organizations was said to have been agreed.²²

In March 1993 ROC's Economy Minister Vincent Siew again invited the EC to set up a representation office in Taipei.²³

Commission Vice-President Martin Bangemann paid a second visit to Taipei in November 1993. He called on President Lee Teng-hui and other senior officials.²⁴

The latest EC-ROC consultation took place in Brussels, 22-23 February, 1994. Each side had a delegation of about 20 officials at the meeting. The agenda consisted of an economic overview, (including GATT accession of the ROC and EC relations with APEC), visa-free entry to the EU for ROC citizens, Taiwan as a regional operations center for the Asia-Pacific, market access issues both for financial services and goods, intellectual property rights, product certification, environment protection, and bilateral cooperation.²⁵ According to the Commission the most important issues dealt with were ROC's accession to GATT, intellectual property, and financial services. The issue of tax discrimination of alcohol and tobacco products from the EC was brought up in connection with the GATT membership issue. The ROC undertook to remove existing discrimination against EC imports by the middle of next year. In respect to intellectual property rights the ROC is moving in the right direction in its legislation. In financial services, however, the ROC still has a long way to go to satisfy EC requests. For the

²⁰ Information kindly provided by the Taipei Economic and Cultural Office in Brussels.

²¹ Agence Europe, 8 September 1992.

²² China Economic News Service, Reuter textline, 23 October 1992.

²³ Agence Europe, 31 March 1993.

²⁴ China Economic News Service, Reuter Textline, 23 November 1993.

²⁵ Information kindly provided by the Taipei Economic and Cultural Office in Brussels.

ROC to be able to join GATT a satisfactory offer in services is needed.²⁶

The EC's Common Commercial Policy

EC-ROC trade relations must be seen in the context of the EC's Common Commercial Policy, which is based on relevant articles of the Treaty of Rome establishing the European Economic Community. The treaty entered into force in 1958. It was later changed by the Single European Act (SEA), which entered into force in 1987, and the Maastricht Treaty on European Union, which entered into force on 1 November 1993.²⁷ These later treaties, however, did not make fundamental changes in respect to trade policy.

Relevant articles on commercial policy are found in the Treaty of Rome (articles 110-116). But other articles are relevant, especially the ones on the customs union (articles 12-37), including the section on setting up of the common customs tariff. The common commercial policy was to be developed over a transition period lasting until 1970. Actually the customs union was established ahead of schedule in 1968. Despite the idea of a common commercial policy, which the European Court of Justice (ECJ) has said is an exclusive EC competence, elements of national trade policies remained until recently, especially national quotas on sensitive products, and sometimes voluntary export restraints (VERs) were negotiated by some member states.

In respect to trade relations with third countries article 113 is of central importance:

1. ... the common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalization, export policy and measures to protect trade as those to be taken in case of dumping or subsidies.
2. The Commission shall submit proposals to the Council for implementing the common commercial policy.
3. Where agreements with third countries need to be negotiated, the Commission shall make recommendations to the Council, which shall authorize the Commission to open the necessary negotiations.

²⁶ Interview material.

²⁷ For the texts of the original treaties as amended by the SEA, see Treaties establishing the European Communities. Texts amending these Treaties. Single European Act. Resolutions - Declarations (Luxembourg: Office for Official Publications of the European Communities, 1987). For the Maastricht Treaty text, see Council of the European Communities and Commission of the European Communities, Treaty on European Union (Luxembourg: Office for Official Publications of the European Communities, 1992).

The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it.

4. In exercising the powers conferred upon it by this Article, the Council shall act by a qualified majority.

We notice that the treaty assigns an important role to the Commission, which is expected to represent the common Community interest. The member states make final decisions in the Council of Ministers and supervise ongoing negotiations in this area through a special committee, referred to normally as the Article 113 Committee. We notice further that the Council can make decisions by a qualified majority. Finally, we notice that article 113 does not require consultation or other involvement by the European Parliament.

The Maastricht Treaty added the following to article 113: "The relevant provisions of Article 228 shall apply." Article 228 deals with agreements with third countries and international organizations in general. It was expanded by the Maastricht Treaty. It includes as a general rule that the European Parliament must be consulted for such agreements, but explicitly exempts agreements referred to in Article 113(3).²⁸

Another article which has been important so far is article 115, which deals with situations where member states have trade related economic difficulties. In such situations the Commission shall recommend methods to deal with the situation. However, "Failing this, the Commission shall authorize Member States to take the necessary protective measures, the conditions and details of which it shall determine." The Maastricht Treaty changed "shall" to "may" in the quoted part. The Treaty of Rome further said that "In case of urgency during the transitional period, Member States may themselves take the necessary measures..." The Maastricht Treaty says "In case of urgency, Member States shall request authorization to take the necessary measures themselves from the Commission, which shall take a decision as soon as possible." So the Maastricht Treaty has strengthened the role of the Commission in this respect. It is this article 115 which has made it possible for some member states to have national quotas for certain products from some countries. With the completion of the Internal Market and abolishment of internal border controls such national quotas should in principle also be abolished - or changed into Community quotas, if necessary. The logic of this would have been to repeal article 115. This, however, did not happen. A leading expert on Community trade law concluded that "the mere existence of Article 115 in the Treaty alerts the Community's trading partners to the fact that there is... a legal basis for protectionist measures -

²⁸ The treaty also includes an article 239 on association agreements. For such agreements the assent by the European Parliament has been required since the Single European Act (SEA). This rule is now also mentioned in article 228 as revised by the Maastricht treaty.

whatever form they may possible take - inside the Community."²⁹

If we look at the substance of EC trade policy it is partly based on the multilateral regime created within GATT and partly based on agreements with various states and groups of states. Many authors have talked about a hierarchy of relations, with some countries being given special treatment. In Europe this includes especially the members of the European Free Trade Association (EFTA), which have had Free Trade Agreements (FTAs) since the first enlargement of the EC in 1973, when two original EFTA countries, the UK and Denmark, joined the EC together with Ireland.³⁰ Five EFTA countries, Austria, Finland, Iceland, Norway and Sweden, more recently, in 1992, concluded the European Economic Area (EEA) agreement with the EC. Through this agreement they get access to the EC's internal market. This means free movement for industrial goods, services, capital and people. The EC has also recently concluded association agreements with Central and Eastern European countries, which aim for free trade in industrial products over a 10 year period.³¹ Outside Europe the most important part of this hierarchy of relations is the Lomé Convention with a large group of former colonies of member countries. These countries are in Africa, the Pacific and the Caribbean, thus referred to as APC countries.

It can be argued that the EC has given low priority to relations with countries in Asia. In the 1960s the area was largely neglected. In the 1970s some Asian countries became competitors as they started exporting an increasing number of industrialized commodities, including especially the East Asian Newly Industrialized Countries (NICs). The EC became protectionist in areas like textiles and clothing, shipbuilding, steel and parts of the chemical and electronic industries. Countries targeted especially included South Korea and Taiwan. Taiwan was further excluded from the Generalized Scheme of Preferences (GSP) for developing countries which was agreed in the United Nations Conference on Trade and Development (UNCTAD) in 1971. The EC's protectionism continued in the 1980s, including quantitative limits of textiles based on the Multifibre Arrangement (MFA), which was negotiated in the GATT in 1973 and went into force at the beginning of 1974. There were quantitative restrictions and 'voluntary' export restraints in

²⁹ Marc Maresceau, "The Concept 'Common Commercial Policy' and the Difficult Road to Maastricht," in Marc Maresceau (ed.), The European Community's Commercial Policy after 1992: The Legal Dimension (Dordrecht: Martinus Nijhoff Publishers, 1993), pp. 5-19.

³⁰ Finn Laursen, 'The Community's Policy Towards EFTA: Regime Formation in the European Economic Space (EES),' Journal of Common Market Studies Vol. 28, No. 4 (June 1990), pp. 303-325.

³¹ Finn Laursen, 'The EC and its European neighbours: special partnerships or widened membership?' International Journal Vol.47, No 1 (Winter 1991-2), pp. 29-63; and Finn Laursen, 'The EC in Europe's Future Economic and Political Architecture,' in Svein S. Andersen and Kjell A. Eliassen (eds.), Making Policy in Europe: The Europeification of National Policy-making (London: SAGE Publications, 1993), pp. 215-236. _.

areas like footwear (Korea and Taiwan), electrical equipment (Korea), umbrellas (Taiwan) and metal flatware (Korea). During the 1980-88 period the four Asian NICs were targeted by thirty anti-dumping or anti-subsidy actions by the EC, nearly 40 percent of the cases against imports from developing countries.³²

Quotas, VERs, anti-dumping and other similar instruments increasingly replaced tariffs as means of protection in the 1970s and 1980 despite efforts during the Tokyo Round to limit these Non-Tariff Barriers (NTBs) to trade. Tariffs were gradually reduced through successive rounds of trade negotiations within GATT. The average tariffs for non-preferential imports to the EC were reduced from 12.5 percent for the original six member countries of the EC in 1958 to 5.1 percent (trade-weighted average) in 1988. However, high tariffs did remain for some products: Up to 30 percent for agricultural products, where there might be so-called levies in stead of or additionally to tariffs, up to 20 percent for footwear, 12.5-15 percent for textiles and clothing, 13-19.2 percent for organic chemicals, 12.5-22 percent for some motor vehicles, 14 percent for most integrated circuits, radios, television sets and video recorders.³³ The list gives a good idea of what is considered 'sensitive' products within the EC.

