Taiwan Keeps Antitrust Torch Burning By Enacting Fair Trade Law

In view of the fact that most doctrines in trade law have been observed to originate in the United States, an issue of particular practical and theoretical significance in this regard is the degree to which . . . Taiwan may be following or departing from the American model as . . . [Taiwan's] own import control regime evolve[s] to respond to the new environment resulting from . . . [its] rapid economic development.[1]

I. INTRODUCTION

The 1990s started the second century of federal antitrust legislation in the United States.[2] First enacted in 1890,[3] with significant additions in both 1914[4] and 1950,[5] the initial goal of U.S. antitrust legislation was to protect market competitors and consumers from the evils of market concentration.[6] The U.S. now wants to export its antitrust provisions to help create a more level playing field for U.S. companies competing abroad, thereby helping to decrease the U.S. trade deficit.[7] The Republic of China (Taiwan), which ranks ninth in U.S. export markets and makes up more than ten percent of the U.S. trade deficit,[8] enacted its first comprehensive antitrust law in January, 1991. This

---

1. Clyde D. Stoltenberg, *Overview: U.S.-Korea and U.S.-Taiwan Trade Law Issues in Comparative Perspective*, 11 MICH. J. INT'L L. 273, 276 (1990) (footnote omitted).

2. This Note will be concerned only with federal antitrust legislation in the United States, not state antitrust laws. *See generally* David Millon, *The First Antitrust Statute*, 29 WASHBURN L.J. 141, 141 (1990) (discussing state antitrust legislation).

3. Sherman Act, ch. 647, 26 Stat. 209 (1890) (current version at 15 U.S.C. § 1-7 (1990)).

4. Clayton Act, ch. 323, 38 Stat. 730 (1914) (current version at 15 U.S.C. § 12-27 (1990)).

5. Kefauver-Cellar Act, ch. 1184, 64 Stat. 1125 (1950) (current version at 15 U.S.C. § 18, 21 (1984)).

6. *See* Frederick M. Rowe, *The Decline of Antitrust and the Delusions of Models: The Faustian Pact of Law and Economics*, 72 GEO. L.J. 1511, 1514-1517 (1984).

7. *See* David L. Kleykamp, The U.S.-Taiwan Trade Problem — An American Perspective 1-2 (1991) (unpublished paper presented at the 3rd Illinois-Tamkang International Conference discussing U.S. responses to its trade deficit with Taiwan) (available from the political science department at Illinois University - Champaign).

8. *Id.* at 2.

law became effective for private companies on February 4, 1992.[9] The Legislative Yuan, the Taiwanese counterpart of the U.S. Congress,[10] passed the Fair Trade Law (FTL) to appease U.S. threats of protectionism[11] and to maintain competition in its increasingly liberalized economy.[12]

This Note compares the FTL's antitrust provisions with similar U.S. provisions, and discusses the effects of FTL enforcement on Taiwanese businesses and Taiwan's trade relationships.

II. HISTORY OF TAIWAN'S ECONOMIC SUCCESS

As the United States Congress was passing the Sherman Act, the Ch'ing dynasty was about to lose its war with Japan resulting in Japanese control of the Taiwan province.[13] A few benefits of Japan's

---

9. Lawrence S. Liu, *Fair Trade Law And New Policy On Competition*, E. Asian Executive Rep., March 15, 1991, *available in* LEXIS, Intlaw library, Easian file [hereinafter *New Policy on Competition*].

10. *See generally* David G. Pierce, *The Legal And Administrative Framework For Foreign Investment In Taiwan*, 7 UCLA PAC. BASIN L.J. 1, 2 (1990) (describing Taiwan's governmental structure).

> The [Taiwan] Constitution of 1947 provides for a system of government based to some extent on the theories of Sun Yat-sen, a founder of the republican government and of the ruling party, the Kuomintang. Its structure consists of an elected National Assembly as the supreme government organ, a President elected by the National Assembly, who is head of state, and five branches of national government, each of which is called a 'Yuan.' The President is vested with considerable power while the practical tasks of the National Assembly are few and, in the realm of law-making, restricted to amendment of the Constitution. *Ordinary legislation is left to an elected Legislative Yuan, one of the five branches of the national government.* The remaining four branches are the Executive Yuan, the Examination Yuan, the Control Yuan, and the Judicial Yuan.

Id. (emphasis added) (footnote omitted).

11. Kleykamp, *supra* note 7, at 12-13.

12. *New Policy on Competition*, *supra* note 9.

13. *See* Thomas A. Metzger & Ramon H. Myers, *Understanding the Taiwan Experience: An Historical Perspective*, 2 PAC. REV. (1989), *reprinted in* Thomas A. Metzger & Ramon H. Myers, UNDERSTANDING THE TAIWAN EXPERIENCE: AN HISTORICAL PERSPECTIVE 2 (Kwang Hwa Publishing Co. 1990) (providing a brief history of Taiwan). The country was not discovered by the West or used extensively by the Chinese until around 1600. *Id.* Many left the Chinese mainland to seek refuge against overpopulation. In 1895, Japan received Taiwan from China as a concession for a victory in Korea. "The Japanese rapidly carried out a programme of modernization: they eliminated most of the serious tropical diseases; established an elementary school system; and launched fiscal, agricultural, and commercial reforms." *Id.* Because of these changes

occupation were the rapid modernization of Taiwan in education, agriculture and commercial reforms and the remnants of an industrial infrastructure left by the Japanese after World War II.[14]

In 1949, Taiwan found itself the refuge for a defeated Chiang K'ai-shek and his followers.[15] After receiving initial protection from invasion by the Chinese Communists from the Truman administration, Chiang K'ai-shek, leader of the Nationalists, "embarked on a policy of . . . economic modernization . . . ."[16] In the past 20 years, that revitalization has paid off, as Taiwan has experienced high rates of growth in its material standard of living.[17] The basis of that growth has been the Taiwanese export markets, especially the U.S. market. In 1990, exports accounted for 41.6% of Taiwan's GNP[18] with 32% of those exports going to the United States.[19] Taiwan's foreign exchange reserves for 1990 were $75 billion which were accumulated mostly through trade surpluses.[20] The United States accounted for over 80% of Taiwan's merchandise trade surplus.[21]

A. The Taiwanese Government and its Role in the Economy

In comparing the FTL with U.S. antitrust laws, the role Taiwan's government has played in its economy must be considered. Because Taiwan was faced with both domestic and foreign instability, Chiang K'ai-shek decided to combine in the government both "dictatorial and

---

Gross Domestic Product in Taiwan had at least doubled by the late 1930s. Japanese success in raising Taiwan's standard of living persuaded many native Taiwanese to accept a Japanese viewpoint of the world. This has resulted in many of Taiwan's business activities as well as the Fair Trade Law having a substantial resemblance to their Japanese counterparts. *Id.*

14. *Id.* at 2-4.

