

ASPIRING TO EXCEL — THE UNEASY CASE OF IMPLEMENTING TAIWAN'S ASIA-PACIFIC REGIONAL OPERATIONS CENTER PLAN

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I. INTRODUCTION

On January 5, 1995 the Executive Yuan ("EY"), which serves as the cabinet of the Republic of China ("ROC" or "Taiwan"), accepted the recommendation of its Council for Economic Planning and Development ("CEPD") and adopted the Plan for Developing Taiwan as an Asia-Pacific Regional Operations Center ("APROC Plan" or "Plan") after two years of external and internal studies by the CEPD and the Ministry of Economic Affairs ("MOEA").¹ Premier Lien Chan labeled the Plan a "cross-century initiative" that, according to President Lee Teng-hui, would "completely transform Taiwan's economy." In short, the APROC Plan presents the most daunting task for economic policy makers in Taiwan for the decade beginning in 1995.² While in one sense the Plan is merely a continuation of Taiwan's gradual economic liberalization begun in the 1950's, the Plan will take on critical significance in the next century as Taiwan ambitiously

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1. See CEPD, THE PLAN FOR DEVELOPING TAIWAN AS AN ASIA-PACIFIC REGIONAL OPERATIONS ("APROC Plan" or "Plan") (in original Chinese and English translation; unless otherwise indicated, citations from the Plan in this article are based on the Chinese version) (Taipei, 1995) (while the Republic of China has not yet established a comprehensive citation system, LAWS AND REGULATIONS OF THE CENTRAL GOVERNMENT OF THE REPUBLIC OF CHINA provides a compilation of statutes). Paul Hsu, a prominent lawyer in Taiwan, is generally credited with originating the basic concept for the APROC initiative, which simply sought to attract more domestic and international investment opportunities by faithfully implementing Taiwan's commitment since the 1980's to economic liberalization and internationalization. Vincent Siew, first as Minister of the MOEA and then as Chairman of the CEPD until late 1994, adopted this basic idea and commissioned studies to refine it. The studies were much influenced by the work of Kenichi Ohmae. See KENICHI OHMAE, THE END OF THE NATION STATE: THE RISE OF REGIONAL ECONOMIES (1995).

2. For an introduction to the constitutional and political system in Taiwan, see Lawrence S. Liu, *Judicial Review and Emerging Constitutionalism: The Uneasy Case for the Republic of China on Taiwan*, 39 AM. J. COMP. L. 509, 510-17 (1991).

prescribes more complete and expeditious reforms through a massive overhaul of laws and regulations.³ Much of the Plan reflects Taiwan's strategic thinking on fully integrating itself with the global economy, and thereby resolving its difficult political stalemate with the People's Republic of China ("PRC" or "China"), upgrading its industrial and business environment, streamlining government bureaucracy, and improving relations between state and society in Taiwan.

Part II of this paper describes the various components of this ambitious plan in Taiwan's social and economic context and examines the objectives the Plan aims to achieve. The author also reviews the progress and difficulties experienced in implementing the Plan to date. In an increasingly pluralistic and noisily democratizing society like Taiwan, measures contemplated in the APROC Plan are subject to adoption, amendment or even repeal by a number of governmental bodies, including the Legislative Yuan ("LY"), which serves as the national parliament, the Assembly of the Provincial Government of Taiwan ("Provincial Assembly"), the assemblies of various counties and cities, various ministries at the central government level, and agencies at the local government level. In other words, the Plan's implementation relies on massive legal and regulatory reform — a law professor's dream and a legal pragmatist's nightmare. Progress in implementing the APROC initiative thus far offers an informative glimpse into the interactions of laws, regulations, economic and social policies, and politics in present-day Taiwan. Part III concludes with an analysis of future actions and prospects for success.

II. DESCRIPTION AND IMPLEMENTATION OF THE APROC PLAN

A. *Background*

Implementation of the APROC Plan is roughly divided into three stages: the 1995 to 1997 period will focus on improving the "soft"

3. During the mid-1980's, Taiwan attempted a similar overhaul. Following some financial scandals caused by related party loans that precipitated bank runs in the midst of a recession in 1984 and 1985, the government invited leading industrialists, academics, and officials at relevant agencies to form an Economic Reform Committee ("ERC"), which met for a few months for a series of highly publicized plenary and breakout sessions. The ERC produced three tomes of position and study papers, and the CEPD set up an Ad Hoc Taskforce on Socio-Economic Laws ("Ad Hoc Taskforce") to administer recommendations made by the ERC. However, perhaps for political stability reasons, the EY failed to act on the ERC recommendations aggressively.

elements of the economic policies, institutions and structures as well as on launching the Plan; between 1997 and 2000, efforts will concentrate on enhancing the scale of various operation centers and deepening the program of massive reform; from 2000 to 2005, Taiwan should take advantage of its complete economic liberalization and completion of infrastructure projects to enhance its economic prowess.⁴

The Plan contains two parts: a conceptual and planning framework and a definitive program for implementation.⁵ The conceptual and planning part has seven components:

- (1) macroeconomic adjustment program, under the CEPD;
- (2) regional manufacturing center program, under the MOEA;
- (3) regional sea transportation center program, under the Ministry of Transportation and Communications ("MOTC");
- (4) regional air transportation center program, under the MOTC;
- (5) regional financial center program, primarily under the Central Bank of China ("CBC") and secondarily under the Ministry of Finance ("MOF");
- (6) regional telecommunications center program, under the MOTC; and
- (7) regional media center program, under the Government Information Office ("GIO").

An outgrowth of a cabinet-approved plan in 1993 to revitalize Taiwan's economy, the APROC Plan was adopted against a background of drastic changes in Taiwan's economic structure, keener global competition, rapid integration in the region covered by members of the Asia Pacific Economic Cooperation ("APEC") forum, and the increasingly important — though still very unpredictable and difficult — economic ties across the Taiwan Straits.

Over the last forty years, Taiwan has quickly developed into a newly industrializing economy, largely by relying on measures to maintain political and economic stability. Through land reforms, industrial promotion and encouragement of savings and investment, Taiwan evolved

4. Unless otherwise indicated, action items, described *infra*, for each program within the APROC initiative are cited from the APROC Plan.

5. The definitive program, constituting Part II of the APROC Plan document, is actually an item-and-responsibility schedule. It sets forth the general goals to be achieved, the laws or regulations to be modified, and the timetable and responsible agencies for taking such actions.

from an agrarian society into an export-driven, light industry-based and growth-oriented economy which currently ranks fifteenth in the global trading system. Since the mid-1980's when Taiwan began its transformation, high-technology products have become the focus of Taiwan's extremely successful manufacturing sector, with its percentage of exports jumping from 27.6% in 1986 to 41.6% by 1993. Taiwan's service industry as a percentage of gross domestic product ("GDP") increased from 47.9% in 1986 to 59.1% by 1994.⁶

In the interest of furthering its global integration, Taiwan and its neighboring islands sought formally in 1990 to accede to the General Agreement on Tariffs and Trade ("GATT") and its successor, the World Trade Organization ("WTO"), as well as to other economic bodies such as APEC, of which Taiwan is already a member along with China and Hong Kong. With international trade representing about 70% of its GDP, Taiwan's WTO bid and regional integration program represent natural and necessary complements to the APROC Plan.⁷ Initial attempts to pass WTO implementing legislation under an omnibus format, however, have proved unsuccessful largely due to the novelty of such an approach in Taiwan.

Economic relations across the Taiwan Straits are also of crucial importance to the APROC Plan as China has been Taiwan's largest trading partner since 1994 (primarily through Hong Kong, due to Taiwan's remaining restrictions on direct trade links with the PRC). A conservative estimate puts Taiwanese investment in mainland China over US\$20 billion, making Taiwan one of the largest overseas investors in mainland China.

Seeking a sound strategy to leverage Taiwan's advantages in shared language, ethnic and business culture, geographic location and management expertise thus forms the cornerstone of the APROC Plan.⁸ Furthermore, implementation of the Plan, at the practical and particularly

6. APROC Plan, *supra* note 1, at 1.

7. The CEPD estimates that by year 2010, the total trade of East Asian economies will account for one-third of global trade. In 1992, trade among East Asian countries accounted for 49.2% of the aggregate volume of trade in this region. APROC Plan, *supra* note 1, at 2.

8. Both foreign and domestic companies are encouraged to take advantage of Taiwan's strengths to set up bases for regional operations. In other words, the goal of the APROC Plan is to improve the level of both internationalization and liberalization in Taiwan. However, there has been unfounded criticism in Taiwan's business community that the APROC initiative was only designed to attract foreign investment. Similarly unfounded concerns exist in Taiwan's foreign business community to some extent that the appellation of "Greater China" is solely reserved for such Chinese-populated countries and regions such as Taiwan, Hong Kong, Macao, China and southeast Asia. A recurring theme in implementing the APROC program or similar economic reform proposals, however, is whether market liberalization in the domestic economy should precede market internationalization to allow competition from foreign companies.

psychological level, will inevitably spill over to influence the confrontational and difficult political, diplomatic and military aspects of overall cross-Straits relations. The Plan represents a critical step towards solidifying Taiwan's economic prosperity and geopolitical stability.

B. Macroeconomic Adjustment Program

1. "Free Flows"

The centerpiece of the APROC Plan is the macroeconomic adjustment program, which targets facilitation of "five freer flows" of goods, services, human resources, funds and information. Foremost in the Plan is trade and investment liberalization.⁹ With respect to trade in goods, tariff barriers will be lowered in keeping with Taiwan's WTO bid. For example, by 1999 the average nominal tariff rate for industrial products is expected to be reduced to approximately 5% from the 6.52% level in 1994. Further, outright discriminatory import quotas for such items as automobiles and agricultural products will be replaced by tariffs.

To streamline the foreign investment regime, the *de facto* dual track of foreign investment established under the Company Law and the primary statute governing foreign investment, the Statute for Investment by Foreign Nationals ("SIFN"), will be unified.¹⁰ Currently, the Company Law covers foreign investment in the area of trading and other non-manufacturing operations, financial institutions such as banks, insurance companies and securities firms that typically use the branch form, and investment projects

9. For a description of Taiwan's foreign investment regime, see Lawrence S. Liu, *The Legal Framework for Foreign Investment*, in TAIWAN TRADE & INVESTMENT 131-90 (Mitchell A. Silk ed. 1994). For a discussion of Taiwan's trade liberalization program and negotiations with the United States in the 1980's, see Lawrence S. Liu, *Legal and Policy Perspectives on United States Trade Initiatives and Economic Liberalization in the Republic of China*, 11 MICH. J INT'L L. 326 (1990).

10. Foreign investors interested in investing in Taiwan's industrial sector have to undergo the Foreign Investment Approval ("FIA") process, unless they choose not to enjoy the repatriation privilege guaranteed by the Statute for Investment by Foreign Nationals ("SIFN"). See also Liu, *The Legal Framework for Foreign Investment*, *supra* note 9, at 140-55. This FIA and non-FIA dichotomy and the arbitrage by foreign investors was created essentially by foreign exchange controls practiced since the 1950's and relaxed in the mid-1980's. Another dichotomy is between the popular form of subsidiaries as the mechanism of investment in the manufacturing sector and the branch form, which is mostly used for trading and financial operations. Subsidiaries of foreign companies are subject to a 20% withholding tax on dividend payments to parent companies, whereas branches of foreign companies are not subject to similar branch profit taxation.

which do not enjoy the right to repatriate principal, interests and earnings under the SIFN due to the Negative Listing policy.

An organizational change relating to foreign investment review has also been contemplated, wherein an Investment Bureau will be established to consolidate the functions of the Investment Commission ("IC"), a Ministry of Economic Affairs organ which is responsible for application review, and the Industrial Development and Investment Center ("IDIC"), another MOEA entity responsible for general investment assistance and promotion.