EC-ROC Trade

The EC's trade with Taiwan has expanded considerably over recent years. The general trends are shown in table 1 (graphed in fig. 1). We notice also that the EC has a trade deficit with Taiwan. This deficit has been growing over the last decade from 1,528 billion ECU in 1982 to 4,467 billion ECU in 1992. This development seems to have changed dramatically in 1993. In October 1993 the ROC Board of Foreign Trade reported that total exports to Europe during the first nine months were down 8%. At the same time imports from Europe rose 11%. Sales in Europe had declined because of economic recession there, and imports to the ROC from the EC had increased because of purchases for the island's 6-year National Development Plan. A trade deficit of up to \$1bn for 1993 was therefore predicted.³⁴

If we look at the relative importance of Taiwan in EC's trade then Taiwan ranked as number 25 in respect to imports in 1980, but had moved up to a 10th place in 1992. On the export side Taiwan moved up from number 45 in 1980 to number 20 in 1992.³⁵ This is a rather impressive improvement.

³² Enzo R. Grilli, The European Community and the Developing Countries (Cambridge: Cambridge University Press, 1993), pp. 281-283.

³³ J.P. Hayes, The Making of Trade Policy in the European Community (London: Macmillan, and New York: St. Martin's Press, 1993), pp. 11-12.

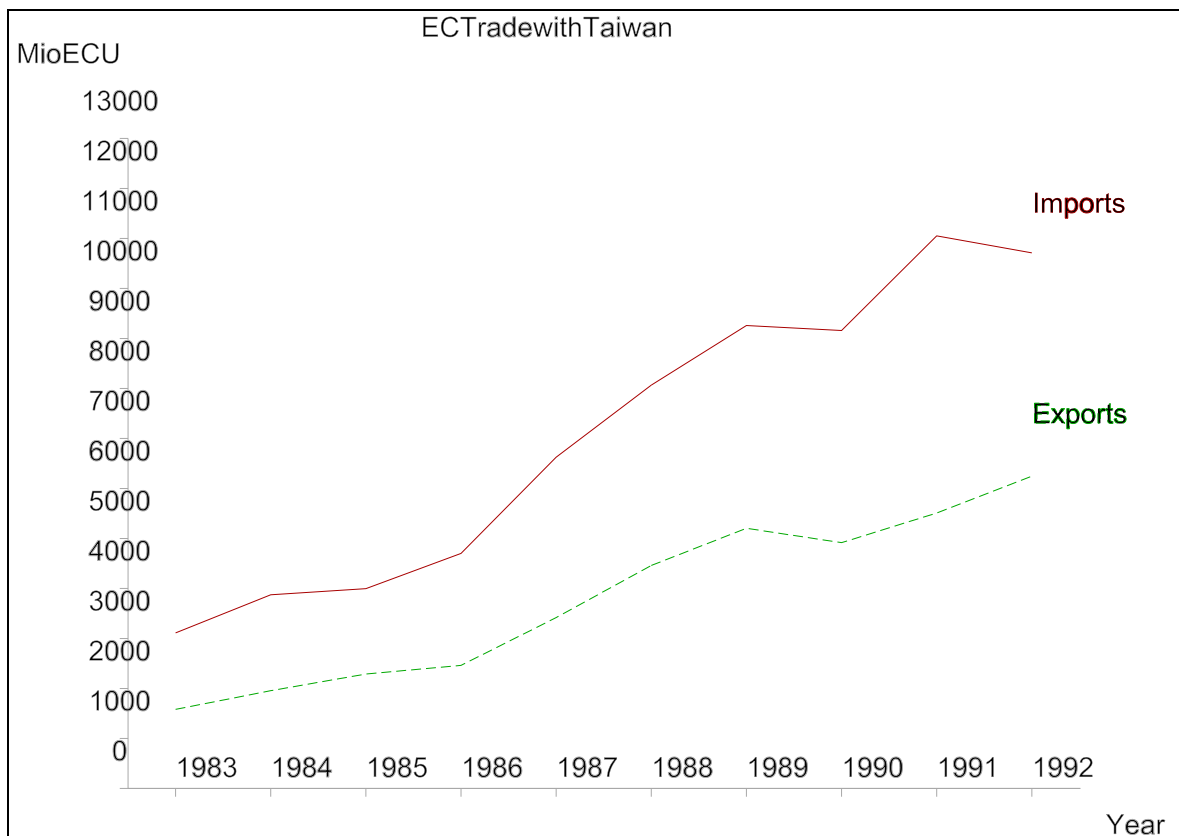
³⁴ Lloyd's List, 28 October 1993.

³⁵ Eurostat, External Trade and Balance of Payments. Statistical yearbook. Recapitulation 1958-1992 (Luxembourg, 1993), p. 8.

Table 1: EC Trade with Taiwan (Values in Mio ECU)

	Imports	Exports	Trade balance
1983	3 111	1 583	-1 528
1984	3 875	1 957	-1 918
1985	3 997	2 291	-1 706
1986	4 702	2 463	-2 238
1987	6 626	3 418	-3 208
1988	8 067	4 460	-3 607
1989	9 259	5 206	-4 053
1990	9 159	4 917	-4 242
1991	11 052	5 511	-5 541
1992	10 713	6 246	-4 467

Source: Eurostat, External Trade and Balance of Payments. Statistical yearbook. Recapitulation 1958-1992 (Luxembourg: Statistical Office of the European Communities, 1993).

**Figure 1** EC Trade with Taiwan

Source: Based on figures in table 1.

If we split Taiwan's exports to and imports from Western Europe up on major groups we get the figures given in Table 2 and Table 3. The group machinery, etc., comes out on top on both sides. On the export side the value was much higher than on the import side. What the table does not show was that on the export side automatic

data processing machines and units thereof came to US\$ 1,870 billion, representing more than half of this category. Bicycles was the largest group among vehicles on Taiwan's export side. Among vehicles on the import side motor cars and other motor vehicles was the biggest group.

Table 2: ROC's Major Export Items to Western Europe in 1991
(Values in Thousand US\$)

Machinery and mechanical appliances (includes Automatic Data Processing machines and units thereof)	3,811,219
Electrical machinery and equipment, sound recorders and reproducers, television image and sound recorders and reproducers	2,816,107
Vehicles other than railway or tramway rolling-stock	969,212
Plastics and articles thereof	593,553
Toys, games and sports requisites	686,002

Source: Data from Euro-Asia Trade Organization, kindly provided by the Belgian Trade Association, Taipei.

Table 3: ROC's Major Import Items from Western Europe in 1991
(Values in Thousand US\$)

Machinery and mechanical appliances	1,947,382
Electrical machinery and equipment	860,681
Vehicles other than railway rolling-stock (incl. motor cars)	666,975
Iron and steel	449,575

Organic chemicals	663,072
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Source: Data from Euro-Asia Trade Organisation, kindly provided by the Belgian Trade Association, Taipei.

Finally, if we split Taiwan's trade up on EC member countries we will see that West Germany was by far the biggest trading partner for Taiwan in 1990, followed by the UK, the Netherlands and France (see table 4 and figure 2).

Table 4: ROC's Trade with Europe in 1990

(Value in Mio. US\$)

	Export	Import	Total	Percent
Europe	12,233	9,586	21,819	100
EEC	10,736	7,268	18,004	82.5
West Germany	3,183	2,668	5,851	26.8
UK	1,979	1,154	3,133	14.4
Netherlands	1,856	729	2,584	11.8
France	1,132	1,132	2,263	10.4
Italy	985	817	1,802	8.3
Belgium	487	393	880	4.0
Spain	588	139	727	3.3
Denmark	163	123	285	1.3
Ireland	116	45	160	0.7
Greece	132	12	144	0.7
Portugal	113	23	135	0.6
Luxembourg	3	34	37	0.2

Source: Data from Euro-Asia Trade Organization, kindly provided by the Belgian Trade Association, Taipei.

