

HOW CHINESE TAIPEI AND THE U.S. NEGOTIATED THE U.S. DEMAND FOR INLAND TRUCKING ACCESS

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In bargaining situations between actors of unequal size, power, etc., are larger actors always triumphant? This question is central to the concerns of scholars of negotiation. Standard discussions of bargaining tactics focus on negotiating to win. However, in real life situations, negotiating principles are often applied in different ways, based on the wisdom and experience of the negotiators. This paper discusses a case study of the negotiations between Chinese Taipei (CT) and the United States over the U.S. demand for inland trucking access. The paper covers the following points:

- Description of the problem and difficulties involved in attaining the goals of both parties.
- Strategies and tactics employed by each side.
- Reasons for a negotiated solution and final result.

1. INTRODUCTION

Is it possible to predict which party will win in negotiations between small and large actors? In discussing this question, this paper, based on the author's observations as a participant in the negotiations, presents a case study of a classic two-level asymmetric negotiation between the United States and CT (1987-1992) over the U.S. demand for inland trucking access.

It begins with factual backgrounds of the trade relationship between two parties, then analyzes the bilateral talks, concluding with findings that deserve further attention.

2. FACTUAL BACKGROUNDS:

2.1 Overview of CT Economy

Immediately following World War II, CT was still a predominately agricultural economy with half its labor force employed in agriculture and about 44 percent of net domestic product generated from that sector. However, based on the infrastructure left behind by Japanese, a strong agricultural foundation and the capital assistance gathered from the United States, CT remarkably developed the pre-condition for economic takeoff. They successfully managed agriculture to provide a considerable net capital flow for non-agriculture. Consequently, CT moved from an agricultural-based economy in the late forties and fifties to a semi-industrialized one by the early seventies, and is presently reaching the stage of full-fledged industrialization.

During the structure transformation, international trade played a crucial role, which fueled the long-term rate of capital accumulation and technical change. Certainly, for a country like CT, which is relatively small and not particularly well endowed with a range of natural resource, the gain from trade must be very helpful in its economic evolution. When CT's modern growth epoch began in the 1950's, the dominant strategy chosen was import substitution. On the one hand, it imported raw materials to produce commodities needed.

On the other hand, it protected domestic industries. Around 1960, because of the success of relatively neutral incentive policies, which had supported import substitution, the domestic market was satisfied for many goods. The prospects of further using import substitution strategy were considerably less rosy. As a result, CT made a critical decision, switching import substitution to export-oriented strategy, which altered the structure of production. Via exporting, CT has generated the income to allow saving and investment on the scale required to rise per capita about tenfold in thirty years. Eventually, international trade, the engine of CT growth, transformed the island from a developing to a mature economy.

Following several waves of structure adjustment, CT has already reached the stage of a developed economy. As its economy grows, the relative importance of agriculture is decreasing. Small and medium-scale enterprises not only have been dominant from the outset but, even more startling, have expanded more rapidly than large-scale enterprises. With CT comparative advantage shifting away from cheap labor and towards technology and skill-intensive goods, today, they have focused on capital intensive industries which include construction, utilities, high priced textiles, refining, petrochemicals, shipbuilding, food processing, metallurgy, chemicals, machinery, and high-tech industries-- electronics, informatics and fiber-optics.

2.2 U.S.-CT Economic Relation Before 1987

The U.S. and CT have had a strong economic relationship since 1949. Their economic interactions are in the broader context of overall the bilateral relationship, as the U.S. is not only CT major trading partner but also its chief military protector and political sponsor (Chan, 1987:253). In the postwar period, to secure itself and another states against China's military threat, the U.S. took advantage of CT as a front line of the U.S. in the West Pacific. To improve CT's economic situation, U.S. aid helped CT with economic recovery in the 1950's. Under the import-substitution strategy, CT was permitted to engage in "infant industry policies". When CT shifted to the export-oriented strategy in the late 1950s, the U.S. government and enterprises played a role in helping CT to promote its exports. The U.S. made unilateral concessions to promote its exports. The U.S. made unilateral concessions to CT which permitted CT products to be exported to the U.S. market; however, the same concession was denied to the U.S. in CT. Under such a trade regime, the U.S. provides a huge market for CT exports. Hence, CT has enjoyed a trade surplus with the U.S. since 1968. When the trade surplus reached its peak, U.S.\$10 billion in 1984, trade conflicts between CT and the U.S. escalated.

The U.S.-CT economic relationship has been characterized by growing linkages in the form of two-way trade and investment, as well as by periods of friction. The U.S. responded to rapidly growing trade deficits during the 1980s by pressing CT to reduce barriers to imports. In addition, the U.S. has pressed CT to reduce barriers to foreign investment and to improve its protection of U.S.-origin intellectual property rights.