A 14-day fast-track approval mechanism for foreign investment that meets the standards and is below a certain amount will be implemented to provide further transparency for foreign investors. Projects that do not qualify for this procedure will receive a definitive response within 30 days. Moreover, the Negative Listing policy, which essentially divides foreign investment into permissible, restricted and prohibited categories, will be redefined so that the last two categories will be reduced in accordance with international foreign investment norms. In particular, foreign ownership restrictions, along with the review and approval procedure for outward investment by Taiwanese firms, will be reexamined. The objective of such scrutiny is to gradually relax trade and investment restrictions.

With respect to trade in services, the domestic market for financial, insurance, telecommunications, transportation, legal, accounting and other professional services will be increasingly liberalized to allow foreign competition.

The macroeconomic adjustment also calls for the eventual lift of restrictions on the movement of personnel and the complete overhaul of visa and work permit regulations for foreign employees. Specific measures include allowing easier internal transfer of personnel by multinational firms, allowing domestic firms to hire foreign professional and technical staff, extending the initial term of work permits from two to three years, and standardizing the duration for both visas and alien resident certificates.

The freer flow of funds will be achieved by overhauling the Statute for the Administration of Foreign Exchange ("SAFE"), Taiwan's primary foreign exchange control measure, as well as ancillary regulations on the remittances and conversion of funds. The general principle guiding this overhaul will be "freedom as the norm, approval as the exception."¹¹ Under the new regime, an effective reporting system will be established to grant

11. APROC Plan, *supra* note 1, at 11, 24.

competent authorities, primarily the Central Bank of China, emergency powers under extraordinary circumstances.

With respect to the freer flow of information, the first step is to develop a legal system that facilitates and protects information. An important element of this adjustment program is the telecommunications reform, discussed *infra*. Other measures include permitting private users to develop satellite networks, more efficiently and fairly allocating the use of radio frequencies, intensifying competition among broadcasting companies, revising relevant provisions in the Criminal Code, Code of Civil Procedure, Code of Criminal Procedure, and Copyright Law, and enacting legislation such as a Computerized Data Privacy Protection Law, Government Archives Law, Trade Secret Law and Semi-Conductor Chip Protection Law to better protect information as well as enhance the evidentiary value of computerized information.

2. Program Coordination

For an enterprise as ambitious as the APROC Plan to succeed, there is a need for a strong political will bolstered by popular support and a cohesive action agenda to be carried out unswervingly by a super agency. To be sure, Taiwan's current political environment is not entirely conducive to smooth implementation of this bold initiative. The legislative bodies, including the Legislative Yuan and the Provincial Assembly, have become increasingly vocal and at times belligerent over controversial measures of the Plan.

The 1994 Local Government Autonomy Law has contributed to the shift of political power from the central government to local governments, which are more susceptible to the lobbying efforts of local politicians and interest groups. The gradual decline of support for the ruling Kuomintang ("KMT" or "Nationalist Party"), coupled with the inclination of elected politicians of all denominations to politicize every public policy issue, makes it increasingly difficult to implement any important measure without considerable political debate and maneuvering. Moreover, because cross-Straits relations constitute an important component of the initiative, the APROC Plan runs the risk of being bogged down in debates on whether Taiwan should be unified with China or seek *de jure* independence as a separate country. Fortunately, economic calculations and security concerns have helped to build a general, albeit fragile, consensus along the political spectrum on the program and closer economic ties with China on which its success hinges.

It was against such backdrop that the CEPD established the Coordination and Service Office for the Asia-Pacific Regional Operations Center, also known as the "APROC Window", in March of 1995.¹² Interestingly, as a special taskforce created virtually overnight under an EY edict to act as a super agency to coordinate the efforts of ministries and agencies in the Plan's promotion and implementation, the APROC Window was initially funded by the flexible Sino-American Economic Development Fund, a CEPD endowment created in 1970 when American economic aid to Taiwan was terminated, rather than by the CEPD's regular, more rigid government budget. Similarly, the staff of the APROC Window, as contract employees of the government, do not have to pass the rigid civil service examination, nor are they protected by the tenure system for regular civil servants.

Therefore, perhaps more by fortuity than design, the APROC Window has the makings of a more enterprising institution: flexible budget, terminable personnel, assertive agency culture and, more importantly, a strong incentive to achieve success in order to extend its tenure. It stands out from other government agencies in Taiwan which are entrenched by organic statutes that enshrine their virtually permanent existence. Nevertheless, considering the multiple layers of government and emerging political pluralism in Taiwan, it is still unrealistic to expect the APROC Window to be as effective as the Economic Development Board ("EDB") in Singapore where an elite and popular ruling party dominates the political and economic scenes.

Charged with the daunting responsibility of policy coordination, the APROC Window under the direction of the CEPD applied several important strategies during the first year of the Plan: engaging in a continuous and collective "thought reform" to instill a sense of urgency and particularly a sense of mission in the officials responsible for the Plan's implementation, aggressively lobbying the Legislative Yuan to pass APROC-related bills, tackling major investment barriers to facilitate important investment projects, and galvanizing other ministries to adopt as many regulatory reforms as possible within the set time frame. For instance, the CEPD orchestrated a series of presentations by relevant

12. Apart from those hired through its own recruiting program, the APROC Window employed the personnel of the Ad Hoc Taskforce, discussed in *supra* note 3. The Ad Hoc Taskforce, set up after the ERC concluded in 1985, was similar to the APROC initiative in concept, although the ERC proposals were not as well-organized and did not enjoy sufficient political support to enter the implementation phase. As a result, in the ten-year period following its establishment, the role of the Ad Hoc Taskforce atrophied substantially. It was formally terminated on June 30, 1995.

ministries to brief then Premier Lien Chan, with the objective of bringing the direction and progress of the Plan under his personal supervision. Soon after the first presentation in April 1995 that addressed the macroeconomic adjustment, the Executive Yuan adopted the CEPD's recommendations and set forth five guiding principles:¹³

(1) focus primarily on competition policy instead of industrial policy;¹⁴

13. Earlier internal CEPD staff recommendations included more principles, such as (1) free competition should be the norm, and government regulation should be the exception; (2) it is preferable that a single agency be the regulator, and concurrent regulatory jurisdiction the exception; (3) liberalization should apply everywhere in Taiwan while special economic zones or other location-based preferential treatment should be avoided; (4) the APROC Plan should be benchmarked against development in neighboring countries and markets — in other words, regional treatment should be the benchmark, and policymakers should not be complacent with only offering foreign firms national treatment; (5) policymakers should look ahead at more advanced economies, and not look back at previous economic achievements, which may not be relevant and are signs of complacency; (6) markets (such as the financial service and transportation industries) should not be segmented artificially and more integrated service firms should be allowed and promoted; (7) onerous tax burdens should be addressed as they increase transaction costs; and (8) government agencies should avoid erecting entry barriers through requirements on minimum paid-in capital and scope of business.

14. Taiwan's economic achievement in the past has been attributed by some to enlightened and less intrusive government policies, and warnings have been given that the government should not discontinue its benign intervention. See ROBERT WADE, *GOVERNING THE MARKET: ECONOMIC THEORY AND THE ROLE OF GOVERNMENT IN EAST ASIAN INDUSTRIALIZATION* (1990). See also Robert Wade, *What Should Be the Economic Role of Government in Taiwan over the Middle-Term Future*, (presented to MIT/EPOCH Foundation Symposium: Taipei, Taiwan, 1994). Wade uses Taiwan's information industry as an example to argue that:

Taiwan's political and business leaders would be wise to be a little skeptical of the urging of Taiwan's U.S.-trained economists for the government to cease its interventions, to limit itself to creating a 'level playing field.' Taiwan has developed an impressive set of policy instruments and organizations for wielding (sic) those instruments, for doing social cost-benefit analysis and acting on them, and not submitting to the pressures or bribes of special interest groups. It is still in a 'follower' position relative to the frontiers of world industrial development, and to that extent the information problem of identifying desirable industrial structures is less serious than for the front runners. In the new world economy these assets could be at least as valuable for maintaining the economy's rise up the economic hierarchy of nations as they have been up to now.

Nonetheless, the CEPD decided that the more competitive global economy of the 1990's should lead to a stronger focus on competition policy, especially as the government's role in the economy has changed and its resources are increasingly limited by budgetary constraints. As far back as 1954, K. Y. Yin, generally credited with launching Taiwan's economic takeoff, argued that industrial policymaking actually hindered economic development. See K. Y. Yin, *Adverse Trend in Taiwan's Industrial Development*, 2 *INDUS. OF FREE CHINA* 1 (1954).

- (2) rely on facilitative and constructive rather than regulatory and restrictive policies;¹⁵
- (3) redefine the government's role as an umpire instead of a player, to maximize private-sector participation;¹⁶
- (4) adopt an after-the-fact reporting system in lieu of the prior approval system and establish a customer-oriented attitude in public matters to enhance administrative efficiency;¹⁷
- (5) ensure policy transparency to delimit the boundary of government power.¹⁸

In addition to its ongoing publicity program to espouse and elaborate on these principles,¹⁹ the CEPD adopted an "assertive constructive engagement" strategy to seek the support of other relevant ministries for the Plan's implementation. For instance, it held a three-day "boot camp" for sub-cabinet officials in early December 1995 to debate and coordinate implementation issues as well as to cultivate a comraderie among participating officials.²⁰ One of the resolutions that emerged from this

15. The CEPD has been particularly struck by the pervasive phenomena of over-regulation (the massive adoption of regulatory, interventionist laws and rules) and under-enforcement (such as lax supervision). Moreover, civil servants are faced with disproportionate policy responsibilities and the unfair threat of criminal punishment for favoritism, a vague legal concept not requiring evidence of bribery under Taiwan's Anticorruption Statute.

16. This principle is particularly applicable where a ministry, such as the MOTC, regulates certain industries while at the same time running units or owning interests in companies in those industries, creating an inherent conflict of interest.

17. This principle advocates allowing the market and firms to make individual decisions, and afterwards punishing violations with market discipline or government sanctions. A good example is the slow but gradual shift of Taiwan's regulatory philosophy under its Securities and Exchange Law ("SEL") for regulating public offerings from a merit review system to a disclosure system. Also, various ministries in Taiwan have begun to adopt a negative listing system, rather than an item-by-item positive listing system, for other policy measures such as foreign investment approval procedures.

18. Pursuant to this view, the more opaque government policies become, the more incentives that will exist for companies to lobby for special exemptions and waivers and for civil servants to interpret the same rules differently. This will result in more intensive "capture" of agencies, which in turn will have to take more responsibility than necessary or appropriate.

19. For example, in an important speech to senior government officials in a two-day brainstorming colloquium on the APROC initiative held in late June 1995, the Honorable Vice Premier and CEPD Chairman, Hsu Li-the, lambasted policies which resorted to exorbitant paid-in capital, single-firm investment percentage quotas, artificial market segmentation, comprehensive regulation of products or services provided by various firms to manage egalitarian development in an industry, and other industrial policymaking measures which inhibit competition.

20. Because of the sensitivity of the APROC Plan and the urgency to complete the necessary studies that led to this initiative, the CEPD did not have much opportunity to communicate extensively with other ministries during the final drafting phase of the APROC Plan. It is therefore crucial that other ministries quickly develop a sense of "joint sponsorship" over the program.

retreat called for periodic press briefings beginning in the first quarter of 1996 on the progress of each relevant regional center.²¹

Within three months after its creation, the APROC Window completed, along with other ministries, a review of all the legal bills encompassed by the APROC Plan and obtained the Executive Yuan's approval to formulate a Comprehensive APROC Legislative Plan, a definitive agenda with which to lobby the Legislative Yuan.²²

21. Inspiration for this requirement came from the theme of the APROC Plan to incorporate the requirement of accountability to shareholders and customers in the business community. Accordingly, the CEPD borrowed from the quarterly financial reporting requirement from securities laws in Taiwan.