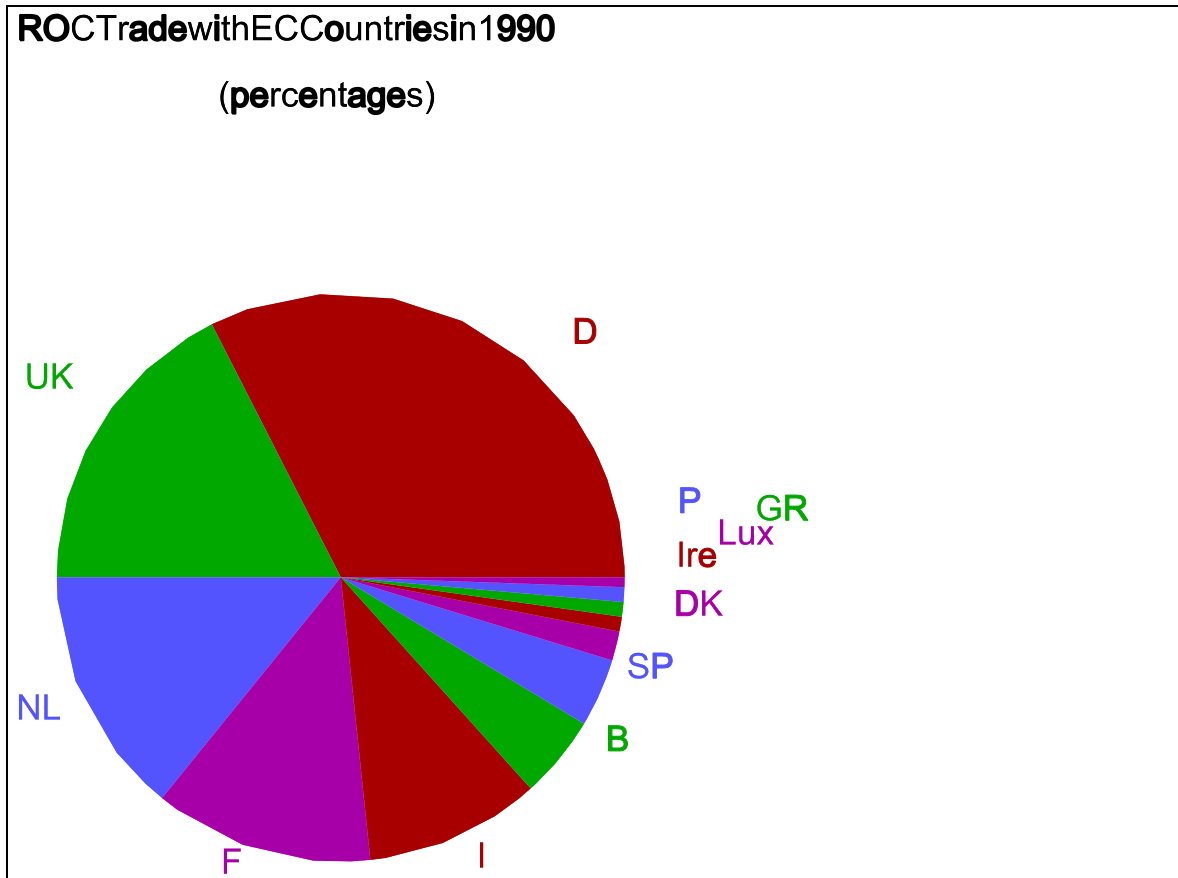


Figure 2: ROC's Trade with EC Countries
Source: Based on figures in table 4

The only EC country that had a trade surplus with Taiwan in 1990 was Luxembourg. France had an exact balance. The other EC countries all had a deficit in their trade balance with Taiwan.

This paper will not deal with investment issues. But let us mention that investments in the EC from the ROC increased substantially in the late 1980s. This happened partly in an effort to avoid tariffs and non-tariff barriers such as quota restrictions, local content requirements and the threat of anti-dumping. During 1986-1991 the ROC government approved direct foreign investments (FDIs) in Europe of \$716m, which corresponded to 15.8% of the islands total FDIs in that period.³⁶

The Management of (Non)-Relations

As mentioned earlier, since the establishment of official relations

³⁶ Philip Liu, "European Single Market - A Mixed Blessing for Taiwan's Economy," *Business Taiwan*, here from Reuter Textline, 11 January 1993. See also "Companies Gear up for EC Single Market," *Asia Wall Street Journal*, here from Reuter Textline, 27 December 1990.

between the EC and the PRC in 1975 there have been no official relations between the EC and the ROC. Trade, however, as we have seen, kept increasing during the 1980s and early 1990s. So the need for some way to manage these (non)-relations was felt. On the EC side this included the passing of unilateral measures, especially in respect to textiles, which has been a politically sensitive issue in the EC. Anti-dumping measures are by nature also unilateral. Recently, in 1990, the EC Commission used a non-governmental organization, the Association of European Chambers of Commerce and Industry (Eurochambres) to conclude two agreements with the ROC. One was a "Protocol on Income Tax Exemption on Shipping Enterprises" between the Taipei Economic and Cultural Office in Brussels and Eurochambres. In this protocol, signed 1 August, 1990, in Brussels, the two sides "ascertained that, as from date of signature, the financial authorities of both parties are willing not to apply, on a reciprocal basis, income tax imposed on the operation of ships in international traffic by their respective shipping enterprises carrying cargoes from either side." The other agreement, signed by the Secretary General of the China External Trade Development Council on 29 december, 1990, and by the President of Eurochambres on 20 March 1991, was an "Agreement on the Organization of a System of International Customs Deposits with China-Taiwan for the temporary Admission of Goods."³⁷

Basically Eurochambres acted as an agent for the Commission, which took the initiative and conducted the negotiations. Using Eurochambres was a solution chosen in order not to upset relations with the PRC. The shipping tax agreement was only concluded after several years of discussions. The purpose was to avoid discrimination in relation to the United States. The agreement on customs deposits aims to facilitate temporary admission of goods for exhibitions and fairs. It is managed by the International Chamber of Commerce in Paris, which guarantees that the goods in question will be reexported. The agreement follows the same principles as the International Convention of the ATA Carnet.³⁸

The possibility of other agreements between European non-governmental organizations and ROC organizations/authorities cannot be ruled out. However, GATT membership of the ROC might presumably make it easier for the EC to contemplate direct bilateral agreements with the ROC.

We shall now move on to review the two most important areas, where the EC has managed its relations with the ROC unilaterally, viz. textiles and anti-dumping measures. We refrain from covering article 115 cases, which were important in the 1980s, but which have diminished in importance in the run-up to 1992. Nor will we cover specific disputes like import and taxation of wine and alcohol in Taiwan,³⁹ issues of intellectual property rights, and the

³⁷ Copies of both agreements kindly provided to the author by Eurochambres.

³⁸ Agence Europe, 21 March 1992.

³⁹ See for instance Agence Europe, 5 March 1991. In December 1991 the EC cut textile import from Taiwan in retaliation for the ROC tariffs imposed on European liquor. Reuter News Service, 8 December 1991.

questions relating to services, like banking and insurance,⁴⁰ where the EC has felt discriminated against compared with the United States. Some of these issues are on the agenda of the GATT Working Party looking at the issue of ROC GATT membership, which we shall deal with without going into technical details.

Textiles and Clothing

Much of today's international trade in textiles and clothing is governed by the multifibre arrangement (MFA) dating back to 1974. Before the MFA there had been first a short term (1961-62) and then a so-called Long-Term Arrangement (LTA) regarding International Trade in Cotton Textiles (1962-74), which covered textile and clothing products with 50 percent of cotton (in value). The first MFA (MFA I, 1974-77) extended coverage to all textiles and clothing of wool, cotton or synthetic fibres. The coverage remained the same during MFA II (1978-82) and MFA III (1982-86). But MFA IV (1986-91) extended coverage to include vegetable fibres (flax and ramie) and silk blends. Through these arrangements developed countries have restricted imports of textiles and clothing from developing countries.⁴¹

The EC's commercial policy concerning textiles is partly based on MFA. During MFA III, for instance, the EC concluded agreements with 27 countries. This number was reduced to 19 during MFA IV. But there is also an autonomous policy for countries that are not parties to the MFA, including Taiwan and some state trading countries, such as for instance Vietnam, Mongolia and North Korea. The PRC, which joined the MFA in 1984, still had a so-called sui generis agreement with the EC for the years 1984-88. For Mediterranean countries and Lomé countries, imports have in principle remained unrestricted, but some informal arrangements have been concluded, especially with Mediterranean countries. For Turkey there are VERs. Since wage levels in the industrialized countries (USA, Australia, Japan and EFTA countries) are similar to those in the EC there have been no agreements or arrangements with these countries.⁴²

During the 1980s the EC's trade deficit in textiles and clothing increased. Exports increased from ECU 17,819 Mio. in 1984 to ECU 19,904 Mio. in 1988. In the same period imports increased from ECU 18,456 mio. to ECU 26,680 mio. It is in the clothing sector that the EC has a deficit. Actually the EC has a trade surplus in

⁴⁰ See for instance China Economic News Service, Reuter Textline 6 November 1991.

⁴¹ Vincent Cable, "Textiles and clothing," in J. Michael Finger and Andrzej Olechowski (eds.), The Uruguay Round: A Handbook for the Multilateral Trade Negotiations (Washington, D. C.: The World Bank, 1987), pp. 180-190.

⁴² R.J.P.M. van Dartel, "The EEC's Commercial Policy Concerning Textiles," in E.L.M. Völker (ed.), Protectionism and the European Community (Deventer Kluwer Law and Taxation Publishers, 1987), pp. 121-158.

textiles (See table 5)

Table 5: EC External Trade in Textiles and Clothing, 1984-88 (Mio. ECU)

Clothing	Textiles			
	Exports	Imports	Exports	Imports
1984	10,973	7,944	6,846	10,514
1985	11,820	8,645	8,165	10,935
1986	11,086	8,742	8,214	12,382
1987	10,898	9,528	8,252	15,014
1988	11,373	10,138	8,531	16,542

Source: GATT, Trade Policy Review: European Communities 1991, Vol. 1 (Geneva, June 1991), p. 188.

Major suppliers of textile and clothing products to the EC included MFA-countries (46 percent in 1988), Mediterranean countries (22.5 percent), and the EFTA countries (14 percent). The most important single source was Hong Kong (10.5 percent). Taiwan provided the EC with 3.3 percent of its textile products in 1988.⁴³ The value of textile and clothing products imported by the EC from Taiwan increased gradually over the years, It was ECU 248 mio. in 1976, ECU 380 mio. in 1980, ECU 586 mio. in 1985, and ECU 779 in 1989 (See fig, 3). In 1976 Taiwan ranked as number 8 supplier to the EC. In 1989 Taiwan was number 11. Turkey, China and Morocco has overtaken Taiwan during these years. Hong Kong remained number one supplier during the whole period.⁴⁴

⁴³ GATT, Trade Policy Review: European Communities 1991 Vol. 1 (Geneva, June 1991), p. 289.

⁴⁴ GATT, Trade Policy Review: European Communities Vol. II (Geneva, June 1991), p. 64.