15. *Id.*

16. *Id.*

17. TAIWAN GOVERNMENT INFORMATION OFFICE, THE ROC SIX-YEAR NATIONAL DEVELOPMENTAL PLAN IN BRIEF 1 (3d ed. 1991) [hereinafter ROC DEVELOPMENTAL PLAN].

18. *See* CHINA EXTERNAL TRADE DEVELOPMENTAL COUNCIL, DOING BUSINESS WITH TAIWAN R.O.C. 6-7 (14th ed. 1991) [hereinafter DOING BUSINESS].

19. Chee-Man Wong & Jyh-Hirng Lin, The U.S.-Taiwan Trade Problems: The Taiwan Perspectives 1, 2 (1991) (unpublished paper presented at the 3d Illinois-Tamkang International Conference) (available from the political science department at Illinois - Champaign).

20. Kleykamp, *supra* note 7, at 24.

21. STAFF OF JOINT ECONOMIC COMM., 100TH CONG., 1ST SESS., RESTORING INTERNATIONAL BALANCE: THE TAIWAN ECONOMY AND INTERNATIONAL TRADE 12 (Comm. Print 1987) [hereinafter RESTORING INTERNATIONAL BALANCE].

democratic tendencies."[22] Chiang justified his power through the 1946 Constitution of the ROC which emphasized democracy combined with concern for "Confucian virtues, patriotism and anti-communism."[23] Most importantly, however, Chiang's nationalist party held a monopoly on political power because opposition parties were suppressed.[24] As a result, the government has played a large role in the Taiwanese economy. It runs a number of the major businesses, creates planning projections and helps Taiwanese businesses stay healthy, especially against foreign competition, with the use of tariffs and import duties.[25]

The stability of Taiwan's one party government and its "commitment to . . . steady, financially conservative, pragmatic, and growth-oriented polic[ies]"[26] accounts for the country's tremendous post World War II growth. In the 1990s, Taiwan is moving away from protecting domestic industry and promoting exports and instead is encouraging foreign investment, especially in the high technology markets.[27] To attract foreign technology into the country, Taiwan must meet international standards in intellectual property protection and antitrust enforcement. After four decades of government intervention, current Taiwanese policies point toward economic liberalization.[28]

B. Legislative History of FTL

While the FTL merely supplements current Taiwanese law on business concentration,[29] the passage of the FTL was Taiwan's first attempt at comprehensive antitrust legislation.[30] In addition, the FTL

---

22. *See* Metzger & Myers, *supra* note 13, at 7.

23. *Id.*

24. *See id.* at 7-9.

25. J.W. Wheeler, *Comparative Development Strategies of South Korea and Taiwan as Reflected in Their Respective International Trade Policies*, 11 MICH. J. INT'L L. 472, 473-475 (1990).

26. *Id.* at 474.

27. *See id.* at 474-75.

28. *New Policy on Competition*, *supra* note 9.

29. FAIR TRADE LAW [F.T.L.] art. 1-49 (Lee & Li trans., Preparatory Office of the Fair Trade Commission 1991) (Taiwan).

30. Lawrence S. Liu, *Draft Fair Trade Law*, E. Asian Executive Rep., July 15, 1986, *available in* LEXIS, Intlaw library, Easian file [hereinafter *Draft*] (discussing the Law Governing Agricultural, Mining, Commercial and Industrial Enterprises (LAMCI), which provides for treble fines and imprisonment for monopolization, manipulation and speculative practices). The government, however, limited LAMCI's reach to certain industries. In addition, a foodstuffs law imposes severe criminal liabilities for the stockpiling of foodstuffs, but the government rarely enforces the law. *Id.*

closely follows Taiwan's attempt to protect intellectual property rights.[31]

The Legislative Yuan modeled the FTL after similar antitrust laws in the United States, Japan, Germany[32] and Korea.[33] The first draft of the FTL was completed in 1983[34] but the bill stalled due to controversy over the draft's antitrust and merger provisions.[35] Opposition came from corporate lobbyists[36] and government officials owning some of the businesses that could be affected by the FTL.[37] For an example of the conflict of interest that can exist when the Taiwanese government tries to regulate its economy, C.F. Koo, chairman of the Taiwanese government's National Association of Commerce and Industry, also heads one of Taiwan's largest companies, the Taiwan Cement Corporation.[38]

III. DOMESTIC AND INTERNATIONAL REASONS FOR PASSAGE OF FTL

The FTL states that it "is enacted to maintain order in transactions, to protect the interest of consumers, to ensure fair competition, and to promote the stability and prosperity of the national economy."[39] Specifically, the FTL was passed to help protect Taiwan's small and medium-sized enterprises, to serve as an economic counterpart to Taiwanese political democratization and to appease threats of protectionism from its trading partners.

A. Maintaining Taiwan's Small and Medium-sized Enterprises

The backbone of Taiwan's past economic success has been its small and medium-sized enterprises (SME).[40] A major reason for the large

---

31. *See* BOARD OF FOREIGN TRADE, MINISTRY OF ECONOMIC AFFAIRS, THE REPUBLIC OF CHINA ON TAIWAN IN THE 1990s - AN INCREASINGLY IMPORTANT TRADING PARTNER IN THE PACIFIC REGION 2-5 (1991) (discussing how Taiwan's new Trademark and Patent Law meets world standards, and how the FTL itself also protects against the domestic pirating of well-known foreign trademarks that are not registered in Taiwan.)

32. *Rules of Competition - General*, Investing Licensing & Trading, June 1, 1990 *available in* LEXIS, Europe library, Inlitr file [hereinafter *Rules of Competition*].

33. *Draft*, *supra* note 30.

34. *Id.*

35. Glenn P. Rickards, *New Fair Trade Law Will Strengthen I.P. Protection*, Int'l Bus. Daily (BNA), April 3, 1991 *available in* LEXIS, Intlaw library, Bnaitd file.

36. *Rules of Competition*, *supra* note 32.