22. This Comprehensive APROC Legislative Plan classifies bills into two types by stages of enactment. Bills listed for the first stage of enactment were further broken down to high-priority and secondary-priority categories. The first stage is the end of the Second Term Legislative Yuan, which adjourned on January 18, 1996. High-priority bills slated for the first stage of enactment are: (1) a World Trade Organization Accession Omnibus Reform Bill ("WTO Bill") to amend more than a dozen pieces of economic legislation in accordance with the accession commitments of the ROC with trading partners; (2) amendment of articles 6 and 7 of the SIFN to enable delegation of approval authority; (3) amendment of articles 7 and 8 of the Statute for Investment by Overseas Chinese, a companion statute to the SIFN, for similar purposes; (4) amendment of articles 42 and 49 of the Employment Service Law to extend the duration of work permits to foreigners from two to three years; (5) repeal of the Statute for Technical Cooperation ("STC"), which regulates licensing of technologies by foreign individuals and firms; (6) amendment of Chapters 85 and 90 of the Customs Schedule to provide duty-free treatment for media equipment; (7) amendment of articles 15, 18-4, 28-2, 28-3, 34 and 42-1 of the SEL to grant more power to securities firms, authorize futures trading, and relax restrictions on the gearing ratios for the issuance of corporate bonds as well as restrictions on mechanical procedures for the conversion of shares; (8) amendment of the Telecommunications Law to modernize and liberalize the telecommunications market; (9) enactment of the Chung-Hua Telecommunications Statute to corporatize the business arm of the Directorate General of Telecommunications ("DGT") as Chung Hua Telecommunications Corporation; (10) enactment of the DGT Statute to reconstitute the DGT as a separate regulatory body; (11) enactment of a Satellite Television and Broadcasting Law to liberalize the transmission and reception of satellite broadcast programming; (12) amendment of articles 8-1 and 8-2 to remove the 5% gross business receipt tax ("GBRT") on inter-bank borrowings, bond trading, and financial derivatives trading; (13) amendment of the Securities Transfer Tax Law to repeal the securities transfer tax on corporate bonds and bank-debt instruments issued by commercial banks; (14) enactment of a Trade Secret Law to provide civil remedies for the misappropriation of trade secrets; (15) enactment of a Semiconductor Chip Protection Law to extend protection over intellectual property to the design of computer chips; (16) enactment of a Trust Law to facilitate financial transactions and portfolio investment; (17) enactment of a Trust Enterprises Law to provide a regulatory framework for companies offering trust service as a business; and (18) enactment of a Futures Trading Law to facilitate and regulate futures trading in Taiwan. Secondary-priority bills slated for enactment during the first stage are: (1) amendment of articles 6-1, 19-1, 19-2, 20 and 26-1 of the SAFE to authorize the mandatory reporting of foreign exchange transactions over a certain amount and grant emergency market intervention powers to the CBC; (2) enactment of a Government Archives Law to organize and publicize government archives; (3) amendment of article 52 of the Shipping Law to remove discriminatory treatment of foreign vessels; (4) amendment of articles 45, 51 and 54 of the Civil Aviation Law to allow more foreign ownership in the air transport business and to gradually deregulate airfares; (5) amendment of the Shipping Vessels Law to relax the registration of foreign vessels; (6) amendment of the Organic

The initial strategy was a daring proposal, apparently influenced by legislative practices in the United States and Germany, to include many bills considered under the Plan in a single omnibus APROC legislation. The bills were unrelated to each other and each of them only contained a few provisions. The more comprehensive reform bills (such as the three telecommunications reform bills discussed above) were to each undergo a separate legislative process in accordance with the general practice in Taiwan. Similarly, where the APROC Plan involves major adjustment to cross-Straits policy, special legislation was to be enacted.

The combination of two factors, however, defeated this effort. First, the dispersion of power resulting from Taiwan's changing domestic political structure meant that the sponsoring KMT party no longer possessed the leverage to simply push legislation through. Second, Taiwan's legislature had no experience to prepare it for this new legislative tactic. The omnibus bill, the APROC Window believed, would not pass and further progress would require a shift of strategy towards a more

Statute of the Ministry of Economic Affairs to merge the Investment Commission into the Industrial Development and Investment Center so as to streamline the review of foreign investment; (7) enactment of a Radio Frequency Law on the assignment of radio frequencies (a later determination, however, was made that this bill could be subsumed under the Telecommunications Law amendment bill); (8) amendment of several provisions of the Civil Code to provide protection of computerized data; (9) amendment of several provisions of the Criminal Code to prohibit the infringement of computerized data; (10) amendment of article 363 of the Code of Civil Procedure to provide evidentiary value to computerized data in civil proceedings; (11) amendment of article 133 of the Code of Criminal Procedure to provide evidentiary value to computerized data in criminal proceedings; (12) amendment of the Copyright Law to implement results of the Uruguay Round of GATT negotiations on trade-related intellectual property ("TRIPs"); (13) enactment of a Computerized Personal Data Privacy Protection Law to facilitate and protect the use of computerized personal information; and (14) amendment of articles 13 and 14 of the Commercial Harbor Law to remove provisions favoring local shipping companies. Bills slated for the second stage of enactment, after the Third Term LY began its session in February 1996, are: (1) enactment of a Law Regulating Government-Owned Financial Institutions to remove operating restrictions on government-owned banks; (2) amendment of the Banking Law to remove artificial distinctions and operational restrictions on different types of financial institutions and enhance their supervision; (3) amendment of the International Financial Business Law to enhance the banking powers of offshore banking units; (4) enactment of a Law Governing Affiliate Facilities of the Civil Aeronautic Administration, so as to consolidate various agencies at international airports into one airport authority; (5) enactment of an Organic Statute for the Shipping Affairs Bureau of the Ministry of Transportation and Communications to enhance the ability of the MOTC so that harbor administration can be transferred to the central government for unified administration; (6) enactment of a Statute Governing International Airports so as to facilitate the privatization of the management of the Phase II Passenger Terminal at the Chiang Kai-shek International Airport; (7) amendment of several provisions of the Mainland Relations Act to facilitate closer trade and economic ties with China; (8) amendment of the Statute for Export Processing Zones to facilitate the transformation of export processing zones in view of changes in Taiwan's economy; and (9) amendment of the Stamp Duty Law to remove stamp duties for certain transactions.

traditional approach. The omnibus legislation therefore was broken down by the APROC Window into discrete pieces for which passage was sought through a piecemeal but organized program, which the APROC Window relabeled as the Comprehensive APROC Legislative Plan. A lesson to be drawn from this experience is that wholesale importation of a foreign legislative practice in contravention of the local political environment is a risky proposition at best.

When the Second Term adjourned on January 18, 1996, twelve bills in the Comprehensive APROC Legislative Plan had been adopted, including the three telecommunications reform bills that have been regarded as the most important of all APROC-related bills.²³ By the same time, 51 of the 73 administrative regulations slated for completion by the end of 1995 had been passed. Of the 20 policy measures, however, only nine had been completed.

In investment promotion and troubleshooting, the APROC Window was also able to garner the preliminary support of the Ministry of Transportation and Communications and the Provincial Government of Taiwan to secure industrial land in the Taichung Harbor for Bayer, a German chemical company which proposed a project valued at nearly US\$800 million. The project involved high value-added chemical processing for re-export in the regional market (including mainland China), a classic operation contemplated by the APROC Plan.²⁴

23. These twelve bills are: (1) repeal of the STC, which regulated licensing of technologies by foreign individuals and firms; (2) amendment of the Telecommunications Law to modernize and liberalize the telecommunications market; (3) enactment of the Organic Statute for the Establishment of Chung Hua Telecommunications Corporation to corporatize the business arm of the DGT; (4) enactment of the DGT Statute to reconstitute the DGT as a separate regulatory body; (5) amendment of articles 8-1 and 8-2 to remove the 5% GBRT on inter-bank borrowings, bond trading and financial derivatives trading; (6) enactment of a Trade Secret Law to provide civil remedies for the misappropriation of trade secrets; (7) enactment of a Semiconductor Chip Protection Law to protect the intellectual property right to the design of computer chips; (8) enactment of a Trust Law to facilitate financial transactions and portfolio investment; (9) amendment of articles 6-1, 19-1, 19-2, 20 and 26-1 of the SAFE to authorize the mandatory reporting of foreign exchange transactions over a certain amount and grant emergency market intervention powers to the CBC; (10) amendment of the Shipping Law, including article 52, to remove discriminatory treatment of foreign vessels; (11) amendment of the Shipping Vessels Law to relax the registration requirements of foreign vessels; (12) enactment of a Computerized Personal Data Privacy Protection Law to facilitate and protect the use of computerized personal information; and (13) amendment of articles 13 and 14 of the Commercial Harbor Law to remove provisions favoring local shipping companies.

24. Bayer had been seeking to lease this land for years, and was so attracted by Singapore's EDB that it almost moved this project there. The earlier difficulty for this project experienced by Bayer lies principally in the unwillingness of mid-level officials to make important decisions for fear of favoritism allegations. In October 1996 the Legislative Yuan passed a bill to revise Taiwan's Anticorruption Law to decriminalize this vague offense.

In another case, the APROC Window advocated a concurrent review model for Acer, Taiwan's most prominent computer company, which was seeking to develop an multiple-purpose high-technology park. According to the model, the time required for receiving various government licenses would be reduced from over 500 days under the usual sequential review model to approximately 300 days. Another case of the APROC Window's intervention was the resolution of the land lease and property tax dispute involving the Taipei American School ("TAS"), an international school attended by children of foreign expatriates and diplomats known for its academic excellence. Although it is unrelated to the APROC initiative, the TAS case has symbolic significance to the foreign business community in Taiwan as a case that reflects the host government's willingness to amend obsolete property tax rules which indirectly discriminated against foreign educational institutions.

In the area of foreign investment (particularly under the non-financial sectors) regulated by the Ministry of Economic Affairs, there has been some modest progress in reducing barriers under the Negative Listing framework. The 1995 overhaul of the Negative Listing policy, which was promulgated under the Statute for Investment by Foreign Nationals and the Statute for Investment by Overseas Chinese ("SIOC"), opened up the prohibited category businesses to allow foreign investment in such areas as gas stations, travel agencies and power generation. However, the 1995 effort is not thorough and more reform will be necessary to further remove foreign investment restrictions.

Relaxation of the Negative Listing policy will have profound ramifications. When the APROC Window reexamined the SIFN amendment called for in the APROC Plan, it found that unifying the *de facto* dual track of foreign investment would actually broaden the regulation of foreign investment unless the prohibited and restricted categories set forth in the policy were substantially reduced. The reason is obvious. Investment that bypasses the Foreign Investment Approval ("FIA") process has existed simply because foreign investors either could not invest under the regular FIA regime due to the Negative Listing policy or would not undergo such review because they did not appreciate the privileges granted by the SIFN.²⁵ Therefore, further liberalization of the foreign investment environment in Taiwan should lead to two actions not set forth in the original APROC Plan: repeal of the SIFN entirely (hence

25. On the differences between FIA and non-FIA companies and the policy ramifications, see *supra* note 10.

the authorization for changes in the Negative Listing policy) and eventual reform of other restrictive regulations. The granting of exemptions from such laws shows that the government is keenly aware of their restrictive effects on foreign investment.

C. Regional Manufacturing Center

1. Technology and High Value-Added Re-exports

The manufacturing center program seeks to solidify Taiwan's manufacturing strength and its East Asian trading network by making Taiwan a production and distribution base for high-technology and other high value-added products, gradually transforming Taiwan into a "technology island." The three major components of this program are (i) improvement of the operating environment for foreign and local manufacturing companies, (ii) construction of intelligent manufacturing parks island wide, and (iii) establishment of manufacturing facilities in the vicinity of seaports and airports.