Apart from being restricted because of MFA and MFA-type quotas imports of textile products in the EC were also restricted during the 1980s through Article 115 limitations. In 1988, 78 out of 119 authorizations under Article 115 referred to textiles and clothing. Between January 1987 and July 1989 Hong Kong, China, Taiwan, the Republic of Korea, India and Pakistan together accounted for more than 90 per cent of these cases.⁴⁵ Thanks to the EC's internal market these article 115 cases were phased

out as 1 January 1993 approached. There were 48 authorizations in 1990, 32 in 1991, but no authorizations in 1992.⁴⁶

As mentioned earlier the ROC actually concluded a textiles agreement with the EC which was in force for three years from October 1970.⁴⁷ It referred to the Long Term Arrangement regarding International Trade in Cotton Textiles and set a global ceiling of 11,445 tonnes of cotton textiles import from the ROC to the EC. After the EC's recognition of the PRC in 1975 the EC started its current autonomous policy vis-à-vis Taiwan. The first regulation introducing quantitative restrictions for textile products from Taiwan was adopted in July 1975.⁴⁸ It introduced Community quotas for a number of textiles (cotton and synthetic fibres). These were expressed in tons or pieces (for instance for shirts and pull-overs). There were also some specific national quotas for the Benelux, the UK, France and Italy. Restrictions were established for 1975, 1976

⁴⁵ Ibid., p. 194.

⁴⁶ GATT, Trade Policy Review: European Communities 1993 Vol. 1 (Geneva, August 1993), p. 209.

⁴⁷ "Accord entre Communauté économique européenne et la république de Chine sur le commerce des textiles de coton," Journal officiel des Communautés européennes No L 43 (22 February 1971), pp. 22-31.

⁴⁸ "Règlement (CEE) No 1783/75 du Conseil du 10 juillet 1975 relatif au régime d'importation pour certains produits textiles originaires de T'ai-wan," Journal officiel des Communautés européennes No L 182 (12 July 1975), pp. 2-6

and 1977 allowing for some annual growth. A week after the first Council regulation a Commission regulation, which divided the Community quota into national quotas, was adopted.⁴⁹

In December 1977 a Commission regulation introduced more detailed quotas for 1978-82,⁵⁰ which were confirmed by the Council in February 1978.⁵¹

A new base regulation for 1983-86 was adopted in December 1982.⁵² It went through various amendments during the four years.⁵³

The next base regulation for the years 1987-1991 was adopted in December 1986.⁵⁴ It included quotas for 1987. In the following years quotas were set annually, and there were a few other amendments.⁵⁵ In December 1991 the regulation was extended for 1992

⁴⁹ "Règlement (CEE) No 1848/75 de la Commission du 18 juillet 1975 portant répartition des contingents quantitatifs communautaires à l'importation de certains produits textiles originaires de T'ai-wan," Journal officiel des Communautés européennes No L 189 (12 July 1975), pp. 24-28.

⁵⁰ "Règlement (CEE) No 3020/77 de la Commission du 30 décembre 1977 relatif au régime d'importation pour certains produits textiles originaires de T'ai-wan," Journal officiel des Communautés européennes No L 357 (31 December 1977), pp. 51-85.

⁵¹ "Règlement (CEE) No 255/78 du Conseil du 7 février 1978 portant maintien du régime d'importation dans la Communauté des produits textiles originaires de T'ai-wan," Journal officiel des Communautés européennes No L 39 (9 February 1978), p. 1.

⁵² "Règlement (CEE) No 3587/82 du Conseil du 23 décembre 1983 relatif au régime d'importation pour certains produits textiles originaires de T'ai-wan," Journal officiel des Communautés européennes No L 374 (31 December 1982), pp. 1-45.

⁵³ Council Regulation (EEC) No 853/83, OJ L 98 (16 April 1983); Commission Regulation (EEC) No 2563/85, OJ No L 244 (12 September 1985); Commission Regulation (EEC) No 3534/85, OJ No L 336 (14 December 1985); Council Regulation (EEC) No 3787/85, OJ L 366 (31 December 1985); Commission Regulation (EEC) No 3751/86, OJ No L 348 (10 December 1986).

⁵⁴ "Council Regulation (EEC) No 4134/86 of 22 December 1986 on the arrangement for imports of certain textile products originating in Taiwan," Official Journal of the European Communities No L 386 (31 December 1986), pp. 1-27.

⁵⁵ Council Regulation (EEC) No 1438/87, OJ No L 139 (29 May 1987); Commission Regulation (EEC) No 3435/87, OJ No L 327 (18 November 1987); Commission Regulation (EEC) No 3311/88, OJ No L 293 (27 November 1988); Commission Regulation (EEC) No 635/89, OJ No L 70 (14 March 1989); Commission Regulation (EEC) No 1760/89, OJ No L 172 (21 June 1989); Commission Regulation (EEC) No 3058/90, OJ No L 294 (25 October 1990); Council Regulation (EEC) No 3733/91, OJ 21 December 1991).

with a few amendments.⁵⁶

The current base regulation for the years 1993-1995, was adopted in December 1992.⁵⁷ It mentions the establishment of the internal market as an area "without internal frontiers."⁵⁸ In annex II it sets Community quantitative limits for the different kinds of textiles and clothing, divided into six major groups, each with subcategories. The system is administered by the Taiwan Textile Federation on the ROC side and by import authorization issued by the Member States' authorities on the Community side. The regulation does not include specific national quotas on the EC side.

Since 1 January 1993 each member state is entitled to issue import authorizations valid for the entire EC market. All national (or regional) quotas have been eliminated. The national authorities and the Commission have been linked through computers ensuring an EC-wide surveillance of import restrictions.⁵⁹

The quantitative limits established for 1993-95 for Taiwan allow for small annual increases. To give a couple of examples. Group 1A, category 2 (woven fabrics of cotton) allows an increase from 5,797 tonnes in 1993 to 5,808 tonnes in 1995. Another example: Group 1B, category 4 (shirts, T-shirts etc.) allow for an increase from 10,246,000 pieces in 1993 to 10,515,000 pieces in 1995.

According to the now concluded Uruguay Round of GATT the MFA is to be phased out over 10 years, from 1995 until 2005. Also non-MFA restrictions are to be phased out.⁶⁰ If such a phase-out does indeed happen it should benefit both importers (and thus consumers in the EC) and exporters, including from the ROC.

EC Anti-Dumping Cases

Article VI of the GATT deals with anti-dumping and countervailing duties. The article condemns dumping "by which products of one country are introduced into the commerce of another country at less than the normal value of the products, ... if it causes or threatens material injury to an established industry ... or materially retards

⁵⁶ "Council Regulation (EEC) No 344/92 of 19 December 1991 amending Regulation (EEC) No 4134/86 on the arrangements for imports of certain textile products originating in Taiwan," Official Journal of the European Communities No L 42 (18 February 1992).

⁵⁷ "Council Regulation (EEC) No 395/92 of 29 December 1992 on the arrangements for imports of certain textile products originating in Taiwan," Official Journal of the European Communities No L 405 (31 December 1992), pp. 6-39.

⁵⁸ On the internal market and textiles, see Jacques Pelkmans, "Applying '1992' to Textiles and Clothing," CEPS Working Document No. 67 (1992).

⁵⁹ GATT, Trade Policy Review: European Communities 1993, p. 221.

⁶⁰ "The Final Act of the Uruguay Round: A Summary," GATT Focus Newsletter, No 104 (December 1993), pp. 5-15, at p. 8.

the establishment of a domestic industry" in the importing country. The article says that there is dumping, if the price is

- (a) is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country, or
- (b) in the absence of such domestic price, is less than either
 - (i) the highest comparable price for the like product for export to any third country in the ordinary course of trade, or
 - (ii) the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit.

The article also specified that "Due allowance shall be made in each case for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability."

If there is dumping, what can the importing country do? "In order to offset or prevent dumping, a contracting party may levy on any dumped product an anti-dumping duty not greater in amount than the margin of dumping in respect of such product."⁶¹

This definition of dumping, especially b(ii), obviously leaves some discretion to the importing country. More specific guidelines were given in the Anti-Dumping Code adopted as part of the GATT Tokyo Round Agreements in 1979.⁶²

The EC introduced legislation for "protection against dumped or subsidized imports" from non-member countries in 1979. A new Regulation was adopted in 1984.⁶³ The current regulation was adopted in 1988.⁶⁴ It states the general principle that "A product shall be considered to have been dumped if its export price to the Community is less than the normal value of the like product." It then goes on to define the normal value, the export price, etc. It deals with the concept of injury and how investigations have to be conducted. If it is concluded that there is dumping (or a

⁶¹ Quoted from Kenneth W. Dam, The GATT: Law and the International Economic Organization (Chicago and London: The University of Chicago Press, 1970), p. 400.

⁶² General Agreement on Tariffs and Trade, The Texts of the Tokyo Round Agreements (Geneva, August 1986), pp. 127-145.

⁶³ "Council Regulation (EEC) No 2176/84 of 23 July 1984 on protection against dumped or subsidized imports from countries not members of the European Economic Community," Official Journal of the European Communities No L 201 (30 July 1984), pp. 1-16.

⁶⁴ "Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community," Official Journal of the European Communities No L 209 (2 August 1988), pp. 1-15. For an analysis, see C. Norall, "The New Amendment to the EC's Basic Anti-Dumping Regulation," Common Market Law Review Vol. 26, No. 1 (1989), pp. 83-101.

subsidy) an anti-dumping or countervailing duty can be imposed. There is also the possibility of accepting price undertakings by the exporting company. Anti-dumping measures are subject to review, "where warranted." They normally lapse after five years.