37. *Cf. Draft*, *supra* note 30 (discussing the legislative history of the bill); *cf.* Rickards, *supra* note 35 (discussing the delay in passage of the Fair Trade Law caused by the inclusion of antitrust provisions).

38. Michael Boydell, *Economic Matchmaker*, FREE CHINA REV., May 1991, at 26.

39. F.T.L., *supra* note 29, at art. 1.

40. *See* Hsueh Li-Min, *Restructuring the SMEs*, FREE CHINA REV., May 1990, at 62.

number of SMEs in Taiwan is that most of the Taiwanese government is made up of mainlanders while much of the business community is made up of native Taiwanese. The more SMEs in existence, the more balanced is the power relationship between the native Taiwanese and those that came from the mainland. As a result, many Taiwanese have an ambivalence towards concentration of economic power that depletes their chances of maintaining equal power with the mainlanders.[41]

Despite the political motivations, Taiwan receives many economic benefits from SMEs. Taiwan has a low unemployment rate because most of the firms are labor intensive, and it also has equality of income between rural and urban laborers due to the various locations and large numbers of SMEs.[42] In addition, the dominance of SMEs in the Taiwanese economy has resulted in widely distributed asset ownership, "at least until recently."[43]

The benefits of Taiwan's rapid growth into a major player in the international economic market has not come without its cost. Social problems include "traffic congestion, environmental pollution, a rising crime rate, and a lack of cultural and recreational facilities."[44] Economic costs include labor shortages, a declining work ethic,[45] and the growth of major Taiwanese corporations that have stymied marketplace competition, resulting in fewer choices and higher prices for the consumer.[46] Many monopolies and oligopolies have started to form because of Taiwan's rapid economic development.[47] At least ten industries in 1981 had a market concentration rate of 90% or more.[48] Agreements to fix prices, restrict output, allocate sales territories and block competitors have been common practices among many Taiwanese industries.[49]

B. FTL is Economic Counterpart to Taiwanese Political Democratization

Precursive to Taiwan's economic liberalization has been its political democratization. Government changes since 1987 have been nothing

---

41. *See* Wheeler, *supra* note 25, at 487; *see* RESTORING INTERNATIONAL BALANCE, *supra* note 21, at 3.

42. *See* RESTORING INTERNATIONAL BALANCE, *supra* note 21, at 5.

43. *Id.*

44. *ROC Developmental Plan*, *supra* note 17, at 1.

45. *Id.*

46. *See Draft*, *supra* note 30.

47. *Id.*

48. *Id.*

49. *Rules of Competition*, *supra* note 32. Examples of industries in Taiwan that have conducted unfair trade practices include the cement, man-made fiber, glass, motorcycle, plastic material, building material, tire, home appliance and soap industries. *Id.*

short of fundamental and include: "the lifting of martial law restrictions, permission for the establishment of new political parties, an expansion of press freedom, a loosening of various travel limitations, and the implementation of . . . bureaucratic reforms."[50] The result of political democratization and economic liberalization has been an increase in both political and economic rights for the Taiwanese citizenry.

C. *Appeasing Threats of Protectionism from Trading Partners*

The main reason for the passage of the FTL, however, was to relieve international pressure, especially from the United States, which has recently started to promote protectionist policies against some countries such as Taiwan.[51] Taiwan also faces pressure to liberalize its economy because of an expected increase in competition from newly industrialized Southeast Asian countries.[52] These international conditions have forced Taiwan to change its emphasis from exports and earning foreign exchange to liberalizing its economic system to match international standards.[53]

Other countries want Taiwan to meet import and duty standards under the General Agreement on Tariffs and Trade (GATT). Taiwan's recent application to GATT "demonstrate[s] the government's determination to intensify its already vigorous policy of economic liberalization and internationalization."[54] GATT membership will help provide Taiwan's labor-intensive economy with "competitive stimulation" and "technological know-how" that it so desperately needs to compete internationally.[55]

Taiwan's longing for international approval of its domestic economic policies most likely results from the time when many countries severed formal diplomatic ties with Taiwan in favor of recognizing the People's Republic of China.[56] Once diplomatic relations ceased with

---

50. DOING BUSINESS, *supra* note 18, at 4.

51. *See* Kleykamp, *supra* note 7, at 12-13.

52. Paul S.P. Hsu, *International Trade and Investment Regulation: Developing Jurisprudence in Taiwan*, 11 MICH. J. INT'L L. 368, 390 (1990).

53. *Id.* at 392.

54. Philip Liu, *Knocking at GATT's Door*, FREE CHINA REV., Oct. 1990, at 38. Taiwan officially applied for GATT membership on January 1, 1990. *Id.*

55. *Id.* at 38-39.

56. *Cf.* Amy Lo, *Pragmatic Diplomacy, Creative Economics*, FREE CHINA REV., May 1991, at 5 (discussing the current status of Taiwan's diplomatic relations) [hereinafter *Pragmatic Diplomacy*]. Taiwan has formal diplomatic ties with 28 countries and semi-official and non-official relations with 120 countries. *Id.* at 7.

many countries in the early 1970s, Taiwan was forced to seek less formal alliances to keep its status as a world trader.[57] As a result, Taiwan is more sensitive to world opinion in its markets. Thus, because other countries such as the United States wanted Taiwan to establish an FTL, Taiwan was more likely to listen. "In this light, economic liberalization inevitably carries a tone of external orientation as the domestic market system is increasingly integrated with that of the outside world."[58]

IV. TAIWAN'S FTL COMPARED WITH U.S. ANTITRUST LAW

Comparing the FTL with U.S. antitrust history and critical comment helps predict whether the FTL will succeed in its purposes.

> The United States itself has had second and even third thoughts about the wisdom of some of its own stricter antitrust initiatives. There have therefore been occasions in which foreigners have begun to adopt U.S. approaches from a previous decade while American government officials or academics were actively seeking to discourage such emulation on the ground that doctrine being copied was now viewed by many in the U.S. as having been substantially mistaken.[59]

Analyzing the plain language of the FTL will determine to a great extent its potential effectiveness. The Fair Trade Commission (FTC), established by the Executive Yuan to "administer matters . . . as set forth in this Law [FTL]," will also play a key role in the law's effectiveness.[60]

A. Definitions of Competition Compared

Defining competition itself can help to determine the FTL's breadth. The FTL defines competition as "acts whereby two or more enterprises offer in the market more favorable price, quantity, quality, service or other terms in order to secure trading opportunities."[61] Competition as defined by the FTL would prevent an enterprise from cornering a market as other enterprises would siphon off consumers through lower prices or higher quality goods and services.