To improve the operating environment for manufacturing firms, the MOEA has been asked to develop an information system to encourage joint ventures, particularly in the area of research and development ("R&D"). In addition, existing R&D projects such as the government-sponsored Industrial Technology Research Institute and Chung-Shan Institute of Science and Technology should improve their marketing capability and increase efforts to transfer technology to the private sector. The Plan also calls for the creation of commercially-oriented R&D institutions by the government and interested private parties.

To broaden Taiwan's technology base, the APROC Plan calls for the construction of two to three intelligent industrial parks a year between 1995 and 2004. Unlike traditional industrial parks, these parks will focus on servicing various industries. They will have modern information networks installed and will include state-of-the-art office facilities, commercial premises and living quarters. Companies situated in these new parks will be offered the same incentives as those in the Hsin-chu Science and Industrial Park, and visitors from mainland China will be welcomed so that the parks may also become training centers. Park development is expected to be funded by central and local governments as well as by the private sector. The goal of park administration will be to offer one-stop services.

The regional manufacturing center program also targets development of industrial parks adjacent to the Chiang Kai-shek International Airport

("CKS") and the port facilities of Keelung, Taichung and Kaohsiung to enhance the competitiveness of manufacturing companies and promote high value-added re-export industries. In addition, the traditional export processing zones will be transformed with a strong emphasis on developing warehousing and related industries.

2. Liberalization in the Midst of Competing Political Forces

The manufacturing industry has long been Taiwan's economic strength. The regional manufacturing program was initially believed to present the least difficulties in implementation. However, the first year of the APROC Plan proved otherwise. The reason may lie in the role of the MOEA. On the one hand, the MOEA has been highly successful in deregulating and liberalizing the economy. On the other hand, it has become the victim of its own success to the extent that it does not have sufficient power or the policy tools such as tax incentives to affect major investment decisions. For example, its Industrial Development Bureau ("IDB"), a successful and competent agency, is an industrial policymaking body and does not have the power to coordinate a coherent government competition policy. The Plan's preference for competition policy over industrial policy compels the IDB to shift its focus to providing guidance and direction to the manufacturing industry.

It is expected that by the year 2000, R&D expenses will amount to 3% of industrial production, of which the government will contribute 30%. The MOEA has been lobbying strongly for a substantial increase (approximately 20% per year) in the government's science and technology development budget. Its goal has been challenged by public opinion, however, and may prove difficult to accomplish due to the increasing constraints that the expanding welfare system has created.

Another issue relating to the science and technology budget for the MOEA is the allocation of resources. There have been complaints from Taiwan's high-technology industry, especially from the information technology sector, that such resources have been allocated inefficiently through the Industrial Technology Research Institute, which tends to direct R&D spending to a single bureaucratic research institution which is unresponsive to the market. In early 1996, the MOEA established an R&D program on its science and technology budget to allow a private-sector association, the Association of Computer Companies, to bypass the Industrial Technology Research Institute and thereby allocate funds directly and take a lead on the research project. Although this set a good example

of the "competition policy" at work, the MOEA has yet to complete a proposal requested under the APROC Plan to install a private R&D institution to compete for limited government resources.

Another MOEA program, administered by the Industrial Development and Investment Center for the past three years, involves signing "letters of intent" on strategic alliance with leading multinational corporations. The letters, signed by local companies and witnessed by the MOEA, are indications of nonbinding commitment and outline areas of potential investment by foreign firms and assistance from the MOEA. However, since the MOEA does not have the authority for policy coordination, it is often incapable of overcoming the eventual investment barriers encountered by the foreign companies that have signed such letters. The strategic alliance program has often degenerated into a public relations campaign not conducive to the actual implementation of the APROC Plan.

The intelligent park proposal in the regional manufacturing center program has turned out to be a good test of the MOEA's new function. The new regulations contemplate a self-management approach under which the parks will not be controlled by the IDB. Moreover, the success of these parks will largely hinge on two factors: (i) improving the telecommunications network at affordable cost, which is the mission of the Ministry of Transportation and Communications, and (ii) securing the required permits and licenses for investors, which is the responsibility of the Environmental Protection Administration ("EPA"), the agency responsible for administering the time-consuming environmental impact analysis process.

The year 1995 witnessed an episode that demonstrates the difficulty of economic internationalization and liberalization in a pluralistic and democratizing society. Although not directly related to the APROC program, the incident shed light on issues that often surface in its implementation. Two related bills to amend the SIFN and SIOC were separately submitted by the MOEA. During the committee hearings at the Legislative Yuan, both statutes were strongly criticized by various legislators for granting foreign investors "supranational treatment". The controversial provisions involve several exemptions from the egalitarian social policies set forth in Taiwan's Company Law and are granted only to foreign-controlled firms approved under the SIFN or SIOC.²⁶ Although

26. Specifically, the Company Law generally requires companies with certain paid-in capital (which is NTS 200 million, or slightly less than US\$ 8 million) to undergo mandatory underwritten public offering when they issue new shares for cash, so as to widen public ownership.

their merits may be debated, overriding these social policies is virtually impossible in light of Taiwan's current political environment, in which any perceived compromise would harm the party supporting the exemptions. The SIFN and SIOC amendments nevertheless forced the Legislative Yuan to consider the proper role of these policies and the proper treatment of foreign investors.²⁷

Another important issue for the implementation of the regional manufacturing center program is whether economic reform can take a short cut by creating "special zones" in which enterprises would enjoy greater trade and investment freedom. Such zones would be created through the enactment of a special law to preempt restrictive economic regulations. During 1995 and early 1996, a proposal to establish such zones was strongly advocated by the MOEA, which even recommended a specific location for consideration. In fact, during the feasibility study in mid-1994 to formulate the APROC initiative, this proposal was eventually rejected because it was deemed to defy the comprehensive liberalization ideal in principle and to create distorting and discriminatory effects in practice. To date, the MOEA has not completed the export processing zone revitalization plan required under the APROC initiative, perhaps because of the same reason.

Although it may not be economically feasible to create an APROC-type special zone in Taiwan, a case may be made for creating an "offshore economic zone" for cross-Straits interactions. While the development of direct links with mainland China seems inevitable, Taiwan must legitimize the political process of doing so — a legal fiction to circumvent the nominal prohibition of such links in Taiwan's laws. As an experimental program, offshore economic zones can also provide a psychological and physical buffer between Taiwan and mainland China before Taiwan is prepared to initiate further direct contact.

These objectives may conflict with provisions in both the Mainland Relations Act, which mandates legislative oversight of major changes in Taiwan's policy towards mainland China, and in the National Unification

In addition, the Company Law generally requires companies to allocate 10% to 15% of new shares in a cash offerings to employees. Exemptions in the SIFN or SIOC from these Company Law requirements, which manifest strong egalitarian social policies for a corporate governance statute, were designed in the 1960s so that foreign investors would not be deterred by such policies.

27. After the Economic Committee of the LY abolished this "supranational treatment" in July 1995, the foreign business community protested strongly to the CEPD and MOEA, which eventually convinced enough Legislators so that on reconsideration the Economic Committee reversed its prior decision and reinstated these exemptions before concluding its review of the SIFN and SIOC bills in January 1996.

Guidelines, which call for a gradual reconciliation with mainland China on the basis of goodwill gestures by the PRC government, including renouncing the use of force against Taiwan. The zone's "offshore" denomination draws conceptual support from similar legal fictions used in financial and trade law, as well as in the MOTC's "offshore transshipment center" program launched in May 1995. But the term "offshore" can also imply cessation of territory and will give rise to debates on whether Taiwan is a sovereign entity independent of China. In any event, both legal and political skills are required to bring this proposal to fruition.

Tensions between Taiwan and the PRC increased in 1995 and 1996 after President Lee Teng-hui's U.S. trip triggered missile tests and military exercises by the PRC. The PRC followed these actions with both propaganda and military campaigns directed at Taiwan's 1996 presidential election. Despite these developments, senior officials from both sides of the Taiwan Straits are willing to explore ways to increase economic cooperation and ease tensions.²⁸ Against this background, the idea of a "cross-Straits economic zone" was proposed by Premier Lien Chan when he addressed attendants of the APROC retreat program in Green Bay in December 1995. Since that time, work has begun to refine his proposal and draft the appropriate legislative bills.

Another challenge for the regional manufacturing center program revolves around the privatization of state enterprises. Although privatization is not limited to the manufacturing sector, it seems more suited to the macroeconomic adjustment program. However, the privatization in 1995 of a construction company and a petrochemical company by the Commission of National Corporations of the MOEA has drawn criticism to the APROC program.²⁹ The MOEA was criticized for "dumping" its shareholding to complete the privatization of these companies and selecting underwriters solely on the basis of bidding even though they were known affiliates of corporate raiders. As a result, the

28. One of the topics is Taiwan's increasing trade surplus with China, which caused China to explore ways to reduce the imbalance and Taiwan's attempt to reduce its dependence. Also, the MOEA has announced a plan to shift to a negative listing policy for the importation of products, semi-finished goods, and raw materials so that more importation of PRC goods and more balanced bilateral trade performance will follow this more streamlined administrative procedure.

29. Such privatization generally proceeds under Taiwan's Statute for the Privatization of State-Owned Enterprises ("Privatization Statute") which includes different ways to privatize state enterprises such as the transfer of ownership and disposition of key assets. However, under the Privatization Statute and laws and regulations governing state-owned enterprises, a company is released from the government's budget and other controls when government ownership falls below 50%.

construction company was taken over by a group with close connections to the underwriter. The MOEA-designated chairman of the board resigned in protest of the takeover action. This incident has caused grave concerns among employees of state-owned enterprises and may provide them with a pretext for resisting further privatization attempts. The negative ramifications of the APROC Plan are twofold. First, the proposed privatization of the Directorate General of Telecommunications ("DGT"), Taiwan's telecommunications monopoly, may be adversely affected, directly impacting the effort of the APROC Window and MOTC to implement the regional telecommunications center program. Second, the doubt cast over corporate privatization in general threatens to impede the Plan's long-term success and viability.

D. Regional Sea Transportation Center Program

1. Advantageous Location

Taiwan has the geographical advantage of being located at the center of high value-added economic activities in East Asia. Kaohsiung, for example, is the third largest container port in the world. The regional sea transportation center program has five goals: (i) improving port management, (ii) enhancing port facilities, (iii) developing an island wide sealink system, (iv) reorganizing Kaohsiung port authorities, and (v) developing "offshore transshipment centers" to facilitate trade between ports in Taiwan and China.

By improving port management, the sea transportation center program seeks to simplify customs clearance procedure by implementing electronic data interchange ("EDI") online services and expanding the hours of service. It also seeks to relax port restrictions on the movement of goods and operations at shared facilities. For example, shipping or handling companies will be able to own equipment and operate in designated areas. Additionally, the traditional practice of using a "closed shop" to pass employment from one generation of workers to the next in a cartel-like manner should be addressed. Shipping companies should be able to hire dock workers at their will and funding for the pensions of dock workers should be secured. Costs and fees for port facilities will be reexamined so that shipping companies can develop long-term cost plans. Finally, port administration will be computerized so as to increase efficiency.

Where the infrastructure is concerned, this program calls for an expansion of value-added operations run by private companies in leased

cargo terminals at the Kaohsiung port. It also calls for the development of a long-term plan by Kaohsiung, Keelung and Taichung ports under which Keelung and Taichung will serve as complementary ports to Kaohsiung in an island wide seaklink system to be administered by the MOTC.

Regulation of port operations should be a function of the central government for both legal and political reasons. First, Article 11 of the Commercial Harbor Law establishes the Ministry of Transportation and Communications as the competent authority to regulate commercial harbors. However, in the past fifty years, this responsibility has been delegated to the Provincial Government of Taiwan while the MOTC only maintains a small advisory staff, leading to less than desirable results. Politically, consolidating port control under the MOTC would reduce local political influence and assist port authorities in meeting the international challenges from neighboring ports like Hong Kong.