Table 6: EC Anti-Dumping Measures in Force against Taiwan at 31 December 1992

Product	Measure	Reg/Dec	Publication
Cycle tyres and tubes	undertakings	Com. Dec. 88/305/EEC 27.5.88	O.J. L 134 31.5.88, p.61
Glutamic acid (monosodium glutamate)	undertakings	Com. Reg. (EEC) No.547/90 2.3.90	O.J. L 56 3.3.90, p.23
	residual duty	Council Reg. (EEC) No. 1798/90 27.6.1990	O.J. L 167 30.6.90, p.1
Oxalic acid	duties	Council Reg. (EEC) No. 2089/88 11.7.88	O.J. L184 15.7.88, p.1
Polyester fibres (synthetic)	duties	Council Reg. (EEC) No. 3905/88 12.12.88	O.J. L 347 16.12.88, p.10
Polyester yarns	duties	Council Reg. (EEC) No. 830/92 30.3.92	OJ L 88 3.4.92, p.1
Synthetic textile fibres of polyester	duties	Council Reg. (EEC) No 3017/92 19.10.92	O.J. L 306 22.10.92, p.1

Source: Commission of the European Communities, Eleventh Annual Report from the Commission to the European Parliament on the Community's Anti-Dumping and Anti-Subsidy Activities (1992) COM(93) 516 final, Brussels, 28 October 1993.

This is not the place for a major study of the EC's anti-dumping policy. Suffice it to mention that a number of authors have been rather critical of the Community's policy in this area. The number of anti-dumping actions increased substantially during the 1980s. Many have argued that anti-dumping has become a substitute for other protectionist measures that have become more difficult to apply

because of international commitments.⁶⁵

Table 6 lists anti-dumping measures in force against Taiwan at the end of 1992. Let us briefly review these cases.

Inner Tubes and new tyre cases for bicycles:

In January 1980 the Commission terminated an anti-dumping proceeding concerning imports of inner tubes and new tyre cases for bicycles from Republic of Korea and Taiwan because the exporters had given undertakings that satisfied the Commission. When these undertakings were about to expire in 1985 the Bureau de Liaison des Industries du Caoutchouc de la Communauté Européenne (BLIC) requested a review. In May 1986 the Commission decided that there was sufficient evidence to warrant a review. The Commission then carried out investigations at the premises of the interested parties, including 13 producers in the EC, two in Korea and nine in Taiwan. Six importers into the EC were also investigated. In the case of Taiwan normal value was determined on the basis of domestic prices of three of the nine producers and exporters. The exports from the three companies accounted for more than 80% of exports to the EC and the Taiwanese Rubber Association had agreed that their prices were representative. These three companies were Cheng Shin Rubber Industrial Co., Ltd, Hwa Fong Rubber Industrial Co. Ltd, and Kenda Rubber Industrial Co. Ltd. However, for one of these companies domestic sales were considered insufficient, so normal value had to be constructed. Export prices were determined on the basis of the prices actually paid by EC importers. When comparing normal value and export price the Commission took account, where appropriate, of differences affecting price comparability including transport, freight, financial costs and commissions. The conclusion was that there was indeed dumping, the dumping margin being set at 15% in the Taiwanese case. The Commission also claimed to prove injury. The market share of inner tubes from Korea and Taiwan increased from 20,8 to 32,6% between 1982 and 1986. Resale prices in the EC undercut those of EC producers between 6 to 26%. The Commission therefore concluded that it was in the EC's interest that intervention should continue. When the exporters concerned were informed of these findings they offered price undertakings which had the effect of eliminating the dumping margins provisionally established. The Commission found these undertakings acceptable, and the investigation was terminated without imposing anti-dumping duties.⁶⁶

⁶⁵ See for instance Christopher Norall, "New Trends in Anti-dumping Practice in Brussels," The World Economy Vol. 9 (March 1986), pp. 97-112; Brian Hindley, "Dumping and the Far East Trade of the European Community," The World Economy Vol. 11 (December 1988), pp. 445-464; and Phedon Nicolaides, "EC Anti-dumping Policies," EUI European Trends No 4 (1989), pp. 57-67.

⁶⁶ Commission Decision of 27 May 1988 (88/305/EEC), OJ No L 134 (31 May 1988).

Oxalic acid:⁶⁷

In March 1987 a Spanish producer of oxalic acid, Destillados Agrícolas Vimbodi (DAVSA), complained about imports of oxalic acid from Taiwan and South Korea. The Commission decided to initiate an anti-dumping proceeding. The Commission investigated the Taiwan company Uranus Chemicals Co. Ltd, Hsin Chu, and three Community producers and one EC importer. Normal value was based on prices paid in Taiwan and export price on what was actually paid by the EC importers. The conclusion was that the weighted average dumping margin was 50,99% (In the case of South Korea the producers were not cooperative, so normal value and export price were based on facts available, and the dumping margin was determined to be 66,05%). The Commission also concluded that there was injury, with EC producers forced to sell their product with a loss. A number of EC firms using or processing oxalic acid from Taiwan argued that it was not in the Community's interest to take defensive action. The Commission disagreed with these firms and decided first to impose a provisional duty of 20,21% for oxalic acid originating in Taiwan (but strangely enough a lower provisional duty for South Korea).⁶⁸ The definitive duty, however, established the same duty, 20,21%, for imports from both Taiwan and Korea. In the meantime the company Uranus Chemicals Co. Ltd. had offered a price undertaking, which was accepted by the Commission. So the definitive duty did not apply to that company.⁶⁹

Polyester yarn

In May 1987 the Commission received a complaint from the International Rayon and Synthetic Fibres Committee (CIRFS), Paris, on behalf of polyester yarn producers in the EC. The evidence provided was sufficient for the Commission to initiate an anti-dumping proceeding, which concerned both partially oriented polyester yarn (POY) and textured polyester yarn (PTY). POY is a feeder yarn used mainly for the production of PTY which is used to produce fabrics of polyester or of cotton and polyester. The Commission collected information from eight Community producers, five producers in Mexico, four in South Korea, five in Taiwan and five in Turkey. Normal values, export prices and dumping margins were established separately for POY and PTY. The Taiwanese firms involved requested an adjustment for the hedging of exchange rates

⁶⁷ Oxalic acid is a colourless, crystalline, toxic organic compound. It is used widely as an acid rinse in laundries, where it is effective in removing rust and ink stains. It is the chief constituent of many commercial preparations used for removing scale from automobile radiators (Encyclopædia Britannica).

⁶⁸ Commission Regulation (EEC) No 699/88 of 15 March 1988, OJ No L 72 (18 March 1988).

⁶⁹ Council Regulation (EEC) No 2089/88 of 11 July 1988, OJ No L 184 (15 July 1988); and Commission Decision of 22 June 1988 (88/353/EEC), OJ No L 160 (28 June 1988).

which they practised to avoid losses from a possible dollar devaluation. The Commission denied such adjustment on the basis that the Regulation (EEC) No 2176/84 did not provide for it. The preliminary investigation revealed dumping margins varying from 0 to 8,37% for PTY and from 0,27 to 17,38% for POY. The four countries increased their market share in the EC from 2.8% in 1984 to 10.6% in 1987. Their prices were significantly lower than the prices of EC producers. A significant number of Community producers suffered losses. Arguments from EC industries using polyester yarn that protective measures would not be in the Community interest were not accepted by the Commission. Nor was the existence of quantitative restrictions in Spain and Italy sufficient reason not to relieve the Community industry from the injury caused by the alleged dumping practices. First a provisional anti-dumping was imposed. In the case of Taiwan the duty was 17.4% for POY, but three companies were exempted, viz. Far Eastern Textile Ltd, Nan Ya Plastics Corp., and Tuntex Fibre Co., Ltd. For PTY the duty was 8.4%, with lower duties for Far Eastern Textile Ltd (6.8%), Nan Ya Plastics Corp., (5.8%), and Shin Kong Synthetic Fibres Corp. (5.8%). Tuntex Fibre Co., Ltd, was exempted from the duty.⁷⁰ The definitive anti-dumping duty imposed later was lower, 8.7% for POY and 6.2% for PTY, with lower duties for Chung Shin Textile Co. Ltd (1.7%), Nan Ya Plastics Corp. (4.9%) and Shin Kong Synthetic Fibres Corp. (5%).⁷¹

Glutamic acid/monosodium glutamate

In 1988 the Confédération Européenne des Fédérations des Industries Chimiques (CEFIC) lodged a complaint concerning imports of glutamic acid and its salts from Indonesia, the Republic of Korea, Taiwan and Thailand. These products are used mainly as flavour enhancer in food products such as soups and preserved fish and meat. The Commission found that the complaint included sufficient evidence to start an anti-dumping proceeding. The investigation included three Community producers, three producers in Indonesia, two in Korea, two in Thailand and three in Taiwan, viz. Tung Hai Fermentation Industry Corporation, Taichung, Ve Wong Corporation, Taipei, and Wei-Chuan Foods Corporation, Taipei. The investigation further included 16 importers in the EC. No submissions were made on behalf of Community consumers. It was found that almost all production and trade is of monosodium glutamate, which is a sodium salt in the form of crystals or crystalline powder. So this was indeed the product then investigated. Varying dumping margins were established. For Tung Hai Fermentation Industry Corporation 42.6% and for Ve Wong Corporation 54.3%. The imports of monosodium glutamate from the four countries concerned increased from 7.1% in 1984 to 23.1% in the first half of 1988. Average prices decreased 29.1% in this period. This forced Community producers to sell at prices which

⁷⁰ Commission Regulation (EEC) No 1695/88 of 14 June 1988, OJ L 151 (17 June 1988).