---

57. *Id.* The United States broke off diplomatic relations with Taiwan in January of 1979. *Id.*

58. John C. H. Fei, *Economic Developments of Taiwan And The Mainland: 1986*, *in* SURVEY OF RECENT DEVELOPMENTS IN CHINA (MAINLAND AND TAIWAN), 1985 - 1986 73, 74 (Hungdah Chiu ed., 1987).

59. Joel Davidow, *The Worldwide Influence of U.S. Antitrust*, 35 ANTITRUST BULL. 603, 606 (1990).

60. F.T.L., *supra* note 29, art. 25.

61. *Id.* art. 4.

In the United States, enhancing and maintaining competition was the goal of early antitrust law.[62] Cases in the 1960s and early 1970s focused on competition as maintaining a market structure of balanced fragmentation. Thus, any movement away from fragmentation equaled a lessening of competition.[63] At the onset, then, both the FTL and U.S. antitrust laws were partially enacted to protect small businesses from market concentration.

B. Regulation of Monopolies Compared

One of the primary reasons for the passage of the FTL was to regulate monopolies.[64] The FTL allows monopolies *per se* but prohibits certain monopoly practices. Under the FTL, a monopoly is defined as a "condition wherein an enterprise faces no competition or has an overwhelming position to enable it to exclude other competitiors [sic] in a particular market."[65] The term "particular market" in this definition refers to either "a geographic area or a sector wherein enterprises engage in competition in respect of a particular commodity or service."[66] In addition, "[w]hen two or more enterprises do not in fact compete with each other in pricing and their relations as a whole with other entities are such as specified in [the monopoly definition] . . . , such situation shall be deemed a monopoly."[67] Thus, not only are monopolies regulated by the FTL's monopoly provisions but also those enterprises that together act like monopolies.

Those Taiwanese enterprises that meet the above definitions for either a monopoly or oligopoly will be announced by the FTC.[68] However, the FTL does not automatically ban those enterprises designated as monopolies or oligopolies but rather prohibits their anticompetitive conduct. Anticompetitive conduct prohibited under the FTL includes the use of unfair trading methods to block entry into the

---

62. Millon, *supra* note 2, at 143-44; Rowe, *supra* note 6, at 1521. Judge Learned Hand said in the 1945 *Alcoa* decision that "'[t]hroughout the history of these statutes it has been constantly assumed that one of their purposes was to perpetuate and preserve, for its own sake and in spite of possible costs, an organization of industry in small units which can effectively compete with each other.'" *Id.* (quoting Aluminum Co. of Am. v. United States, 148 F.2d 416, 429 (2d Cir. 1945)).

63. John R. Carter, *Actual Potential Entry Under Section 7 of the Clayton Act*, 66 VA. L. REV. 1485, 1494 (1980).

64. *See New Policy on Competition*, *supra* note 9.

65. F.T.L., *supra* note 29, art. 5.

66. *Id.*

67. *Id.*

68. *Id.* art. 10.

market, improper price fixing, causing a competitor to "provide preferential treatment", and "conducting other acts by abusing its market standing."[69] The inclusion of an oligopolistic definition reflects Taiwan's trouble with oligopolies engaging in anticompetitive acts such as "conscious parallelism" or "price leadership."[70] The FTL monopoly provisions are ambiguous on whether a "particular market" terminology can include foreign competition. Including foreign competition would expand the scope of the "particular market" definition and fewer enterprises would be considered monopolies, thereby resulting in less enforcement of the monopoly provisions. As a result of the ambiguity, the FTC will need to come up with guidelines to determine what constitutes a "particular market." In the United States, the changes in the 1984 update to the Justice Department's Merger Guidelines emphasized the inclusion of foreign firms when determining the relevant market size for merger decisions.[71]

The FTL's monopoly provisions differ from similar U.S. provisions in that under the Oligopoly Model,[72] monopolies and oligopolies were deemed per se illegal restraints on trade,[73] whereas the FTL allows monopolies and oligopolies but not their anticompetitive practices. The Oligopoly Model in the United States changed the focus of antitrust law from a Rule of Reason doctrine that judged "commercial arrangements in light of their context, purpose, and effects"[74] to one that judged commercial arrangements based on market shares and market structures.[75] By listing those activities considered monopolistic, the FTL, unlike the U.S., has given monopolies and oligopolies some flexibility in their business practices.[76]

---

69. *Id.; see also* DOING BUSINESS, *supra* note 18, at 58.

70. *Draft*, *supra* note 30.

71. 1984 Merger Guidelines, 49 Fed. Reg. 26,827, 26,830 (Dep't Justice 1984).

72. The Oligopoly Model posited that a few firms in the same market could act together and create a monopoly-like effect. *See* Rowe, *supra* notes 6, at 1518-1543 (discussing the foundation of the Oligopoly Model in the United States).

73. Eleanor M. Fox, *The Future of the Per Se Rule: Two Visions at War With One Another*, 29 WASHBURN L.J. 200, 201 (1990).

74. *See* Rowe, *supra* note 6, at 1518. *Standard Oil Co. of N.J. v. United States*, 221 U.S. 1 (1911), created the Rule of Reason doctrine. *Id.*

75. *Id.* at 1524. The use of the Oligopoly Model resulted in challenges of trivial mergers and concentration in smaller product markets while large acquisitions by conglomerations were ignored. *Id.*

76. Many criticize the use of the Oligopoly Model in the United States because it addresses market situations that no longer exist. The Oligopoly Model might have proved useful for single product markets. However, it fails to comprehend the current

The insurance industry is an example of a Taiwanese monopoly that might be affected once the FTL goes into effect. Taiwan's largest insurance company, Tsai's Cathay Life Insurance Company, had a 59% share in the Taiwanese life insurance market in 1989.[77] The lack of competition has allowed insurance companies to keep premiums artificially high and to delay and hinder the paying of claims.[78] Many blame government because of its protection of the industry and lack of regulation enforcement.[79] Until recently, the government banned new insurance companies[80] which "left the customers at the mercy of existing insurers and denied them the improved services which new competition could have brought to the industry."[81] Fortunately, the Taiwanese government has started to open up the market more by allowing some limited foreign competition and regulating the amount of real estate investment in which insurance companies can engage. According to a Cathay official, the presence of foreign insurance firms has already increased competition, thereby benefiting domestic policyholders.[82] Premiums have been lowered and claims are paid faster.[83]