The regional sea transportation center program calls for a gradual shift, first to the formation of a joint liaison committee and eventually to the establishment of a Shipping Affairs Bureau within the MOTC to fulfill regulatory functions. At the same time, port authorities should be corporatized and their business functions eventually privatized, while private investors should be permitted to bid on offering various port services.

The most visible and politically sensitive aspect of the regional sea transportation center program is the offshore transshipment center ("OTC") program. After the Nationalist government went to Taiwan in the late 1940's, it imposed an embargo against trade and sea links across the Taiwan Straits. This prohibition, as set forth in Taiwan's National Unification Guidelines and the Mainland Relations Act, not only restricts vessels owned by interests across the Taiwan Straits, but also works to prohibit foreign-owned vessels from plying directly between Taiwan and China. The APROC Plan will force the policy makers in Taiwan to face the problems that this restriction has caused both the domestic and foreign shipping industries.

The regional sea transportation center program, which contemplates making Kaohsiung port an OTC for transit goods, provides a practical solution. As long as there is no customs clearance (that is, no direct import from or direct export to China), transshipment and certain related 'simple processing' activities will be permitted. Although this step falls short of the

direct trade and shipping links demanded by the PRC,³⁰ it represents a positive step towards developing closer economic ties with the mainland.

2. Developing an Offshore Transshipment Center to Circumvent Political Impasse on Direct Trade

One of the first steps the Taiwan government took in launching its APROC initiative was the MOTC's adoption of the regulations concerning the OTC program in May 1995 discussed *supra*. The State Council of the PRC quickly made favorable rehouses, despite the usual complaints that the program fell short of, and should not be seen as a substitute for, direct links, and that all cross-Straits shipping routes under the program should be considered "domestic routes".³¹ The positive response from mainland China was anticipated because of the mutual benefits the offshore transshipment center offered. It would not only satisfy the political goal of both sides to expand ties, but would also generate revenues for Taiwanese ports and save costs for mainland Chinese shippers. According to an internal study commissioned by the MOTC, for each 20-Foot Equivalent Unit ("TEU") of exports from mainland China going through Kaohsiung instead of Hong Kong, this program represents an average 40% savings to shipping companies.³²

The transportation center program also borrows from another legal tactic — registration of shipping vessels under the "flag of convenience," which is a highly convenient practice used to resolve the thorny flag issue in shipping negotiations between Taiwan and China. Rather than risking loss of revenue and perhaps pride by registering as a domestic vessel of the opposing government, shipping companies on either side of the Taiwan Straits would instead register their vessel under a wholly foreign flag, thereby becoming a carrier of transit goods and avoiding the restriction against direct shipment.³³

30. This demand is originally drawn from the nine points enunciated by Marshall Yeh Gien-ing in the mid-1970's, later endorsed by Deng Xiao-ping.

31. Taiwan does not mind such constructive ambiguity as it understands the importance of an implicit agreement to disagree in such circumstances.

32. By the end of 1994, China's total cargo terminal capacity was 4.1 million TEU's. From 1981 to 1993, the cargo volume handled through Hong Kong increased from about 1.5 million TEUs to about 9.5 million TEUs; the bulk of such increase was represented by growth in China's exports. See MOTC, *Briefing to the Premier for the Sea Transportation Center Program under the APROC Plan* (July 10, 1995) (on file with the author) at 24-25.

33. Although Taiwan would not mind having true foreign owned vessels ply the Taiwan Straits under its offshore transshipment center program, China has indicated that it will only allow vessels whose home country has shipping agreement with it to participate in this program.

After President Lee Teng-hui's visit to the U.S. in June 1995, the PRC delayed measures to match Taiwan's OTC program. Nevertheless, indirect contacts on the technical level continued within the cross-Straits shipping industry. Some companies in Taiwan obtained application forms from the relevant mainland Chinese authorities, while the Chinese government adopted a "wait-and-see" approach towards Taiwan's presidential election and the formation of a new cabinet in May 1996. Meanwhile, the MOTC has since completed the technical aspects of preparing for the negotiations with its mainland counterpart.

Another ramification of the offshore transshipment center program is its impact on the "cross-Straits economic zone" proposal, the outline of which was publicized in December 1995. In the OTC program, the term "simple processing" was given considerable room for interpretation, suggesting light manufacturing and assembly operations. Selecting the location for the special zone will be a more difficult decision. Domestic political considerations will come into play.

In an effort to resolve the long-standing practice of dock workers keeping jobs among family members and friends, a decision was made in early 1996 to establish a fund under the Government of Taiwan Province to break the existing choke hold on competition and workplace efficiency. Severance of dock workers would proceed in stages starting May 1996. About 1,200 dock workers at the Fifth Cargo Terminal in Kaohsiung would be released at the first stage. Shipping companies benefitting from the resulting employment freedom would be assessed a provisional fee to help finance pension payments.

The MOTC understands that modifying laws and regulations will be important, but not sufficient to transform the management of port facilities. In February 1996, it decided to appoint the then Director General of the Shipping Affairs Division, a well-experienced and respected professional executive in the shipping industry, to head the Kaohsiung Harbor Administration. The assignment was a departure from the traditional practice of appointing retired navy officials to lead such agencies. On a larger scale, this shift is compatible with the emerging professionalism at the MOTC in recent years, and has enabled industry professionals to be more involved in the effort to fight nepotism, cronyism and bureaucracy in harbor administration.

E. Regional Air Transportation Center Program

1. Taipei's Role as a Regional Transportation Hub

Among major cities in East Asia, Taipei is an ideal location for passenger and cargo transportation. Chiang Kai-shek ("CKS") International Airport, for example, ranks twelfth in the world in airport cargo volume.³⁴ There is a strong possibility that Taipei will develop into a regional air transportation hub.

The regional air transportation center program focuses on establishing an express cargo zone, in which a designated space will be provided to international integrated express carriers such as Federal Express and United States Parcel Service. The purpose of this program is to exploit CKS's advantages and introduce more effective competition. For example, the program calls for the creation of a domestic industry of integrated express air cargo carriers and, when necessary, the bidding of scarce airport space will be allowed. In connection with this agenda, measures such as the adoption of paperless customs clearance procedures, pre-clearance and 24-hour customs service are likely to be implemented.

Overall efficiency in the airport operating environment also needs improvement. Specifically, the air cargo terminal businesses and ground handling services owned or dominated by the government should be liberalized through transfer to the private sector. Eventually, the air cargo terminal should be privatized and the fee structure for air cargo service should be revamped. In the passenger area, the CKS terminal will undergo an expansion to transform it functionally from a destination airport to a transit airport.

Another prong of the regional air transportation center program addresses transformation of CKS into a regional passenger hub offering competitive services. To this end, the Ministry of Transportation and Communications is responsible for negotiating landing rights to generate more transportation business for the airport. CKS should improve its capacity for domestic and international transit business and enhance its competitiveness by both upgrading existing facilities and simplifying passenger clearance procedures in such matters as visa issuance.

Over the next three years, the Phase II expansion project of CKS, which was originally designed as a destination airport, will be underway

34. APROC Plan, *supra* note 1, at 19.

and is expected to provide more commercial and passenger rest space. Highway transportation to and from the airport will be liberalized to allow competition from a second bus company and improved through the construction of a rapid transit system linking the airport with Taipei. The new passenger terminal will be managed by private investors and concessionary arrangements will be extended to all ancillary and support services. Furthermore, the current system of classifying domestic carriers needs to be overhauled so that the carriers will become more competitive internationally over time.

In a related urban planning scheme, this program also contemplates turning Taoyuan County, in which CKS is located, into an "air city." The inner circle of the city will be comprised of the airport and related facilities. Airport support industries will form the center ring, and commercial establishments such as conference centers, shopping malls, and hotels will make up the outer rim.

2. Building an "Air City"

Most tasks under this program, such as CKS's Phase II development and the transformation of the adjacent area into an air city, are slated for medium- to long-term completion under the APROC Plan's implementation schedule. The most important short-term task is introduction of integrated express cargo carriers for development of transshipment operations in Taiwan. The difficult negotiations between MOTC and integrated carriers, thus far, illustrate the legal, political and regulatory hurdles to the principle of market liberalization.

After six years of negotiations during which delays and missteps on both sides forced Federal Express to choose Subic Bay as a partial solution, all issues except the rental payment have been resolved. However, still present is the rental payment issue, which is related to the central problem of how integrated carriers qualified to negotiate with the MOTC on concession of airport space for the construction of sorting facilities should pay for such build-to-lease treatment. At the legal level, the question is whether a corporation like Federal Express is entitled to a right or a granted privilege to a selected number of qualified firms under the Civil Air Transport Agreement between Taiwan and the United States.³⁵

35. Neither side has focused on or given up on this issue. The crux of the issue is whether there is a space constraint under Section 6 of this bilateral agreement. Meanwhile, as negotiations with the Civil Aeronautics Administration proceed slowly, Federal Express has blocked applications by China Air Lines to serve Chicago and by Eva Air to serve Manila.

At the practical level, there is also the issue of rental structure. Should the lessee pay for rental space used for handling transshipped goods? How should the rental payment be structured to the extent the lessee handles import and export goods?³⁶ The latter issue is the thornier problem, because the Taipei Air Cargo Terminal, a unit of the Civil Aeronautics Administration ("CAA") and the lessor for such operations, has a rental rate schedule applicable to all air carriers, competitive or non-competitive. The design of the schedule is based on the operation and employee welfare cost and revenue projections of a bureaucratic monopoly. The CAA faces the dilemma of a tradeoff between efficiency and fairness. It can reduce the fees to all, thereby making the rental to the integrated cargo carrier affordable to all, but unable to meet revenue forecast. Alternatively, it can reduce the rent only to the integrated carrier, but will then be threatened by allegations of favoritism and discriminatory treatment in violation of the Fair Trade Law. The most comprehensive long-term solution is privatization of the Taipei Air Cargo Terminal, once and for all.

F. Regional Financial Center Program

1. Gradual Liberalization and Privatization of Banking and Capital Markets

While Taiwan admittedly lags behind Hong Kong, Singapore and Tokyo in offering competitive regional financial business, several advantages that Taiwan has over other countries — its dynamic economic performance, as well as its foreign exchange assets and reserves — have led policy makers to believe that the island can play a more prominent role in the region's financial activities.³⁷ Reflecting their usually cautious attitude toward the financial markets, policy makers intend to follow the conservative approach of gradually opening up, under the principle of allowing "full freedom in the offshore market while gradually liberalizing the domestic market."³⁸

36. Although conceptually different, the handling of transshipped and original destination goods is one integrated operation. Different rental payments therefore are a volume-based accounting arrangement to compute the total rental.

37. For a discussion of Taiwan's financial system, see Lawrence S. Liu, *Creating An International Financial Center: the Case of Taiwan, R.O.C.*, in *INTERNATIONAL BANKING OPERATIONS AND PRACTICES: CURRENT DEVELOPMENTS* 71-144 (J. J. Norton et al. eds. 1994).

38. APROC Plan (English version), *supra* note 1, at 23.

The most important task for the program is the improvement of the general conditions for Taiwan's development as a financial center. To this end, movement of funds should be liberalized as much as possible. An amendment should be made to the Statute for the Administration of Foreign Exchange to provide emergency powers and to secure more freedom of fund movement under normal circumstances. Similarly, restrictions on Taiwanese companies' ability to remit foreign currency-denominated proceeds of securities offerings abroad should be relaxed gradually. The annual quota under rules promulgated pursuant to the SAFE for inbound and outbound remittances for residents and corporations should also be increased.