⁷¹ Council Regulation (EEC) No 3905/88 of 12 December 1988, OJ No L 347 (16 December 1988).

did not cover their costs. The Commission concluded that there was material injury to Community producers. In March 1990 the Commission imposed a provisional anti-dumping duty. In the case of Taiwan the duty was ECU 0.653 per kg. But direct imports from Tung Hai Fermentation Industry Corporation and Ve Wong Corporation were excluded from the duty since these companies had offered price undertakings, which were accepted.⁷² The definitive Council regulation in June 1990 confirmed these undertakings and duties.⁷³

Polyester yarns (man-made staple fibres)

In March 1990 the Commission initiated an anti-dumping proceeding concerning imports into the EC of certain yarns of staple polyester fibres originating in the Republic of Korea, Taiwan, Indonesia, India, PRC and Turkey. This followed a complaint from the Committee of the Cotton and Allied Textile Industries of the EEC (Eurocoton). The investigation included 23 Community producers and 13 exporters, including Chung Shing Textile Company Ltd, Taipei. Seven Indian companies were included, but many Indian companies prevented the Commission from carrying out verifications at the premises. 14 did answer questionnaires. The investigation also included five Community importers. The products covered were the following: sewing thread of polyester staple fibres, not put up for retail sale, single and multiple (folded) yarn containing 85% or more by weight of polyester staple fibres, not put up for retail sale, and other yarn of polyester staple fibres mixed mainly or solely either with artificial staple fibres or with cotton. The Commission decided to impose a provisional anti-dumping duty in September 1991. For the Taiwanese company involved in the investigation a dumping margin of 2.24% was established and a provisional duty of 2.2% was imposed. But for non-cooperating companies a dumping margin of 24.5% and an anti-dumping duty of the same size was set for Taiwan.⁷⁴ In January 1992 the Council extended these provisional duties for a period of two months.⁷⁵ In March a definitive duty was imposed. The 2,2% duty for Chung Shing Textile Company Ltd was retained. But the general duty for Taiwan was reduced to 14.3%.⁷⁶

⁷² Commission Regulation (EEC) No 547/90 of 2 March 1990, OJ No L 56 (3 March 1990).

⁷³ Council Regulation (EEC) No 1798/90 of 27 June 1990, OJ L 167 (30 June 1990).

⁷⁴ Commission Regulation (EEC) No 2904/91 of 27 September 1991, OJ No L 276 (3 October 1991).

⁷⁵ Council Regulation (EEC) No 202/92 of 27 January 1992, OJ No L 21 (30 January 1992).

⁷⁶ Council Regulation (EEC) No 830/92 of 30 March 1992, OJ No L 88 (3 April 1992).

Synthetic polyester fibres

In May 1987 the International Rayon and Synthetic Fibres Committee (IRSFC) lodged a complaint to the Commission on behalf of EC producers of synthetic fibres of polyester. The Commission investigated nine Community producers and a number of producers/exporters in the United States, Mexico, Taiwan, Turkey, Rumania, and Yugoslavia. Information was also received from 16 EC importers. In the case of Taiwan the following dumping margins were established: Chung Shing Textile Co. Ltd 20,4%, Far Eastern Textile Ltd 5,8%, Nan Ya Plastics Corp. 7,2% and Shinkong Synthetic Fibres Corp. 6,3%. Imports from Taiwan undercut the prices charged by EC producers between 22% and 30%. On 14 June 1988 the Commission imposed a provisional anti-dumping duty on imports from Taiwan of 20,4%, with special lower duties applying to three companies, viz. Far Eastern Textile Ltd. 5,8%, Nan Ya Plastics Corp. 7,2% and Shinkong Synthetic Fibres Corp 6,3%.⁷⁷ A definitive duty was imposed by the Council on 16 December 1988. The general duty was lowered to 15,8%. For the three companies it established the following duties: Far Eastern Textile Ltd. 5,1%, Nan Ya Plastics Corp. 6,3%, and Shinkong Synthetic Fibres Corp 9,2%.⁷⁸

In March 1990 the Association of Importers of Synthetic Polyester Fibres requested a review. After consultations the Commission decided to institute a full review of the 1988 regulation. The review included 13 Community producers and two Community importers as well as a number of producers in Turkey, Serbia and Montenegro, Macedonia, Mexico, the United States, and Taiwan. In the case of Taiwan these were: Chung Shing Textile Co., Ltd, Taipei, Far Eastern Textile Ltd., Taipei, Nan Ya Plastics Corporation, Taipei, Shinkong Synthetic Fibres Corporation, Taipei, Tainan Spinning Co., Ltd, Tainan, and Tuntex District Corporation, Tainan. The review concluded with a 13% anti-dumping duty being imposed on imports of the polyester fibres in question from Taiwan. For Far Eastern Textile Ltd the lower rate of 6.8% would apply, and for Nan Ya Plastics Corporation the rate was set at 5.9%.⁷⁹

Developments in 1993

The main developments for Taiwan in 1993 in respect to anti-dumping included two investigations that were terminated without imposition of duties. One concerned CD players initiated after a complaint

⁷⁷ "Commission Regulation (EEC) No 1696/88 of 14 June 1988," Official Journal of the European Communities No L 151 (17 June 1988), pp. 47-54.

⁷⁸ "Council Regulation (EEC) No 3946/88 of 16 December 1988," Official Journal of the European Communities No L 348 (17 December 1988), pp. 49-55.

⁷⁹ "Council Regulation (EEC) No 3017/92 of 19 October 1992," Official Journal of the European Communities No L 306 (22 October 1992), pp. 1-9.

from the Committee of Mechoptronics Producers and Connected Technologies (Compact) in February 1992. Later two major Community producers of CD players decided to cease production and Compact formally withdrew its complaint on 6 April 1993. In July the Commission decided to terminate the proceeding without imposition of protective measures.⁸⁰ The other investigation was based on a complaint lodged by the European Bicycle Manufacturers Association (EBMA) in July 1991. The dumping margin found for Taiwan was considered negligible so no anti-dumping duty was imposed on imports of bicycles from Taiwan.⁸¹

However, a proceeding concerning 3.5" microdisks led to imposition of anti-dumping duties. This case started with a complaint from the Committee of European Diskette Manufacturers (Diskma). The Commission carried out investigations at the premises of a number of companies in the EC, Japan, Hong Kong and Taiwan. In the case of Hong Kong these were companies exporting diskettes originating in the PRC. The two Taiwanese companies investigated were CIS Technology Inc., Hsin-Chu, and Megamedia Corporation, Taipei. A provisional anti-dumping was imposed in April 1993 by the Commission.⁸² In August the Council extended it for a period of two months.⁸³ The definitive anti-dumping duty was imposed in October 1993. A duty of 32.7% was imposed on 3.5" microdisks originating in Taiwan, with the exception of disks produced by CIS Technology, which were made subject to a duty of 19.8%.⁸⁴

Monosodium glutamate was also back on the anti-dumping agenda in 1993. The closure of two European companies producing this product and the substantial changes in the value of the US dollar, which undermined existing price undertakings, led to the review. During the review the Commission withdrew its acceptance of undertakings from 1990. However, a number of companies, including Tung Hai Fermentation Industry Corporation and Ve Wong Corporation in Taiwan offered new undertakings which were accepted.⁸⁵ The definitive anti-dumping duty for monosodium glutamate from Taiwan remained ECU 0.653 per kg, with the two companies mentioned remaining exempted.⁸⁶

⁸⁰ Commission Decision of 19 July 1993 (93/413/EEC), OJ No L 185 (28 July 1993).

⁸¹ Commission Decision of 6 September 1993 (93/485/EEC), OJ No L 227 (8 September 1993).

⁸² Commission Regulation (EEC) No 920/93 of 15 April 1993, OJ No L 95 (21 April 1993).

⁸³ Council Regulation (EEC) No 2206/93 of 4 August 1993, OJ No L 196 (5 August 1993).

⁸⁴ Council Regulation (EEC) No 2861/93 of 18 October 1993, OJ No L 262 (21 October 1993).

⁸⁵ Commission Decision of 30 July 1993 (93/479/EEC), OJ No L 225 (4 September 1993).

⁸⁶ Council Regulation (EEC) No 2455/93 of 2 September 1993, OJ No L 225 (4 September 1993).

Summing up: The EC has since the mid-80s used anti-dumping measures against a number of products from Taiwan. The EC's approach to anti-dumping is based on art. VI of the GATT and the anti-dumping code from the GATT Tokyo Round. Whether these multilateral rules are based on correct economic theory can be discussed. We noticed cases where importer interests were brushed aside by the Commission. In no cases were consumers consulted. It can therefore be argued that there is a risk that anti-dumping is too much based on the interests of EC producers. It has been suggested that the right economic question to ask is: "Are the gains to the buyers from this import competition larger or smaller than the costs to competing domestic producers?"⁸⁷ This question of net gain for the importing Community seems not to be asked. Anti-dumping policies therefore will often be bad policies from an economic point of view. Low prices are only bad if they constitute a predatory pricing policy, i.e. an aggressive policy that will drive domestic firms out of business leaving foreign sellers with a quasi monopoly. Only in such cases is anti-dumping justified from an economic point of view. Otherwise, in the author's view, it is not only economically bad policy, but also politically bad policy because it leads to unnecessary conflicts with third countries.

The Final Act of the now concluded Uruguay Round also includes a text on anti-dumping. This text provides for greater clarity and more detailed rules about the successive steps in anti-dumping cases, determining whether a product is dumped, whether it causes injury, etc. It also clarifies the role of dispute settlement panels. It includes conditions for ensuring that all interested parties are given an opportunity to present evidence.⁸⁸

GATT Membership of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu ('Chinese Taipei')

China was one of the original contracting parties of the General Agreement on Tariffs and Trade (GATT) after the Second World War.