Taiwan's protection of its insurance industry is not unique. Since the passage of the McCarran-Ferguson Act in 1945, the U.S. insurance industry has received an antitrust exemption because Congress thought competition would ruin the industry.[84] However, just as in Taiwan, the effect of the exemption was a "mask for privilege and power."[85] The exemption allows all types of price fixing and colluding to divide territories and customers.[86]

---

state of the U.S. economy with conglomerations ". . . compet[ing] against each other in criss-crossing encounters" where it is hard to tell when one market ends and another begins. *See id.* at 1542-43. Conglomerations tend to discount one of the Oligopoly Model's rationales: that an oligopolistic market creates higher barriers to entry. In fact, advances in transportation and communication in the last 50 years have significantly lowered barriers to entry as enterprises are now more mobile in their geographic and product markets. *See id.*

77. Osman Tseng, *Help From Complaints And Competition*, FREE CHINA REV. Oct. 1990, at 42.

78. *See id.* at 43.

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.* at 45.

83. *Id.*

84. Walter Adams & John W. Brock, *The Political Economy of Antitrust Exemptions*, 29 WASHBURN L.J. 215, 216-17 (1990).

85. *Id.*

86. *Id.* at 219.

Under the FTL monopoly definition, the FTC would probably consider the Taiwanese insurance industry an oligopoly because it "has an overwhelming position [in the market] to enable it to exclude other competitors in a particular market."[87] Once the FTC deemed the insurance industry an oligopoly for FTL purposes, the FTC would then look at the industry's business practices.[88] Evidence indicates that the large Taiwanese insurance companies' concentration of the market has allowed them to keep prices high and output low,[89] thereby violating one of the FTL's prohibited monopoly acts of "improperly determining, maintaining or changing the prices of goods . . . ."[90]

Once a violation occurs, the FTC can conduct investigations either based on a complaint or *ex officio*.[91] In addition, the injured party may petition the FTC for elimination of the violation, "prevention thereof," or sue for damages.[92] The FTC can then impose both prison terms and fines[93] and a court can award up to treble damages or order an injunction for an ongoing violation.[94]

C. *Regulation of Mergers Compared*

The FTL applies three tests to determine whether a merger violates its provisions. First, the FTL defines enterprise activity that would fall under its merger provisions. While the first test defines what constitutes a merger for FTL purposes, the second test determines which mergers must apply to the FTC for approval. The final test under the FTL's merger provisions applies a cost-benefit analysis as to the merger's effects on the Taiwanese economy.

1. *FTL Defined Merger Activity*

First, the FTL defines those combinations that would fall under its merger provisions. In the FTL, the term "combination" refers to:

> whereunder an enterprise: (1) merges with another enterprise; (2) holds or acquires the shares or capital contributions of another enterprise to an extent of representing more than one-

87. F.T.L., *supra* note 29, art. 5.
88. *See id.* art. 10.
89. *See supra* note 77 and accompanying text.
90. F.T.L., *supra* note 29, art. 10.
91. *Id.* art. 26-27.
92. *Id.* art. 30-31.
93. *Id.* art. 35-44.
94. *Id.* art. 30-34.

> third of the total voting shares or the total capital stock of such other enterprise; (3) accepts a transfer of, or leases the whole or the major part of the business or properties of another enterprise; (4) frequently operates jointly with another enterprise or is entrusted by another enterprise to operate the latter's business; or (5) directly or indirectly controls the business operation, or the employment and termination of the personnel, of another enterprise.[95]

If an activity between two Taiwanese enterprises fails to meet the above criteria, it will not be regulated by the FTL's merger provisions.

2. *Mergers that Must Apply for FTC Approval*

If the following situations result from a "merger," the enterprises involved must request approval from the FTC:

> (1) as a result of the combination, the surviving enterprise will acquire a market share reaching one third (1/3); (2) an enterprise participating in the combination holds a market share reaching one fourth (1/4); or (3) the amount of sales in the preceding fiscal year of an enterprise participating in the combination exceeds the amount publicly announced by the central competent authority (Fair Trade Commission). The central competent authority shall announce those enterprises occupying more than one fifth of total market share.[96]

If any "merger" fails to rise to one of the percentage levels or to the total sales level announced by the FTC, the FTC requires no notification. However, the FTC will publish those enterprises "reaching one fifth" of a particular market.[97] The FTL's notification guidelines were taken from similar European guidelines.[98]

The U.S. also has notification requirements, although the Justice Department's Merger Guidelines (Merger Guidelines) use lower standards than those in the FTL. For example, the 1982 Merger Guidelines and the 1984 update state that the Justice Department will not challenge

---

95. F.T.L., *supra* note 29, art. 6.
96. *Id.* art. 11.
97. *Id.*
98. *Draft*, *supra* note 30.

merging enterprises that result in a market percentage below 14% - 18% depending on the concentration of the market.[99] In addition, the Hart-Scott-Rodino Antitrust Improvements Act of 1976 requires notification for mergers that involve acquiring firms with over $100 million in assets and acquired firms with over $10 million in assets.[100]

3. Cost-Benefit Analysis

Even if the FTC determines that enterprise activity has resulted in a "combination" under the FTL and the "combination" meets one of the notification guidelines, the FTC still has discretion to allow the "combination" if "the benefit of the combination to the overall economy outweighs the disadvantages of its restraining competition."[101] Advantages to the national economy may include "econom[ies] of scale, reduction of production costs and rationalization of management."[102]

An example of merging enterprises that would meet the first test for "merger activity" and could meet the second test requiring notification and approval, yet still pass as beneficial to the national economy, is the Taiwanese textile industry. SMEs compose 90% of Taiwan's textile industry.[103] These SMEs find it harder to survive based on a labor shortage and a lack of capital to invest in Research and Development.[104] Unless these firms are able to merge their production processes, they will lose out to cheaper competition from China and South Korea.[105] For example, two of the largest textile conglomerates, Chung Shing Textile Co. and Far Eastern Textile Co., Ltd., are self-reliant because they have completed production lines.[106]

The FTL's final cost-benefit test is comparable to the Rule of Reason Doctrine used in U.S. antitrust laws.[107] The Taiwanese gov-

---

99. Davidow, *supra* note 59, at 613. The amended guidelines raised the minimum percentage from the initial merger guidelines of 1968 which were between eight percent and ten percent depending on the concentration of the market. Rowe, *supra* note 6, at 1525.