As finance is increasingly globalized, becoming a financial center necessarily entails the establishment of a considerable number of foreign financial institutions engaged in business at that location. Therefore, the financial center program mandates that restrictions on foreign banks concerning branching, location, and operations be relaxed further. The APROC Plan also calls for the amendment of the Business Tax Law and Stamp Duties Law so that tax burdens for financial derivatives and transactions in the money market and interbank borrowing market will be reduced.

As a result of the disintermediation phenomenon in the 1980's, the Plan calls for the establishment of non-deposit taking institutions, or "nonbank banks". Specifically, the Ministry of Finance and Ministry of Economic Affairs have been charged with removing restrictions on the establishment of finance companies. More competition is required in the area of traditional banking, particularly in the state-owned banking sector, which represents more than 50% of the commercial banking business in Taiwan. A definitive timetable should be set for the privatization of government-owned banks for four reasons. First, operating efficiency of banks, which are currently subject to heavy government regulation, will increase significantly with respect to budget and personnel. Second, the banks will find more incentives to pursue high-profit business opportunities to promote capital formation. At present, employees of government-owned banks, as civil servants, are subject to criminal liability for bad loans and major mismanagement. As a result, these banks tend to be ultra risk-averse. Third, government-owned banks currently command more than half of the market, down from approximately 80% following the entry of 16 private banks since 1992. Privatization will therefore unleash a considerable force of competition and innovation in the entire financial market. Fourth,

privatization will substantially insulate banks from local politicians intending to use political leverage to influence banks' loan policies.

Similarly, a statute should be enacted to provide more freedom to government-owned banking institutions that should stay in governmental control for policy reasons. Thus, domestic banks will be encouraged to establish branch operations abroad and the traditional segmentation of banking businesses will be reexamined to improve their competitiveness and efficiency. Finally, to enhance Taiwan's overall financial environment, training programs for financial executives need to be stepped up and facilities such as an international financial center should be constructed to bring about concentration among similar institutions.

Taiwan's substantial foreign exchange reserves are a potential asset for development of its financial market. The APROC Plan calls for developing more foreign exchange business, in part by substituting a foreign liability reserve for the existing foreign liability and overbought/oversold ceilings. By the same token, the foreign exchange market can benefit from the introduction of international money brokers whose market-making activities will deepen the Taiwan interbank offered rate ("TIBOR") market. The gradualist approach also suggests that the government is willing to spend more energy on developing additional offshore banking business by allowing more business to be routed through offshore banking units of foreign and local banks, including the allowance of resident individuals and corporations to maintain New Taiwanese Dollar ("NT\$") accounts.

As financial markets mature, financial transactions become more sophisticated and often speculative, creating the need for risk management. Despite incidents of bank losses caused by inexperienced trading, the regional financial center program calls for the gradual development of a derivatives market. Specifically, various new financial instruments involving non-NT\$ currencies will be encouraged. In addition, a Taiwan international monetary exchange will be considered.

Another component of the regional financial center program is the development of Taiwan's capital market. First, Taiwan needs to further internationalize its stock market by expanding its qualified foreign institutional investment ("QFII") program. Restrictions on total percentage and single-investor percentage of foreign investment as well as on the amount of permissible annual remittances must be relaxed; nonresident individuals and corporations should be permitted to invest directly in securities that are publicly listed or quoted in Taiwan. On outbound portfolio investment, Taiwanese investors and mutual funds should be

allowed a wider selection of the types and countries of investment, particularly in the "emerging markets". As in the banking sector, participation by foreign securities firms should be welcomed and to this end, requirements concerning paid-in capital, location, minimum fixed asset investment, personnel and other matters will be gradually relaxed. Local securities firms should also be given additional power to engage in ancillary business as is common for foreign securities firms. Finally, efforts should be made to introduce credit rating to Taiwan by encouraging domestic financial and industrial companies to seek credit ratings by reputable international rating agencies.

Compared with Taiwan's volatile equity market, the bond market appears particularly inactive. The regional financial center program intends to stimulate bond trading on both the securities exchange and the over-the-counter market. Procedures for bond issuance should be streamlined and the Securities and Exchange Law amended to allow issuance of bonds with warrants attached, and an increase in the bond-to-equity ratio. Similarly, commercial banks should be permitted to issue corporate bonds, known as bank-debt instruments, in Taiwan. At the same time, cross-border bond issuance and listing standards, applicable to international institutions, multinational corporations, and overseas affiliates of Taiwanese companies should be adopted to further internationalize the bond market.

Internationalization of the equity market is the centerpiece of the regional financial center program. To accomplish this, the size of the primary market should first be expanded by improving listing and issuing practices. For example, the underwriting practice and regulations need to be adjusted to permit more auction and other market-driven arrangements, to allow underwriters to stabilize the market during the underwriting period, and to permit more institutional investors such as participants in the QFII program, insurance and trust companies, banks and mutual funds, to purchase underwritten equities. The listing standards and review criteria should be revised with reference to similar requirements in other regional markets. Taiwan's Securities and Exchange Commission ("SEC") under the Ministry of Finance has issued regulations concerning the issuance of Taiwan Depositary Receipts ("TDR") by foreign companies. The regional financial center program will call for further relaxation of TDR regulations so that reputable foreign companies will be attracted to issue such instruments in Taiwan. Furthermore, foreign companies should be encouraged to directly issue equity stocks in Taiwan. Finally, Taiwanese companies should not only be encouraged to float Global Depositary

Receipts ("GDR") overseas, but should also be permitted to issue securities directly on foreign markets.

2. The Central Bank of China Should Take the Lead in Opening a Closed Market

Progress on the Plan's regional financial center program during 1995 was primarily reflected in the change of attitude experienced by regulators of Taiwan's financial market and the finalization of a timetable to remove foreign exchange controls. The implementation of actual measures to transform Taiwan, or more appropriately Taipei, into a regional financial center was modest. In July 1995, intense lobbying efforts by the APROC Window led to the passage of a SAFE amendment that gave the CBC the much-needed emergency market intervention power. With this emergency power, the CBC was persuaded to a targeted timetable to remove foreign exchange controls by the end of the year 2000. Restrictions under the QFII program for foreign portfolio investment in Taiwan's securities market were relaxed; the lock-up period for remittances was removed while the number of remittances each year were increased. In addition, the percentage for individual foreign institutional investors increased from 5% to 7.5% of each listed company's total market capitalization. Similarly, the aggregate QFII quota for each listed company went up from 10% to 15%, and then to 20%. However, these increases can also be attributed to China's missile threats and military exercises starting in mid-1995, which forced financial regulators in Taiwan to take extraordinary measures to energize the depressed capital market.

The policy debate in this area centers around the role of the government in the financial marketplace and the pace of reform. Unless there are major changes in the policymakers or policy directions, Taiwan's pursuit will be limited to its further financial liberalization, and will not be aimed at transforming itself into a financial center in the region. A telltale sign of the course of the policy debates is the way in which the basic framework for the regional financial center program was adopted. The CBC, instead of the MOF, was given the task of coordinating the program, despite its more conservative mentality and agency culture, and its relative unfamiliarity with the regulatory issues that involve banks, securities firms, futures trading, the capital market and the insurance industry. Apart from political considerations, this delegation indicates the risk-averse senior policymakers' inclination to follow a gradualist approach. Another indication of the CBC policymakers' thinking on fundamental issues

related to the regional financial center program is their greater emphasis on the banking sector over the capital market and on offshore banking units over domestic banking units. The Central Bank of China has maintained the artificial "policy fire wall" between these two segments so that they can contain the adverse spillover of their impact.

Despite an attitude change by regulators reflected in the targeted timetable for removing foreign exchange controls, the need to institute a competition policy should be emphasized constantly. At present, Taiwan's financial market is regarded as over-regulated. There are too many entry barriers and operating constraints, such as paid-in capital, type of financial institution, credential requirements for personnel, zoning requirements for office locations, regulation of products and services, poor coordination among the multiple agencies having oversight of financial institutions, and inability to privatize state banks that enjoy the largest market shares. At the same time, supervision is largely inadequate. There is a lack of regard for fiduciary duty to depositors and customers, and financial supervision is too weak to ensure prudent management. Indeed, several financial scandals in 1995 and 1996, involving related party loans and irregular operations at leading financial institutions, are evidence of the lack of supervision.

G. Regional Telecommunications Center Program

1. Sequential Market Opening and Taiwan's Directorate General of Telecommunications

The telecommunications center program is critical to the success of other APROC programs and calls for sequential market liberalization, rate rebalancing, separation of business and regulatory functions, formation of call transfer and customer service centers, and development of the National Information Infrastructure ("NII").

Sequential market opening is the backbone of the program and consists of three stages. The first stage involves more value-added telecommunications services. The second stage involves the opening to competition of the sale of such items as mobile telephones, pagers, Very Small Aperture Satellites, mobile data services, and trunked radio services by the end of 1995. The third and final stage focuses on liberalization of international, long distance, and city calling services over the next five years.

In Taiwan, the comprehensive service coverage by the Directorate General of Telecommunications, an effective monopoly run by the Ministry

of Transportation and Communications, has led to cross-subsidization of various telecommunications services. Rate rebalancing is necessary not only for market liberalization purposes, but also for the instilling of rigor, logic and discipline in the pricing of the DGT's tariff rates, so that its business unit can be corporatized and spun off from its regulatory unit with the least possible difficulty.

Separating the DGT's regulatory and business functions will require major legislative reform through the amendment or enactment of three major telecommunications bills — the Telecommunications Law, the Organic Statute for Chung-Hua Telecommunications Corporation ("CTC Statute"), and enactment of the Organic Statute for the Directorate General of Telecommunications ("DGT Statute"). Chung-Hua Telecommunications ("CTC") should be charged with establishing performance targets after its incorporation so that it can meet the increasing demands of the rapidly liberalizing global telecommunications market.

International cooperation in making Taiwan a call transfer and customer service center is another important prong of the program. It includes participation in more international trunkline construction projects, international roaming and credit card calling services, and strategic alliance arrangements with leading international telecommunications companies to secure more call- and data-transfer services in Taiwan.

The NII program calls for efforts such as digitization of telecommunications networks and fiber optic lines pavement, establishment of broad-band information networks, and a government-wide information and data system.

2. Three Telecommunications Reform Bills

The regional telecommunications center program represents perhaps both the most controversial and exciting development at the launching stage of the APROC initiative. In September 1995, the MOTC implemented a major rate rebalancing of the DGT telecommunications (mostly telephony) tariff to reduce cross-subsidization of tariffs among different sectors. This measure was deemed crucial for bringing forth major market liberalization.³⁹ In early 1995, the MOTC also granted licenses to private domestic investors to set up second-generation cordless telephone

39. The MOTC believed that the failure of Nippon Telegraph and Telephone in Japan to successfully enhance its competitiveness after the Japanese telecommunications liberalization in the 1980's was due to its inability to conduct a rate rebalancing program to reduce cross-subsidization.

operations, a lower level of mobile telephony service. The market liberalization move was met with mixed reactions. Although the MOTC was credited for its commitment to an open market, the DGT was accused of abusing its dominant market position and policy function by imposing territorial restrictions on licenses to suppress competition.⁴⁰

The most significant development in the telecommunications center program in 1995 was the decision by the MOTC and CEPD/APROC Window to revive the campaign for the enactment of the three telecommunications reform bills that had been put on hold by the Legislative Yuan in April 1992,⁴¹ despite strong resistance from union members at the DGT, the national legislature election in November 1995, and the presidential election in March 1996. After six months of intense lobbying, these agencies persuaded the LY to pass the three bills on January 16, 1996, largely based on the original government bills and signaling a new era for Taiwan's telecommunications industry.