China signed the GATT in 1947 and ratified the Protocol of Provisional Application in 1948. China also took part in the first two Rounds of multilateral tariff negotiations in Geneva in 1947 and in Annecy in 1949.⁸⁹

In October 1949 the Peoples Republic of China (PRC) was founded in mainland China and the Chiang Kai-shek government fled to Taiwan, where it continued the Republic of China (ROC). Both the PRC and the ROC claimed to be the legitimate government of China. The ROC

⁸⁷ J. Michael Finger, "Antidumping and antisubsidy measures," in J. Michael Finger and Andrzej Olechowski (eds.), The Uruguay Round: A Handbook for the Multilateral Trade Negotiations (Washington, D.C.: The World Bank, 1987), pp. 153-161, at p. 157.

⁸⁸ GATT Focus Newsletter (December 1993), p. 9.

⁸⁹ For background, see for instance Hungdah Chiu, "Taiwan's Membership in the General Agreement on Tariffs and Trade," Chinese Yearbook of International Law and Affairs Vol. 10 (1990-91), pp. 198-205.

maintained China's seat in the UN until 1971, but decided to withdraw from GATT on 6 March 1950. For many years the PRC showed no interest in GATT membership. In 1965 the ROC requested observer status in GATT, which was granted despite objections from some contracting parties, which stated that the PRC was the sole lawful government of China. The objecting states included two EC member states at the time, namely France and the Netherlands, as well as two future EC member states, the UK and Denmark.⁹⁰

The ROC continued its observer status at GATT until 1971, when it was expelled following the UN General Assembly Resolution 2758 (XXVI) which expelled the ROC from the UN and restored the rights of the PRC.

It was only in connection with its "open-doors-policy" in the 1980's that the PRC started becoming interested in GATT. It became an observer in GATT in 1982, signed the Multifibre Arrangement (MFA) in 1983 and got a special observer status in 1984 which allowed it to take part in meetings of the GATT Council and eventually all GATT meetings. This has allowed the PRC to take part in the Uruguay Round meetings that started in 1986. On 10 July 1986 the PRC formally notified GATT of its decision to "resume" its membership in GATT. A Working Party on the PRC's status as contracting party was established in March 1987. Following the Tiananmen events in June 1989 negotiations were suspended and not resumed before December 1989.

The ROC formally submitted its application for accession to GATT on 1 January 1990. It did so under the name of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu. Originally the PRC strongly opposed GATT membership of the ROC as "utterly illegal", but gradually its position became less negative. In September 1992 the GATT Council decided to establish a Working Party to consider the request from the ROC to accede to GATT under article XXXIII.⁹¹ The PRC has argued that accession must take place according to article XXVI(5) which implies the sponsorship of a responsible contracting party.

Both Hong Kong and Macao have joined GATT on the basis of article XXVI(5), sponsored by the UK and Portugal respectively. This happened with the approval of the PRC. Hong Kong will be returned to the PRC in 1997 and Macao in 1999. The PRC has promised that they will enjoy a high degree of autonomy and be able to continue in GATT.

But who should sponsor the ROC. The PRC presumably after "resuming" its membership. This obviously is not acceptable to the ROC. Other contracting parties also prefer to use article XXXIII because it implies negotiations and concessions before joining. Article XXVI was made for colonies that had customs autonomy. The ROC does not really fit in with the purpose of the article.⁹²

⁹⁰ See also Ya Qin, "GATT Membership for Taiwan: An Analysis in International Law," New York University Journal of International Law and Politics Vol 24 (Spring 1992), pp. 1059-1105, at p. 1070.

⁹¹ General Agreement on Tariffs and Trade, GATT Activities 1992: An Annual Review of the work of GATT, Geneva, June 1993, pp. 95-96.

⁹² This is even admitted by a scholar from the PRC. See Lei Wang, "Separate Customs Territory in GATT and Taiwan's Request for GATT

Article XXXIII stipulates:

A government not party to this Agreement, or a government acting on behalf of a separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in the Agreement, may accede to this Agreement, on its own behalf or on behalf of that territory, on terms to be agreed between such government and the CONTRACTING PARTIES. Decisions of the CONTRACTING PARTIES under this paragraph shall be taken by a two-thirds majority.⁹³

We notice that this article talks about 'a government' and that it also includes a government 'acting on behalf of a separate customs territory possessing full autonomy' in commercial matters. We further notice that a decision can be made by a two-thirds majority. This article is flexible and should facilitate the ROC's membership. By applying as "The Customs Territory of Taiwan, Penghu, Kinmen and Matsu" the ROC has itself tried to avoid the issue of "two Chinas" or "One China, one Taiwan". that would politically complicate the matter.

Due to the PRC's original opposition to ROC's membership in GATT many GATT contracting parties hesitated to deal with the issue. However, in 1991 a group of US senators linked the renewal of the PRC's most-favoured-nation status to ROC's GATT membership. Despite opposition within the administration President Bush sent a letter to Senator Max S. Baucus, Chairman of the Senate Subcommittee for International Trade on 19 July, 1991, in which he pledged his support to the ROC's GATT membership:

...I share your interest in Taiwan's accession to the GATT. As a major trading economy, Taiwan can make an important contribution to the global trade system through responsible GATT participation. The U.S. has a firm position of supporting the accession of Taiwan on terms acceptable to GATT contracting parties. The United States will begin to work actively with other contracting parties to resolve in a favourable manner the issue relating to Taiwan's GATT accession.... U.S. support for Taiwan's accession to the GATT as a customs territory should in no way be interpreted as a departure from the long-standing policy of five administrations which acknowledges the Chinese position that there is only one China, and that Taiwan is part of China.⁹⁴

Subsequently the EC and some other GATT members also expressed their

Membership," Journal of World Trade Vol. 25 (October 1991), pp. 5-19, at 15.

⁹³ Quoted from Kenneth W. Dam, The GATT: Law and the International Economic Organization (Chicago and London: The University of Chicago Press, 1970), p.441.

⁹⁴ Quoted from Hungdah Chiu, "Taiwan's Membership," p. 204.

positive attitude to ROC membership.⁹⁵

The EC Commission, which negotiates in the GATT on behalf of the EC, is in favour of ROC membership in GATT on certain conditions.⁹⁶ The timing of membership depends on accepting the obligations. The Commission welcomes the fact that the ROC seeks membership as a developed country, which means that it cannot claim the exemptions given to developing countries. It is important in this respect to remember that ROC has important trade surplus and great foreign exchange reserves.

When negotiations started the ROC was asking for derogations for certain sectors and transitional periods for some, including automobiles and civil aircraft. But the Commission notices that the GDP per capita in the ROC is higher than in three EC member countries. So derogations are out of question. When the ROC says that it has non-competitive sectors the Commission answers that GATT is about opening up and accepting competition.

The codes adopted by the Tokyo Round has been one of the problems in the negotiations.⁹⁷ The EC says that the ROC must accept all the codes. There are codes dealing with anti-dumping practices, subsidies and countervailing measures, import licensing procedures, customs valuation, technical barriers to trade (TBTs), trade in civil aircraft, and government procurement. Taken together these codes should constitute a non-tariff barriers (NTB) regime. The Tokyo Round failed to agree on codes on quantitative restrictions and safeguard actions that constitute two other groups of NTBs.⁹⁸

By mid-October 1993 the ROC agreed to sign five of the Tokyo codes, but asked for some transition periods, one and a half year for TBTs and three years for import licensing. In respect to the government procurement code the ROC offered to start to negotiate accession as soon as it accedes to GATT. But the ROC refused to sign the civil aircraft code.

The EC Commission also argues that there are important discriminatory import measures in the ROC. The EC has mainly been concerned about discrimination against tobacco and alcohol products from the EC. But there are also discriminatory measures in the agricultural area, and in the industrial area as well, including automobiles and motor cycles.

The EC message to the ROC is straight-forward: accept all

⁹⁵ Ya Qin, "GATT Membership for Taiwan," p. 1060. [With ref. to "EC Supporting Taiwan for GATT," Free China Journal, July 26, 1991, at 1.]

⁹⁶ This section is based on interview material.

⁹⁷ For the texts of these codes, see General Agreement on Tariffs and Trade, The Texts of the Tokyo Round Agreements, Geneva, August 1986.

⁹⁸ For a synopsis of the NTB codes, see Joseph M. Grieco, Cooperation among Nations: Europe, America, and Non-Tariff Barriers to Trade (Ithaca and London: Cornell University Press, 1990), pp. 57-64. On the Tokyo Round, see especially Gilbert R. Winham, International Trade and the Tokyo Round Negotiation (Princeton: Princeton University Press, 1986).

obligations without derogations; sign all codes and end all discriminating measures on or before accession to GATT. The Commission also expects an across-board binding of tariffs followed by meaningful bilateral tariff negotiations for particular products.

The conclusion of the Uruguay Round in December 1993 has added some new issues, including services, etc.⁹⁹ It is still a little unclear how this may affect ROC membership of GATT, and the future World Trade Organization (WTO) to be created. In contrast to the PRC, which took part in the Uruguay Round, the ROC did not. The ROC will be expected to accept the outcome of the Uruguay Round including new commitments in respect to services, agriculture, TRIMs and TRIPs, etc.