100. Davidow, *supra* note 59, at 612; Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 1, 8, 15(c), 18(a) (1976).

101. F.T.L., *supra* note 29, art. 12.

102. *See New Policy on Competition*, *supra* note 9.

103. Jim Hwang, *Weaving a More Competitive Future*, FREE CHINA REV., June 1991, at 20.

104. *Id.*

105. *Id.*

106. *Id.* Chung Shing ranked 19th in the 1990 list of highest grossing manufacturers while Far Eastern ranked seventh. *Id.*

107. *See supra* notes 72-76 and accompanying text for discussion of U.S. Rule of Reason Doctrine.

ernment decided that the Rule of Reason Doctrine should be considered in every case and thereby codified the doctrine in its antitrust law. In contrast, the use of the Rule of Reason Doctrine in the United States has always depended on the policies of a particular administration in enforcement or the composition of the Supreme Court in judicial decisions.[108] The 1982 Merger Guidelines purported to recognize that most mergers are pro-competition and pro-consumer. The Guidelines also show a pro-business bias and promote businesses' freedom in order to enhance efficiency.[109] From 1981 through 1987, the Justice Department challenged only 26 out of the 10,723 pre-merger notifications received.[110] The Merger Guidelines have basically created an "exemption that is tantamount to the euthanasia of section 7 of the Clayton Act."[111] By putting the Rule of Reason Doctrine in the antitrust law itself, Taiwanese merger enforcement stands to be more consistent than past U.S. enforcement, which has depended on the administration or policies prevalent at a particular time. The FTC, violators and the complainants when making arguments for or against a certain action can rely on the plain language of the FTL which should not change significantly over time.[112]

D. Regulation of Concerted Actions and Vertical Restraints Compared

The FTL also regulates concerted actions undertaken by enterprises in Taiwan.[113] Concerted action, defined in the FTL, refers to "an act to mutually restrict the activities of enterprises, such as an act by an enterprise that enters into a contract, agreement or other form of mutual understanding with other enterprises with whom it competes to jointly determine the prices of goods or services, or to restrict quantities, technology, products, equipment, trading counterparts or trading territories."[114] These concerted actions must then be approved by the

---

108. *See* Charles F. Rule & David L. Meyer, *Toward a Merger Policy That Maximizes Consumer Welfare: Enforcement by Careful Analysis, Not by the Numbers*, 35 ANTITRUST BULL. 251, 254-55 (1990).

109. Adams & Brock, *supra* note 84, at 234.

110. *Id.* at 236.

111. *Id.* at 233.

112. Ruth Bader Ginsburg, *A Study Tour of Taiwan's Legal System*, A.B.A. J., Feb. 1980, at 167. Taiwan is a civil law system which relies on little court precedent. *Id.* at 167-170.

113. F.T.L., *supra* note 29, art. 14.

114. *Id.* art. 7; *see also New Policy on Competition*, *supra* note 9.

FTC. To meet approval, the concerted action need benefit the national economy and either: increase efficiency, unify standards, promote joint research and development, maintain orderly imports and exports, avoid bankruptcy or improve SME competitiveness.[115] The notification and approval requirements mirror the European model and differ from the United States which generally prohibits such practices.[116] The FTL collusion provisions resemble a Rule of Reason Doctrine that would decide illegality on an *ad hoc* basis, making it difficult for domestic companies to know initially what collusions fall within the exception.[117] On the other hand, the approval and notification requirements have the potential to make the newly established FTC a "potentially important agency."[118] The predictability problem will solve itself once enough cases are published in government gazettes as required by the FTL.[119]

The FTL's restrictions on vertical restraints as opposed to the provisions on "concerted actions" are much less flexible.[120] The vertical restraint provisions have no notice and approval requirements.[121] The

---

115. *See* F.T.L., *supra* note 29, art. 14. The seven specific exceptions to the prohibition of concerted action between Taiwanese enterprises under the FTL include:

> (1) to unify the specifications or models of goods in order to reduce cost, improve quality or increase efficiency; (2) to jointly research and develop goods or markets in order to upgrade technical skills, improve quality, reduce costs or increase efficiency; (3) to engage in specialized areas of business in order to achieve the enterprise's rational operations; (4) to enter into an agreement in respect of the competition in overseas markets in order to secure or promote exports; (5) to take concerted action in respect of the importation of foreign goods in order to strengthen trading capability; (6) to take concerted action in imposing limitations restrictions on the quantity of production and sales, equipment or prices in order to adjust to orderly demand when the enterprises in a particular industrial sector suffer hardship to continue their business operations or over-production due to the fact that the market price of goods remains at a level below the average production cost during economic recession; or (7) to take concernted [sic] action in order to improve the operational efficiency or strengthen the competitiveness of the small and medium-sized enterprises concerned.

Id.

116. *Draft*, *supra* note 30.
117. *Id.*
118. *Id.*
119. *Id.*; F.T.L., *supra* note 29, art. 17.
120. *See id.*; *see also* F.T.L., *supra* note 29, art. 18-19.
121. *Draft*, *supra* note 30.

FTL voids any act contrary to its vertical restraint provisions.[122] The vertical restraint provisions restrict trade activity between enterprises to protect the freedom of trading partners to decide the prices of its commodities[123] and to prevent enterprises from improperly limiting the commercial activities of those with whom it transacts business as a condition to such business.[124] In addition, only goods for daily consumption and similar products sold in local markets under free competition are exempted from the vertical restraint provisions.[125] Unlike the many exceptions allowed under the FTL's concerted action provisions, the Taiwanese government has failed to allow for exceptions for vertical restraints that promote productive efficiency or the national interest.