This campaign began with a reexamination of the three bills pending in the Legislative Yuan with the goal of making the necessary revisions to obtain Executive Yuan approval without compromising the goal of liberalization. The three bills, which had been independently drafted by the conservative DGT, were not competition oriented and failed to reflect current developments in the global telecommunications industry. During this period, a breathtaking array of new technologies have been introduced to the market. The European Union decided to liberalize telephone competition among member states by early 1998; the United States Congress amended its Telecommunications Act to increase competition and convergence among telephone, cable television, and publishing

40. Such allegations of conflict of interest had been leveled at the DGT before, with much justification. When Taiwan began to legalize its cable television industry in 1994, the DGT successfully lobbied for the inclusion of a provision, article 22(4), in the Cable Television Law so that any future cable television ("CATV") licensee would have to undertake that it would not engage in telecommunications business in the future. In other words, in addition to the water-tight Telecommunications Law at that time which already gave the DGT a virtual monopoly, it further solidified this monopoly by engaging in rent-seeking lobbying to erect another legislative barrier against intrusion by CATV operators. Therefore, the CEPD/APROC Window and MOTC also encountered some resistance by CATV business against the DGT's corporatization contemplated by the three telecommunications reform bills.

41. After the submission of the Telecommunications Law amendment bill in April 1992, by the EY to the LY, the LY's Telecommunications and Transportation Committee insisted that two other bills, the organic statutes for CTC and the new DGT, also be submitted. The EY complied with this demand in December 1994. Meanwhile, close to ten competing bills to the executive branch's Telecommunications Law amendment bill were attached by Legislators of various parties. In addition, some union members at the DGT waged an effective lobbying campaign with the LY to postpone deliberation of the three bills indefinitely until union demands were included.

industries in 1996; and WTO members were negotiating in Geneva for the liberalization of basic telecommunications services.

This re-examination yielded a number of results. First, instead of just opening the value-added network ("VAN") business, the common carrier service was also scheduled for increased competition; however, licensing by the MOTC and the DGT will be required.⁴² Second, a VAN company may now be wholly owned by foreigners although only up to one-third of the interest of a common carrier, including the CTC, may be foreign owned.⁴³ Third, in separating the CTC from the new DGT, which acts only as a regulator,⁴⁴ the three bills would provide equal access and impose a universal service obligation to ensure interconnections and intra-monopolist cross-subsidization would be replaced by industry wide cross-subsidization to ensure the penetration of basic services in even remote areas.⁴⁵ The CTC, however, would be barred from predation and cross-subsidization. Fourth, the CTC Statute removes prior auditing controls on procurement by the CTC, an onerous constraint on the DGT and other state-owned business units.⁴⁶

Negotiating with the DGT's union members proved more difficult. Several concerns of the union were considered. First, since they were concerned with layoffs, the CTC Statute bill responded by promising no layoffs, transfers or demotions as a result of corporatization. The Telecommunications Law also specifically provided that the CTC shall be

42. Telecommunications Law, art. 12, 17. The 1992 bill had provided for a more complicated, but less logical, regulatory framework, which would entail granting the DGT monopoly rights in principle, and then allow periodic reviews every six months to examine whether some services could be opened for competition, in which case those services would fall into type II business. To give CTC some breathing room to meet new market challenges, however, the EY made a decision in October 1995 to postpone, for five years after the three bills' passage, competition for Type I telecommunications services that require the installation of basic networks.

43. *Id.* art. 12, 17.

44. One crucial issue during the legislative debate is whether the DGT should be abolished and whether an inter-ministry communications commission modeled after the U.S. Federal Communications Commission ("FCC") should be set up to take its place. Proponents of the FCC model argued that there should be more co-ordination among ministries and the FCC model would prevent the new CTC from enjoying cosy relations with telecommunications regulators. The EY responded by arguing that all OECD economies, except the United States, followed a ministry/telecommunications directorate model, and offered to set up a dispute-resolution committee within the new DGT which would have the independence, stature and expertise of its members, who would be appointed by the Minister of MOTC, instead of the Director General of the new DGT.

45. Telecommunications Law, arts. 16, 19, 20.

46. CTC Statute, arts. 7, 9.

a "state-owned company."⁴⁷ Second, some union members were dissatisfied with the alleged practice by the KMT of rewarding loyalists with management positions and sabotaging the privatization of state-owned companies so that they fell into the hands of corporate raiders. Accordingly, some DGT employees believed there was no reason why they could not be board directors as well. In response, the executive branch made an implicit commitment to professional management at the CTC.

In sum, the demands of union interests at the DGT centered around more employee participation under the label of "industrial democracy" and the demand for one-third of the board seats of the new Chung-Hua Telecommunications Corporation.⁴⁸ Although the DGT's union activists ultimately failed to insert these demands into the enacted legislation, they obtained the support of unions at other state-owned companies, formed a united front to represent the management of state-owned companies, and gained publicity for their cause. In addition, they had other gains. As enacted, the CTC Statute contains a compromise on employee participation in corporate governance. It requires one-fifth of the CTC's board to be composed of "experts",⁴⁹ a significant break with Taiwan's Company Law which requires board directors to be elected from among shareholders or, in the case of corporate shareholders, their representatives.⁵⁰ As Taiwan

47. Telecommunications Law, art. 30. To be sure, this compromise was intended to appease the recalcitrant DGT union members, by passing the buck to the LY, which has the sole power to amend this provision in the future to permit reduction of government ownership below the 50% control threshold. On the other hand, other economies have opted to keep their telecommunications operators under state ownership despite market opening and ownership distribution programs. In any event, the size of the DGT would not permit ownership of the new CTC to be privatized in the short term.

48. The union members specifically referred to employee participation legislation in certain European and socialist countries, and pointed as examples to Germany's *Mitbestimmungsgesetz* (Co-determination Law) and the organic statute for France Telecom, which grants one-third of board seats to employees.

49. CTC Statute, art. 5. Leaders among the union members at DGT resisting corporatization participated in the LY negotiations between MOTC/CEPD representatives and those representing the three dominant parties on the eve of this legislation's passage. At union members' request, the Democratic Progressive Party ("DPP") sought to introduce a nonbinding concurrent resolution that such experts should include employee representative(s). The EY countered by obtaining another nonbinding concurrent resolution demanding that such experts not be status-based. Because of confusion on the LY floor, the DPP resolution was not adopted, resulting in some threats by union members to continue boycotts over the definitive corporatization task. During President Lee Teng-hui's campaign for the 1996 presidential election, they even became vocal when Lee sought labor votes in rallies of labor representatives in Taiwan.

50. Company Law, art. 192. The only other exception to this rule is the SEL requirement that stock exchanges in corporate form (the legal form of Taiwan Stock Exchange, Taiwan's only and partially state-owned stock exchange) have at least one-third of its board consist of "public interest directors" appointed by the SEC. SEL, art. 126.

pursues further privatization by shedding ownership of state enterprises and awarding concessionary build-operate-transfer ("BOT") contracts, the debate in the Legislative Yuan and competing lobbies on the "industrial democracy" issue that inform the enactment of the CTC Statute will have a profound impact on the role of employees in these programs. Whether there will be any spillover effects to private companies is being closely monitored by policymakers, the business community, academics and social activists alike.⁵¹

Lobbying for the revised telecommunications reform bills in November 1995 amidst Taiwan's national election of a new legislature became a testing ground for the political support of the APROC initiative, especially after the ruling KMT party saw its majority reduced to a razor-thin margin of three seats.⁵² This fact was clear to the Executive Yuan, recalcitrant union members at the DGT, and legislators of all three major parties interested in using the issue of telecommunications reform to gain publicity and political support. Indeed, the bare majority maintained by the ruling party for the next few months caused some faction members to hold out by threatening to withdraw support. Likewise, the two major opposition parties were anxious to exploit the new balance of political power to teach the KMT a lesson and stalling the passage of the telecommunications reform bills during the post-election lame duck session became their battle cry.⁵³

51. Another issue is whether more competition could be engendered even within the state sector or semi-state sector. Taiwan Power Company seems interested in some type I telecommunications business, which it could branch into as a result of its power transmission networks. Similarly, even the inefficient Taiwan Railroad Bureau or the more efficient Postal Administration, both controlled by the MOTC, have networks and can do the same. Planners for Taiwan's high speed railroad system, which will be built through BOT awards, also seem interested in offering some kind of Type I telecommunications services.

52. If these telecom reform bills had not been enacted during the Second Term LY's lame duck session ending January 18, 1996, the passing of these politically sensitive bills in the fractured Third Term LY would have been doomed. There would have been dire consequences. For example, the market opening program of the MOTC scheduled for 1996 would have been further delayed, as foreign ownership in *any* type of telecommunications service (that is, even the VAN business which would pose less national interest concerns) would have been barred by the Telecommunications Law of 1958. If Taiwan had gone ahead to liberalize its telecom market for only domestic companies under the 1958 legislation without also allowing some foreign participation, it would have seriously violated the national treatment principle.

53. This military analogy was apt because of the following skirmishes: (1) the DPP gave marching orders to boycott the three bills, to begin at the committee level; (2) about 2,000 DGT employees waged several demonstrations outside the LY premises during committee deliberations, shooting firecrackers, honking car horns, and putting on loud speakers singing protest songs, drawing close to a hundred riot police at times; (3) legislators resorted to pushing and shoving during some committee hearings, a typical act of showmanship at the LY; (4) the KMT resorted to LY house rules

Under these conditions, the passage of the three bills in essentially their original form was a victory for the Plan.⁵⁴ However, it was only the beginning of another round of liberalization efforts. Liberalization of the market for such services as mobile telephones, mobile data, and paging requires the adoption or amendment of 99 Ministry of Transportation and Communications regulations.⁵⁵ Corporatization of the business side of the DGT to form the Chung-Hua Telecommunications Corporation includes a major overhaul of its organizational structure, meeting requirements of the Budget Law and Company Law, and other matters. The task is equivalent to a gigantic merger, and requires such efforts as the removal of restraints on cross-competition between cable television ("CATV") operators and telecommunications operators embedded in the Cable Television Law.

H. Regional Media Center Program

1. New Laws to Promote Entertainment and Business Opportunities

Since the lifting of the Martial Law decree in mid-1987, Taiwan has quickly become one of the most liberal societies in East Asia in the area of freedom of expression and the press. Such freedom will become especially important where there is an increased demand for Chinese language products when Hong Kong reverts to Chinese rule in July 1997. With increasing standards of living and growing demand for high-quality entertainment and news programs, this freedom can be translated into business opportunities for Taiwan, turning it into a media center in the Asia-Pacific region. For example, cable television in Taiwan already enjoys the highest subscription rate in Asia next to Japan. The number of

to pull the three bills out of the LY's committee sessions for a direct showdown in the plenary sessions; and (5) the KMT came up with "Situation Super A" marching orders for ensuring passage of the three bills (during the legislative debates in mid-1995 for enacting a statute governing presidential and vice presidential elections, the KMT had only a "Situation A" marching order.

54. The main revisions include the reduction of foreign ownership limits for common carrier businesses from one-third to 20 percent and a compromise provision to allow up to one-fifth of the CTC's directors to be "experts," who may be employee representatives.

55. The legislative overhaul of the telecommunications market allows the MOTC to schedule March 1996 to begin entertaining applications to provide five types of telecommunications whose liberalization had been promised in 1994 for implementation by the end of 1995. There would be up to 8 regional mobile telephone operators, 8 regional paging operators, 24 trunk radio operators, and 21 regional mobile data operators. Interregional investment is permissible.

international film awards won by films made or financed by Taiwanese entities indicates the potential of building a competitive film industry. The popularity enjoyed by Taiwan-produced television soap operas such as "Judge Pao" and Mandarin Chinese songs in Southeast Asia suggests significant opportunity for Taiwan to build a regional market for its entertainment products.