2.3 U.S. Responses Towards Its Trade Conflicts With CT Before 1987

Trade conflicts between CT and the U.S. intensified after 1984, when the U.S. economy was in recession and CT balance of trade was positive. There are many arguments that CT trade surplus has come at the expense of the U.S., many Americans, therefore, want a so-called "leveling of the playing field" with CT. By this they mean that CT has not followed the rules of free trade, i.e., CT market has failed to be opened to many American products though the U.S. market remains open to CT. CT was repeatedly accused of unfair labor and trade practices.

The U.S. Congress demands for trade protectionism reached dangerous proportions in 1985. In the House of Representatives, nearly 300 protectionist bills were introduced between January and the summer recess. In an attempt to correct the trade imbalance, the U.S. Congress passed the Omnibus Trade and Competitiveness Act in August 1988. Although this Act made no real break with the past trade policy, it armed the U.S. officials with more potent ammunition to act against other countries' systematic trade restrictions through bilateral negotiations. Several of the bill's most controversial provisions were aimed at Japan, South Korea, and CT.

Among other things, the Foreign Shipping Practices Act of 1988 (FSPA, Title X of the *Omnibus Trade and Competitiveness Act of 1988*) and section 19 of the Merchant Marine Act of 1920 regulates maritime-related services, including inland trucking, as part of its agreements on intermodal transportation. The FSPA authorizes the Federal Maritime Commission (FMC) to take action to ensure that U.S. foreign commerce is not burdened by non-market barriers to ocean shipping. The Commission may take countervailing action to correct unfavorable shipping conditions in U.S. foreign commerce and may impose penalties including limitations on sailing, suspension of tariffs (thereby precluding the vessels' operations at U.S. ports), and fees of up to \$1,000,000 per voyage to address actions by carriers or foreign governments that adversely affect the operation of U.S. carriers in the U.S. foreign ocean-borne trade and that impair access of U.S.-flag vessels to ocean trade between foreign ports.

2.4 CT Strategy For Managing Trade Conflicts Before 1987

With CT trade surplus with the U.S. ballooning to U.S.\$7 billion in 1983, CT faced increasing pressure from the U.S. to reduce its huge trade surplus. Under growing U.S. pressure, late president Chiang Ching-kuo, in late 1983, instructed the Executive Yuan to take appropriate actions to resolve CT-U.S. trade conflicts. The CT-U.S. Ad Hoc Trade Committee was soon established in January 1984 to tackle these conflicts.

Meanwhile, Washington insisted that Taipei should quickly reduce its import tariffs and abolish non-tariff barriers. To cope with the matter, President Lee Teng-hui told a group of the U.S. Congressmen that the Executive Yuan was drafting an "Action Plan for Strengthening Economic and Trade Ties with the United States." The plan was expected to effectively solve CT's huge trade surplus with the U.S., addressing the problems of opening its market and unfair trade in the coming years. President Lee presided over the "National Establishment Briefing", and indicated that the Action Plan was very timely and important after the report on that plan made by Fredrick F.Chien, the convener of the CT-U.S. Ad Hoc Trade Committee. To implement that plan, Premier Yu Kuo-hua instructed each agency to develop a concrete plan to be ready in one month. The plan included (Business America, Jan. 30, 1989:30):

- Diversifying foreign markets and increasing imports
- Setting up a time-table for opening the domestic market and removing domestic protection
- Increasing major project purchases
- Accelerating public construction and expanding domestic consumption

The expected outcome of the plan was intended to prevent CT from being included in the retaliatory list by the United States Trade Representative (USTR) and scheduled to reduce CT U.S.\$1 billion trade surplus with the U.S. annually.

Overall, the strategy for the CT government to deal with the U.S. pressure, starting from 1978, was "passive" and "defensive." Once the U.S. raised a problem, CT would work out a countermeasure appropriate to the situation. The more pressure from the U.S., the more concessions would be to CT. As a result, CT's trade liberalization was spurred only by continuous U.S. pressure. To break through its isolation in the international economic and political spheres and to apply a systematic trade mechanism for dispute settlement, CT has

been planning to return to the GATT/WTO (the General Agreement on Tariffs and Trade/World Trade Organization) since late 1987.