E. Antitrust Enforcement Compared

The FTL's penalty provisions including imprisonment of up to three years[126] and treble damages[127] compare favorably with similar U.S. antitrust provisions.[128] The severe penalties deter those companies that could easily pay lesser fines[129] and should serve as an effective remedy to those foreign corporations suing under the FTL.[130]

The FTL allows imprisonment of up to three years for violation of Articles 10, 14 and 20 dealing with monopoly practices and collusion activities.[131] The FTC has the power to dissolve, suspend or close enterprises that conduct merger activity when those enterprises fail to file an application for merger approval or if that application is denied.[132] Beyond the power to directly affect their business conduct, the FTC can fine merging enterprises who fail to apply or disregard disapproval between 100,000 in New Taiwan Dollars (NT$) and NT$1 million.[133]

The FTL has three different damage remedies depending on whether a violation was intentional or negligent and whether the infringer was

---

122. F.T.L., *supra* note 29, art. 18.
123. *Id.*
124. *Id.* art. 19.
125. *Id.* art. 18. The FTC will publicly announce those items of daily products referred to in Article 18. *Id.*
126. *Id.* art. 35.
127. *Id.* art. 32.
128. *See* Sherman Act, *supra* note 3, §§ 2; *see* Clayton Act, *supra* note 4, §§ 15.
129. *See* Rickards, *supra* note 35.
130. *See* F.T.L., *supra* note 29, art. 47.
131. *Id.* art. 35.
132. *Id.* art. 13.
133. *Id.* art. 40.

unjustly enriched. An intentional violation can incur as much as treble damages.[134] Until 1988, when treble damages were applied to insider trading under the securities and exchange laws, there was no allowance of treble damages for any violation of any Taiwan law.[135] If the infringer has gained a profit from an FTL violation, compensation can be claimed for that amount.[136] However, with no discovery procedures, it will be difficult for victims of discriminatory practices to prove a defendant's unjust enrichment.[137]

An additional remedy that may serve as an effective deterrent includes a provision that would allow for the FTC to announce those enterprises holding at least a one-fifth market share[138] and publicize judgment amounts by request of the injured party in a suit.[139] In addition, continual fines of NT$1 million can be assessed until action ceases.[140]

One criticism of the enforcement provisions is the lightness of the FTL fines compared with the U.S. antitrust fines. A maximum fine in Taiwan, which would include an award for treble damages, would be close to $100,000 (U.S. dollars), while in the U.S., the Antitrust Amendments Act of 1990 increased fines under sections 1 and 2 of the Sherman Act from $1 million to $10 million for corporations and from $100,000 to $850,000 for individuals.[141]

The effectiveness of the FTL enforcement will depend on the FTC. "The FTC will have the power to investigate possible violations of the law and impose administrative sanctions."[142]

> Although it is possible that restrictive interpretations of the law could eviscerate some of its provisions, the current judicial approach to enforcement of the Trademark Law and other intellectual property laws provides good reason to anticipate that the Fair Trade Law will be interpreted in most instances in a manner that will not degrade its usefulness.[143]

---

134. *Id.* art. 32.
135. *New Policy on Competition*, *supra* note 9.
136. F.T.L., *supra* note 29, art. 32.
137. Rickards, *supra* note 35.
138. F.T.L., *supra* note 29, art. 11.
139. *Id.* art. 34.
140. *Id.* art. 41.
141. *See* Lester M. Bridgeman, *Antitrust Amendments Act of 1990*, 58 TRANSP. PRAC. J. 254 (1991); Sherman Act, *supra* note 3, § 2.
142. *New Policy on Competition*, *supra* note 9.
143. Rickards, *supra* note 35.

Despite the lax enforcement of previous Taiwanese laws dealing with restraint of trade such as the Law Governing Agriculture, Mining, Commercial and Industrial Enterprises and the Foodstuff Laws,[144] there is reason to believe that Taiwan will enforce the provisions. This optimism is based on Taiwan's increased enforcement of intellectual property rights.[145]

The FTL's statute of limitations for individual action is fairly liberal, making the limit to file a complaint two years after discovery or ten years after the action occurred.[146] The United States only allows four years from the accrual of the action for individuals to file an action under the antitrust provisions.[147]

Foreign sovereignties may file a complaint or file suit if certain conditions are met.[148] The FTL requires reciprocity, meaning that a foreign enterprise's government must extend the same protection to Taiwanese enterprises as the FTL provides to the complaining foreign enterprise.[149] The "fairer and more open business environment"[150] created by the FTL should encourage U.S. companies to invest in Taiwan.

The FTL's reciprocity provision may have little effect, however, due to other Taiwanese laws that hinder foreign investment.[151] Foreign investment in Taiwan is governed by the Statute for Investment by Foreign Nationals and the Statute for Investment by Overseas Chinese.[152] The two statutes direct the Taiwanese Investment Commission to only approve foreign-invested projects that (1) produce needed goods and services; (2) "have an export market;" (3) will aid in development of Taiwanese "industrial, mining, or communications enterprises;" (4) are involved in "scientific research and development;" or (5) benefit the "social and economic development" of Taiwan.[153] These projects then receive favored tax treatment.[154] Without tax incentives, foreign-

144. *See Draft*, *supra* note 30 (discussing how these laws are rarely enforced).

145. DOING BUSINESS, *supra* note 18, at 55. Taiwan's Patent Law, amended in 1986, "increases protection available to patent holders and expand[s] the number and scope of inventions covered." *Id.* Taiwan's Copyright Law, revised in 1985, "provides wide-ranging protection for authors of almost all original works." *Id.* at 57. Also, Taiwan protects registered and even some unregistered trademarks. *Id.* at 56.

146. *See* F.T.L., *supra* note 29, art. 33.

147. Clayton Act, *supra* note 4, § 15(b).

148. *See* F.T.L., *supra* note 29, art. 47.

149. *See id.*

150. *Cf.* Hsu, *supra* note 52, at 378.

151. *See* Pierce, *supra* note 10, at 4-5.

152. *Id.* at 5.

153. *Id.*

154. *Id.*

invested projects falling outside of the five allowable categories is a rarity.[155] In addition, foreign investment is prohibited or restricted in Taiwanese industries such as inland transportation, public utilities and certain defense-related industries.[156]

V. POSSIBLE DOMESTIC AND INTERNATIONAL EFFECTS OF FTL

Many argue that there is no need for the FTL because in the mid-1960s the island boomed and there has been little consolidation of smaller firms into larger ones. Mergers are a rarity in Taiwan. "[T]here is a strong tendency for small firms to persist and grow modestly over time."[157] A number of commentators, though, do suggest that the FTL antitrust provisions will have an effect on business practices in Taiwan.[158] The type of effect, however, will depend on the vigorousness of the FTC's enforcement. Regardless of the domestic impact of the law, enacting the FTL has already shown signs of pleasing the international community, especially the United States. Once the FTL becomes effective, the competent authority will need to maintain a very fine balance between domestic and international interests. Overly strict enforcement will retard domestic business growth, while lax enforcement will deplete the initial international goodwill bestowed on Taiwan for passage of an antitrust law.