The foremost task of this program is to improve the overall environment for the media industry. Measures in this regard include enacting a satellite television and broadcasting law to liberalize the transmission (primarily uplinking) of satellite signals. In addition, Taiwan needs to expedite the legalization of its cable television industry, which has mushroomed as illegal "fourth stations" (so called because there have been only three legal terrestrial television stations, all of which are associated with the government or the ruling party) even before the passage of the Cable Television Law in 1993. Better training of performing and technical personnel is needed along with the lifting of restrictions on collaboration with Hong Kong and mainland China media concerns and on shooting at mainland locations. Finally, the program calls for the establishment of a media industry commission composed of experts from government, industry, and academia to elevate the level of Taiwan's media industry.

The second prong of the media center program involves the establishment of a high-technology media park outside of Taipei to promote an industry for the production and post-production of Chinese-language television programs and films. The park will be developed at two stages within a total of seven years. At the first stage, to be accomplished within three years, the focus will be on launching the park and attracting domestic media and production firms to meet domestic market demand. At stage two, the government should act to attract participation by foreign media firms and to meet regional market demand. To this end, functional tax incentives such as reduction or waiver of customs duties for equipment and other incentives such as preferential treatment on land lease, development loans and training assistance will be provided. The development of such a media park would be run by a development company under both government and private control.

2. Developing Media Parks and Lifting Foreign Ownership Restrictions

During 1995, initial progress under the regional media center program was made in selecting six out of ten applicants to develop media parks.

Changes were made when the program moved from the conceptual to the implementation phase because the original plan to have just one media park gave way to plans for multiple media parks set up by different investors. In addition, instead of having more government involvement in developing and regulating the parks, it was decided in 1995 that the role for the government would be restricted to providing necessary assistance (such as zoning approvals) and development loans where needed.

At the ideological level, progress was made within the Executive Yuan to scrap foreign ownership limitations completely for the draft of the satellite television broadcasting law. This has not been an easy decision for the Government Information Office, which was responsible for drafting the bill, and the ministers who attended the council meeting at the EY. The fact that satellite signals can be received in any free society, thereby rendering regulation useless, was not lost on the policy makers. They also believe that imposing such restrictions would lead to the perverse result of subjecting domestic companies to regulatory burden, while foreign companies not wishing or able to set up operations in Taiwan could still beam air waves down to Taiwan. But the real battle is now over the passage of the bill in the legislature, which is known to be highly interested in sensational issues involving cultural policies and even "cultural aggression".

III. CONCLUSION

In many ways, the APROC initiative is an extraordinary plan to elevate Taiwan to a higher plateau. First, as a strategy for global competition, the Plan was not initiated by the ROC government but rather from the private sector. Indeed, in campaigns to publicize its policies, the government of Taiwan formally recognized that government inefficiency is a problem. The Plan not only reflects the increasing maturity of Taiwan as a society as well as an economy, but also works to remove certain mental barriers and thereby allow government officials to discern weaknesses in their policies.

Secondly, the APROC initiative reflects Taiwan's willingness to allow foreign investors to compete with domestic companies on an equal footing. The APROC initiative not only offers foreign companies the same entry and operating conditions as enjoyed by domestic firms, it goes further by treating foreign and domestic firms alike as long as they use Taiwan as their regional operations center or as one of such centers. By broadening its focus to the entire region of East Asia and Southeast Asia, Taiwan can

benchmark the competitiveness of its economic system against its neighbors. At the same time, Taiwan will give domestic investors, which have grown so competitive that they can now choose to relocate or initiate operations overseas, sufficient incentives to keep their capital in Taiwan.

This aspect of the APROC initiative leads to its third salient feature: Taiwan's aspirations to excel in global competition and cooperation. To a certain degree, the idea behind the APROC program seems to be the unilateral dismantling of trade barriers. Accordingly, at least some policymakers in Taiwan are willing to offer more than Taiwan needs to offer in order to enter the WTO. While this may prove easier said than done, certain policymakers do follow the Hong Kong approach of maximum unilateral liberalization.

The key to this competitive strategy is, of course, to open Taiwan's markets as wide as possible to ensure that the island will improve its overall operating environment through competition. In other words, the Taiwan government should concern itself less with the performance of particular industries. It should instead periodically review Taiwan's entire economic system to make sure Taiwan's industries maintain their competitiveness. The goal of the APROC initiative, therefore, is not merely to maintain a strong domestic economy, but to further improve Taiwan's dynamic environment by attracting foreign firms and retaining domestic firms at the same time.

Fourth, and most importantly, policymakers in Taiwan realize that while the APROC program is essentially an economic reform, it is also a legal reform that begins with modifying laws and administrative practices relevant to economic policy. As a result, a bolder stride is necessary, such as the revised telecommunications reform bills formulated by the CEPD in the summer of 1995 that forced the government to deal directly with the difficult issue of employee welfare at the DGT when it is corporatized in the midst of the opening of the telecommunications market.

Legal reform has also resulted in the repeal of obsolete legislation. Policymakers used to believe that the best solution to many problems was to enact more laws, even at the risk of creating a body of inconsistent economic laws and regulations. The APROC initiative recognizes that more legislation will not by itself ensure its implementation and enforcement and that it is time to check its growth.

Another legal aspect of the APROC Plan is its focus on adopting facilitative laws, such as the Trust Law and the Securities and Exchange Law ("SEL") amendment, which confers legal status on derivative securities such as warrants and options. Such laws are necessary tools for

facilitating complex business transactions engendered by a fully developed economy. This is an area which until recently has not attracted sufficient attention on the part of Taiwan's policymakers. In Chinese societies, laws have been traditionally perceived as a big stick wielded by the state to prohibit and restrict people's behavior. Seldom have policymakers or indeed the public thought much about laws as a facilitative or protective carrot.

The technical process of enacting laws and adopting regulations has also been affected by the APROC initiative. By attaching a priority status to certain bills, the APROC Comprehensive Legislative Plan has subtly changed the way bills become laws. It is as close to omnibus legislation in the United States or Europe as allowed by Taiwan's politics and legislative practices. Moreover, the lobbying experience accumulated in the promotion of the APROC bills may help the lobbying efforts for the WTO negotiations.

As admirable as any aspiration to excel, the APROC initiative will encounter significant hurdles. For this massive program to succeed, there needs to be political support as well as professional expertise and dedication to revamp the existing economic structure.

The first type of political support is external. The APROC initiative and its mirror image, the WTO bid, has to be embraced by the international community, including Taiwan's primary trading partners. In particular, Japan should not be made to feel that the Plan's objective is to seek alliance with North American and European firms to offset Japan's economic influence.

Another type of external political support needs to come from mainland China, especially after the deterioration of cross-Straits relations in 1995. Like all other aspects of the relationship, it takes two to tango to an economic theme. China should not see the APROC program as a hidden agenda to internationalize the "Taiwan issue". As a remarkable contributor to the global trading system, Taiwan simply must expand its trade and economic ties — which sometimes carry with them semi-diplomatic implications — around the world. In addition, regional economic integration is the backbone of the APROC Plan, which calls for closer economic ties with mainland China as long as these ties will not sacrifice the security and dignity of Taiwan Chinese.

Garnering domestic political support is equally important to the APROC initiative's success. In the past ten years, Taiwan has expended most of its energy in developing a working democracy, the first in Chinese history. Democracy solidifies the resolve for a market economy and

sustains the resilience needed by a society undergoing fundamental changes to implement a program as massive as the APROC Plan. Taiwan has also learned to decentralize political power under a democratic system by steering power away from the central government, away from the ruling KMT party, and away from the all-mighty executive branch. It has yet to learn, however, how to build consensus on making economic adjustments that are exceedingly difficult and painful in the short term, but that will certainly prove rewarding and beneficial in the long run.

In this regard, politicians in Taiwan need to understand the Plan's subtle implications in cross-Straits relations. The APROC Plan provides Taiwan with a legitimate opportunity to earn the international recognition it deserves. It also allows Taiwan and China to resume interaction by first tackling the less controversial economic aspect of the cross-Straits relationship. This is perhaps Taiwan's way of constructively engaging China while sustaining the ability to continue an all-round dialogue on mutually beneficial terms.

Political support is a necessary, but not sufficient, condition to the success of the APROC Plan. Technocratic expertise is also needed to cure Taiwan's economy of the malaise of over-regulation and under-supervision, particularly in the much neglected but increasingly important financial sector. Again, there is much for Taiwan to learn from Hong Kong, which because of its small local market is naturally inclined to favor a very open economy but has enough experience to avoid short cuts or compromises on prudent management of financial institutions.

Foremost among all valid technocratic concerns is the need to cultivate the expertise of regulators in dealing with new products, new entrants and changing markets. The regulators need to understand enough about the workings of an efficient market and switch to a new role of supervising the implementation of its industrial.

Seen in this light, the APROC initiative is a relearning program for the government and industries of Taiwan. Therein lies the hope for its success. Taiwan's economic, social and political achievements to date are largely attributable to its demonstrated ability to recognize and adapt to changes. Resilience and survival instincts sharpened by entrepreneurship have probably contributed more to the island's adaptability than the government tampering has. There is, therefore, justification for cautious optimism as Taiwan attempts the uneasy task of implementing the APROC Plan.

GLOSSARY OF ACRONYMS

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| 1. APEC | Asia Pacific Economic Cooperation |
| 2. APROC | Asia-Pacific Regional Operations Center |
| 3. BOT | Build-Operate-Transfer |
| 4. CAA | Civil Aeronautics Administration |
| 5. CATV | Cable Television |
| 6. CBC | Central Bank of China |
| 7. CEPD | Council for Economic Planning and Development |
| 8. CKS | Chiang Kai-shek International Airport |
| 9. CTC | Chung-Hua Telecommunications Corporation |
| 10. DGT | Directorate General of Telecommunications |
| 11. DPP | Democratic Progressive Party |
| 12. EDB | Economic Development Bureau |
| 13. EDI | Electronic Data Interchange |
| 14. EPA | Environmental Protection Agency |
| 15. ERC | Economic Reform Committee |
| 16. EY | Executive Yuan |
| 17. FCC | Federal Communications Commission |
| 18. FIA | Foreign Investment Approval |

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| 19. GATT | General Agreement on Tariffs and Trade |
| 20. GBRT | Gross Business Receipt Tax |
| 21. GDP | Gross Domestic Product |
| 22. GDR | Global Depositary Receipt |
| 23. GIO | Government Information Office |
| 24. IC | Investment Commission |
| 25. IDB | Industrial Development Bureau |
| 26. IDIC | Industrial Development and Investment Center |
| 27. KMT | Kuomintang (Nationalist Party) |
| 28. LY | Legislative Yuan |
| 29. MOEA | Ministry of Economic Affairs |
| 30. MOF | Ministry of Finance |
| 31. MOTC | Ministry of Transportation and Communications |
| 32. NII | National Information Infrastructure |
| 33. NT\$ | New Taiwan Dollar |
| 34. OECD | Organization for Economic Cooperation and Development |
| 35. OTC | Offshore Transshipment Center |
| 36. PRC | People's Republic of China |
| 37. QFII | Qualified Foreign Institutional Investment |

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| 38. R&D | Research and Development |
| 39. ROC | Republic of China |
| 40. SAFE | Statute for the Administration of Foreign Exchange |
| 41. SEC | Securities and Exchange Commission of Taiwan |
| 42. SEL | Securities and Exchange Law |
| 43. SIFN | Statute for Investment by Foreign Nationals |
| 44. SIOC | Statute for Investment by Overseas Chinese |
| 45. STC | Statute for Technical Cooperation |
| 46. TAS | Taipei American School |
| 47. TDR | Taiwan Depositary Receipt |
| 48. TEU | 20-Foot Equivalent Unit |
| 49. TIBOR | Taiwan Interbank Offered Rate |
| 50. TRIPs | Trade-Related Intellectual Property |
| 51. VAN | Value-Added Network |
| 52. WTO | World Trade Organization |