3.Explanation and Analysis of the Bilateral Talks on Inland Trucking Market Access

3.1 The Initial Agreement and Subsequent U.S. Investigative Actions

Prior to 1987, both sides in the initial Taipei-U.S. shipping consultations touched on the issue of inland trucking access. Early conclusions of the issue indicated that CT would consider an amendment to the Highway Law permitting foreign carriers to operate intermodal services in support of intermodal freight movement. Inland trucking access, nevertheless, was not a core issue until 1987, when both sides encountered dilemmas on shipping issues. The sticking point was that the FMC, under the FSPA, indicated that the Highway Law of CT prohibited U.S. carriers from operating inland trucking. This restriction adversely affected the operations of the U.S. carriers, while no such conditions existed for CT carriers in the U.S.. Apparently, the U.S. wanted to initiate the FSPA investigative proceedings in order to increase its negotiating status in dealing with trucking access and other shipping issues with CT.

Although the FMC took cognizance of the fact that the CT government had satisfactorily resolved most of the shipping issues and had proposed the Highway Law amendment to its legislature, it still complained that CT had not been able to live up to its assurances of liberalizing inland trucking. Thus, the FMC initialed the following four investigative actions to determine if conditions unfavorable to U.S. shipping existed in CT:

- In April of 1987, an inquiry was initiated under section 15 of the Shipping Act of 1984.
- The second investigation, under section 19 of the Merchant Marine Act of 1920, was initiated in December 1987 and discontinued in March 1988.
- The third investigation, under the 1988 FSPA, was initiated in July 1989 and discontinued in November 1989.
- The fourth FSPA investigation took place in October 1991 and, at the time of the negotiations, had been extended until May 13, 1992.

Essentially, these investigative actions had been initiated because of the continuing restrictions and limits placed on the operations of U.S. carriers attempting to do business in CT. The investigative actions were discontinued or extended when CT authorities promised to remove barriers so that the U.S. carriers would have the same rights and privileges that CT carriers enjoyed in the U.S..

3.2 U.S. Threats and a Compromise Proposal by CT

By 1992, five years of meetings, discussions, investigations, and exchanges of letters had not yet resulted in the elimination of the restrictions on U.S. carriers conducting inland trucking in CT. Finally, CT was notified that the FMC would issue retaliatory actions against two CT shipping carriers, Evergreen and Yangming Company, by the deadline of the fourth investigation (May 13, 1992) if no positive responses to the U.S. demand were proposed. At the time, CT was horrified by the ultimatum and immediately called for bilateral discussions in Washington, D.C on May 6-7, 1992, at which it hoped to show its good-faith and eliminate any obstacles that arose. The two-day urgent negotiations were intensive, but amicable and constructive in spite of the pressure of the FMC sanctions. On the basis of the negotiation results, CT proposed the following statement (MOTC, 1992) as a countermeasure:

- CT has offered detailed information on the legislative background of the proposed amendment to Article 35 of the Highway Law, which amply demonstrates that CT has made sincere and diligent efforts to amend the law. CT will identify the proposed amendment to Article 35 of the Highway Law as a high priority task and will recommend that the Legislative Yuan adopt the bill during the current session of the Legislative Yuan, which is scheduled to

- end during the summer of 1992.
- CT believes that there is a discrepancy between the CT and U.S. understandings of the term "inter-modal transportation." CT's understanding is based on the 1989 Consultation and on the United Nations Convention on International Multi-modal Transport of Goods. CT understands that the U.S. now seeks complete access for international ocean-borne containers for import and export, regardless of the ownership of the containers or the vessel on which the containers are shipped. CT takes exception to the U.S. statement that such a complete liberalization target was contemplated by the parties at the 1989 Consultation. Nevertheless, CT shares the U.S. view that such complete liberalization is a desirable ultimate goal.
 - CT is willing to consider submitting an additional amendment to the Legislative Yuan for the final and complete liberalization of the land transportation of international session beginning in September 1993. Phased access for U.S. carriers will be adopted to allow for adjustment by the local industry, which will most likely compensate for the loss of business by gradually expanding its business scope. According to the CT proposal, the timetable for the phased access will either be included in the proposed amendment or established by the Ministry of Transportation and Communications under legislative authorization. CT commits itself to provide a reasonable timetable by the second half of 1992.
 - CT reaffirms its demand that the trucking operations of the U.S. carriers will be subject to all laws and regulations of CT, especially those relating to: (1) expropriation and other measures in case of national emergency; (2) security inspection; (3) taxation; (4) tariff regulations; and, (5) other actions applicable to domestic businesses as stated in the minutes of the CT-U.S. Consultation of April 1987.
 - CT wishes to stress that a sanction order by the FMC on May 13, 1992 or at any time thereafter, in whatever form and for whatever duration, would be extremely harmful to the goodwill between the parties. The negative domestic reaction to such an order would hinder the government's further liberalization plans. CT would like to make it clear that it cannot predict with any degree of certainty whether the above-mentioned plan of action would or could be carried out, should such a sanction order be issued.