A. FTL Effect on the Taiwanese Economy

Strict domestic enforcement of the FTL's antitrust provisions may contradict Taiwanese policy on encouraging domestic high-technology investment and research and development growth.[159] Taiwan's current goals under a new six-year plan call for: "(1) raising national income; (2) providing sufficient resources for continued industrial growth; (3) promoting the balanced development of various regions; [and] (4) raising the national quality of life."[160] The current economic status of Taiwan is the result of exporting products from labor-intensive small businesses

---

155. *Id.*

156. *Id.* at 16.

157. *Restoring International Balance*, *supra* note 21, at 10.

158. Hsu, *supra* note 52, at 378; Rickards, *supra* note 35; *New Policy on Competition*, *supra* note 9.

159. *Cf.* Wheeler, *supra* note 25, at 489-90 (discussing the conflict between Taiwanese government's policies and Taiwan's economic structure).

160. ROC DEVELOPMENTAL PLAN, *supra* note 17, at 2.

with low value-added. For the 1990s, the new six-year development plan recognizes the importance of creating more high-tech industries with a greater value-added.[161]

> [T]hese problems reflect inherent conflicts between policy goals and Taiwan's economic structure. For example, the small size of the average firm and broad-based entrepreneurial spirit have been key sources of Taiwan's flexibility and economic dynamism. Yet larger, professionally managed firms have become even more important to Taiwan's future as technology, capital, and global marketing have become more central to the state's most competitive exports.[162]

SMEs lack the requisite capital to stay competitive in the high-technology industries.[163] Any law, such as the FTL, which regulates the activities of business, may either hinder or help the government's goal of increasing Taiwanese competitiveness in high-technology industries depending on the frequency and arbitrariness of enforcement. If the FTC is overly aggressive in enforcing the FTL provisions, it could hamper the government's goal of encouraging enterprise growth to meet the demands of the international marketplace. To give the FTC some flexibility, the FTL allows many collusions between businesses.[164] Justifications for collusion include improving economic efficiency, joining resources for research and development, creating joint agreements on exports or imports and, in hard times, colluding to reduce production to increase prices.[165]

---

161. *See id.* at 3-4. Specific methods the Taiwan government is using to increase the size of its firms include: (a) promoting larger firms; (b) giving tax benefits to those "firms that list on the stock exchange;" (c) providing tax benefits that support mergers; and (d) giving "incentives for firms to develop direct links with their subcontractors." *See* Wheeler, *supra* note 25, at 487; *see also* Boydell, *supra* note 36, at 29 (discussing how CETRA is starting a new program to help Taiwanese companies enter the merger and acquisition field and to ally with medium and large-sized firms abroad). *But see Much Ado about SMEthing*, FREE CHINA REV., May 1990, at 68 (stating, "'Internationalization is not a monopoly of big business, and SMEs can also go international if they put proper emphasis on both management and product development.'").

162. Wheeler, *supra* note 25, at 489. "Taiwan's great strength has been its highly successful small and medium-size companies, which possess great flexibility. But this strength is also a weakness: there is a shortage of large firms capable of moving into high technology areas requiring very large investments." *Id.* at 475.

163. *Id.* at 484.

164. *See* F.T.L., *supra* note 29, art. 14.

165. *Id.*

B. *Taiwanese Government Control Over Economy Will Shape FTL Effect*

Because the Taiwanese government plays such a large role in the economy as compared to a more traditional free enterprise system such as the United States, it will be difficult to prove the effectiveness of the FTL. For instance, the FTL exempts from antitrust provisions all acts by "government enterprise[s], public utilit[ies] or communications and transportation enterprise[s] approved by the Executive Yuan for five years from the effective date of the FTL, February 4, 1992.[166] The five-year exception for public enterprises "is potentially controversial, in that the private sector may believe that the draft FTL does not treat private and public sector enterprises with an even hand."[167] Other exemptions include enterprises importing on a joint basis to maximize trade efficiency,[168] legal monopolies created through patent, trademark and copyright laws,[169] and "any act performed by an enterprise in accordance with other laws."[170] These exceptions leave large holes in the FTC's ability to enforce the FTL and achieve the purposes set out in the FTL's initial provisions.[171] However, when many of Taiwanese public companies become subject to FTL jurisdiction, the law will gain some bite.[172] It will make Taiwanese markets both more competitive as well as more efficient and will contribute to even more liberalization and internationalization of the Taiwanese economic system.[173]

C. *FTL Will Positively Effect Taiwanese Trade Relationships*

Perhaps the largest benefit Taiwan will realize from the FTL will be international goodwill. Because of the international pressure for Taiwan to pass some type of fair trade law, passing the FTL will encourage and promote the Taiwanese export market as protectionist fears ease. However, "[a]lthough billed as a means of regulating monopolies, mergers and cartels and checking unfair business practices and competition, the proposal is a far cry from most Western codes governing these areas."[174]

---

166. *Id.* art. 46.

167. *See Draft*, *supra* note 30.

168. *See Doing Business*, *supra* note 18, at 58.

169. F.T.L., *supra* note 29, art. 45.

170. *Id.* art. 46.

171. *See supra* note 39 and accompanying text for FTL's stated purposes.

172. *See New Policy on Competition*, *supra* note 9.

173. *See Doing Business*, *supra* note 18, at 58.

174. *Rules of Competition - General*, Investing Licensing & Trading, March 1, 1989 *available in* LEXIS, Europe library, Inlitr file.

VI. CONCLUSION

The FTL provides a framework for balanced economic growth in Taiwan. On the surface, the FTL provisions balance the need to protect consumers from anticompetitive behavior and the need of Taiwanese business to compete internationally. The plain language of the FTL provides for enough flexibility in enforcement to benefit Taiwanese consumers and competitors while allowing enough mergers and business growth for Taiwan to continue to expand economically. Once the FTL applies to all Taiwanese companies, it will serve as an effective force for protecting foreign enterprises doing business in Taiwan. Along with other intellectual property rights improvements, the FTL should help ease U.S. protectionism threats.

The Taiwanese proverb, "It is better to be the head of a chicken than the tail of an ox," illustrates the importance of SMEs to Taiwan's continued growth. If the FTL accomplishes nothing else, it should protect the SMEs that have allowed Taiwan to achieve economic success.

*Jeffrey V. Crabill**

---

* J.D. candidate, 1993, Indiana University School of Law-Indianapolis