We should add that it has been agreed that the ROC will join as "Chinese-Taipei." It took a year to agree on that. All GATT Contracting Parties also confirmed in September 1992 that there is only one China, as expressed in the UN General Assembly Resolution 2758 of 25 October 1971. The question of timing of the accession of China and "Chinese Taipei" will depend on the reports of the respective Working Parties. It was agreed in September 1992 when the Working Party on "Chinese Taipei" was established that the Council of GATT should give full consideration to the views expressed, including the view that the Council "should examine the report of the Working Party on China and adopt the Protocol for the PRC's accession before examining the report and adopting the Protocol for Chinese Taipei."¹⁰⁰

The European Parliament has also recently dealt with the issue of GATT membership of the PRC and the ROC.¹⁰¹ The Committee on External Economic Relations prepared a report of the issue (The Hindley report), adopted unanimously by the Committee on 17 March 1993.¹⁰² The report included a motion for a resolution, which was

⁹⁹ On the EC and the Uruguay Round, see for instance Finn Laursen, "The EC, GATT, and the Uruguay Round," in Leon Hurwitz and Christian Lequesne (eds.), The State of the European Community: Policies, Institutions & Debates in the Transition Years (Boulder, CO: Lynne Rienner Publishers, 1991), pp. 373-385; and Finn Laursen, "The EC, the United States, and the Uruguay Round," in Alan W. Cafruny and Glenda G. Rosenthal (eds.), The State of the European Community. Vol. 2: The Maastricht Debates and Beyond (Boulder, CO: Lynne Rienner Publishers, 1993), pp. 245-263.

¹⁰⁰ GATT Activities 1992, p. 96. The wording on this point in this GATT report makes it sound as if there was a consensus on the order expressed in the quoted part. This, however, was not the case (author's interview material).

¹⁰¹ In general, see "Parliament in Favour of Taiwan and China Accession to GATT," Agence Europe, 2 June 1993.

¹⁰² European Parliament, "Report of the Committee on External Economic Relations on the inclusion of China and Taiwan in the General Agreement on Tariffs and Trade (GATT). Rapporteur: Mr Michael J. Hindley," Report no. A3-0092/93, 19 March 1993, Doc. PE 203.426/fin.

adopted by the Parliament on 28 May 1993.¹⁰³ In this resolution the Parliament supports the membership of GATT of both the PRC and the ROC. In respect to the PRC the Parliament said that "the re-integration of China into the GATT system will only formally be a resumption, but substantially a new accession with the result that the PRC will have to enter into negotiations on new tariff concessions and that the Contracting Parties will remain entitled to invoke the non-application clause under Article XXXV of the GATT, if they are not satisfied with the concessions offered by the PRC for its new accession." In respect to the ROC the Parliament was aware of the political implications but said that "GATT has at its disposal the appropriate instruments to accept Taiwan as a contracting party without prejudicing the main political issue." The Parliament found that article XXXIII was the pertinent legal basis for ROC's accession, and said that "the application of Taiwan does not pose major difficulties in economic terms for it has long enjoyed a market economy system." The Parliament also recalled that "Taiwan belongs to the newly industrialized economies (NIE) and to the so-called 'five Tigers' of the Far East, which precludes Taiwan being given developing country status in GATT." GATT membership would be to "the advantage of all other GATT members including the PRC" and it was "manifestly in the European Community's interests."¹⁰⁴

Another report was prepared by the Committee on Foreign Affairs and Security (The Reding report).¹⁰⁵ This report also included a motion for a resolution. It was adopted by the committee on 17 March 1993 by 20 votes to 1, with 13 abstentions. It too was adopted by the Parliament on 28 May 1993.

This second resolution recalled that "the Community has no diplomatic relations with the Taiwanese Government since the only recognized government is that of the People's Republic of China." But Taiwan is geopolitically important and has had exceptional economic results. Trade between the EC and ROC has grown steadily over the years. The resolution also referred to "the reform process launched by the Kuomintang in 1986, which has led to the lifting of martial law and the formation of political parties (particularly the Democratic Progress Party), and [to] the fact that the constitution now guarantees a large number of fundamental rights and freedom of the press." The resolution confirmed the Parliaments support for ROC membership in GATT, suggesting that the PRC and ROC applications should be considered in parallel. In general, "relations between the Community and Taiwan should be organized on the basis of a pragmatic approach allowing the establishment

¹⁰³ Debates of the European Parliament No 3-431 (28 May 1993), pp. 306-307.

¹⁰⁴ "Resolution on the inclusion of China and Taiwan in the General Agreement on Tariffs and Trade (GATT)," Official Journal of the European Communities No C 176 (28 June 1993), pp.221-224.

¹⁰⁵ European Parliament, "Report of the Committee on Foreign Affairs and Security on GATT membership for Taiwan. Rapporteur: Mrs Viviane Reding," Report no. A3-0139/93, 29 April 1993. Doc. PE 202.417/fin.

and strengthening of political, cultural, economic and commercial relations." Investment and trade with ROC "should be stepped up." In more specific terms, the resolution called on "the Commission to open an office in Taipei, as it has done in the other countries of the region." In this connection it was also mentioned that all member states are now "represented in Taiwan by cultural or trade institutes, etc."¹⁰⁶

The Hindley and Reding reports were debated by the European Parliament on 27 May 1993. "Taiwan is already a major world trader and deserves a quick and problem-free entry into GATT," said Michael Hindley (British member of the European Socialist Group, PSE) when he introduced his report. Viviane Reding (Luxembourg Christian Democrat, member of the European Peoples Party, PPE) said that nobody wishes to make a choice between China and Taiwan. "There is no logic to it, as the countries of the European Community have clearly well understood, since they long ago opened cultural institutes and trade offices in Taipei, although they do not have official diplomatic relations with Taiwan." So she looked for pragmatic solutions, which should include membership in GATT, the IMF, the World Bank and the OECD for Taiwan. In the debate that followed the question of child labour and human rights was brought up, but mainly so in relation to the PRC. Bettini (Green Group) for instance emphasized that Taiwan had been absent from Amnesty International's reports of imprisonment of dissidents for the past two years. Also, there is now a vocal opposition in the Taiwanese Parliament "and its members are being neither ill-treated nor silenced."¹⁰⁷

During the European Parliament's debate of the Hindley and Reding reports the Commission was represented by the Commissioner from Portugal, Joao de Deus Pinheiro. During his contribution to the debate he stated, inter alia:

As the House is aware, the European Community recognizes the People's Republic of China as being the only China, and it does not, therefore, have diplomatic or other official relations with Taiwan. The suggestions contained in the Reding report that the Community's political relations with Taiwan should be strengthened must therefore be considered in the light of the Community's official stance. Nevertheless, in view of Taiwan's economic and commercial importance, the Commission believes that the accession of that country to GATT will be of benefit to the multilateral trade system. Given the surplus of Taiwan's balance of trade, it is important that that country should make significant tariff concessions during the accession negotiations. Naturally, the Commission will defend the Community's interests in this context.¹⁰⁸

¹⁰⁶ "Resolution on GATT membership for Taiwan," Official Journal of the European Communities No C 176 (28 June 1993), pp. 224-225.

¹⁰⁷ Debates of the European Parliament No 3-431 (27 May 1993), pp. 275-281.

¹⁰⁸ *Ibid.*, p. 280.

EC-ROC Relations in the Post-Cold-War World

It seems that EC-ROC relations or non-relations are slowly moving into a more pragmatic period. The end of the Cold War has changed some of the strategic-political parameters and the reform process in the PRC continues, despite the setback in 1989. It is also worth recalling that the PRC and the ROC have been able to coexist within the Asian Development Bank since 1986¹⁰⁹ and in the Asia-Pacific Economic Cooperation forum (APEC) since 1991.¹¹⁰ So there are precedents for the kind of solution being looked for within GATT.

GATT membership for ROC as 'Chinese Taipei' should make it politically easier for the Commission to follow the suggestions that have been coming from the European Parliament for pragmatic improvements in EC-ROC relations, including eventually the establishment of a Commission office in Taipei.

GATT membership will 'multilateralize' the EC-ROC relations in trade matters. It will allow for some conflicts to be settled through GATT, or the new WTO to be established, instead of bilaterally. Part of the Uruguay Round results is also an agreement to phase out the MFA over ten years thus leading to a liberalization of trade in textiles. Application of the Tokyo Round codes should lead to fewer NTBs affecting trade between the ROC and the EC. And, if we look towards the future, if the future WTO succeeds putting competition policy on the agenda and creates a multilateral regime on competition we should also expect fewer anti-dumping cases. Indeed GATT/WTO membership should be expected to have mutual benefits.

Sir Leon Brittan, EC Commissioner responsible for EC external economic relations summed up the current Commission position in a recent speech at the Royal Institute of International Affairs, Chatham House, in London:

... the EU has unequivocally welcomed China's and Taiwan's applications for [GATT] membership. The discussion is underway in Geneva to negotiate the terms of membership in each case. These are real negotiations: membership of GATT or the WTO is no sinecure. But nor is it impossibly difficult. If the terms are right, the early membership of China and Taiwan must be in the interest both of the world economy and of the applicants. And in both cases, the race is now on to become founder members of the WTO when it opens its doors for business in Geneva next year. The EU would welcome conclusion of the membership process for

¹⁰⁹ Peter Kien-Hong Yu, "On Taipei's Rejoining the Asian Development Bank (ADB) Subsequent to Beijing's Entry: One Country, Two Seats?" Asian Affairs, An American Review Vol 17, No 1 (Spring 1990), pp.3-13.

¹¹⁰ Damon Darlin, "APEC Resolves 'Three Chinas' Problem, But Struggles to Define Its Own Function," The Asian Wall Street Journal Weekly, September 2, 1991.

China, as for Taiwan, this year if it is possible. When East Asia is fully represented in the multilateral trade system economic relations will be easier because we shall all be speaking the same language and applying the same rules. We will do all in our power to make it possible.¹¹¹

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