3.3 Outcome: Fulfilling Promises and Finalizing the Talks

In October of 1992, CT provided a reasonable timetable for phased inland trucking access, along the lines of the above statement. The phased access was to be launched beginning in August 1, 1995. During 1992, CT also conducted bilateral negotiations with relevant countries, including the U.S., on its application to GATT/WTO. CT used that opportunity to transfer the bilateral trucking issue to the GATT/WTO multilateral framework, at which it committed itself to open up trucking markets upon entry to the GATT/WTO. As a result, the FMC terminated the fourth investigation and issued an order requiring further information.

As the FMC terminated the fourth investigation, CT was supposed to take a wait-and-see attitude, because the liberalization of the trucking access was subject to the progress of its bid to GATT/WTO, which could not be controlled by CT. However, in order to be more open and efficient in its trade practices, the Executive Yuan of CT made great efforts to persuade the Legislative Yuan to enact the Highway Law amendment. Eventually, the Legislative Yuan passed the amendment and the changes in trucking market access took effect on November 1, 1997. The passage of the Highway Law amendment set the stage for the end of the negotiations.

3.4 Analysis of the Negotiation Techniques

Negotiators' Goals

From the U.S. government's point of view, the demand of liberalizing trucking in CT is the U.S. trade policy toward foreign markets. However, in terms of the U.S. carriers' commercial interests, the shipping facilities they can obtain right away in CT are probably more practical and beneficial than trucking operations in CT. Thus, CT has to identify the U.S. agenda and find out what issues are under the surface, which can be traded off. So what CT can do is stay honest and rational and try to understand the U.S. demand by means of good communications in an effort to respond to U.S. demands without any damage to CT trade interests.

Strategies

Negotiators continually face a choice among three strategies for moving towards agreement (Kremenyuk, 1991): contending/competition, problem solving, and yielding. In this case, given that the U.S. gets the jump on CT to coerce and persuade CT to concede by applying the FSPA investigation procedures, it certainly employed the contending strategy in the beginning. However, considering a long-term convergence of interests, the U.S. finally tends to adopt joint problem-solving strategy. By contract, CT adopted the problem-solving strategy, instead of yielding. The reasons why CT chose the problem-solving strategy are: (1) it is difficult to yield, due to domestic industry's objection (2) contentious tactics are impossible, and (3) delay tactics could lead to the risk of the U.S. FMC sanctions.

Tactics

Tactics are negotiation techniques employed to accomplish negotiators' goals and strategies. In this case, what actions the U.S. took to fit its contentious strategy are no exception to general contentious tactics, such as persuasive arguments, threatening to walk out or retaliate if CT does not concede. On the other hand, given that it takes time for the legislature to deliberate the trucking liberalization bill, and that it takes time for the internal industry to accept the proposed final liberalization concession, CT made an effort to figure out all possible tactics, including the following:

- Brainstorming: keep asking questions to clarify the scope of the liberalization, limited to the container trucking motor business.
- Promise tactics: proposing a time-table for the phased access in an effort to seek room to survive.
- Counterattack tactics: declaring in the negotiation statement that any sanction actions would harm mutual goodwill and would cause difficulty in realizing the liberalization plans and even hurt long-term relationships established before.
- Issue-linking tactics: CT took the opportunity presented by its application to GATT/WTO and transferred the bilateral issue to the GATT/WTO multilateral negotiation framework, aiming to utilize the principles embodied in the multilateral trading system to settle dispute and to defend its position.

4. CONCLUSION

This case study can be verified from both economic and political perspectives. Baldwin et al (1995: 121) indicates that the executive agencies of CT were mainly concerned with Taipei's external relationship with the U.S., on which CT economic development and political survival depend. In contrast, its legislative branch was mainly concerned with the domestic interests from which legislators drew political support. Such interaction between executive and legislative agencies is commonplace in a democratic society. As a leading country advocating democracy, the U.S. certainly understood the various operative

interests in CT society and realized that the power structure in CT was pluralistic and that power was not concentrated in the executive branch. Thus, under the circumstances of a politically pluralistic environment and an asymmetrically weak bargaining position vis-a-vis the U.S., it was not surprising that CT first liberalized the trucking market (as a lower-priority sector), while protection was prolonged on the remaining motor businesses, as higher-priority sectors.

From the case study, it reflects that working relationships exist between CT and the U.S.. Working relationships make sense when the U.S. finds out the coercive mode of the negotiation is too risky and of little benefit. As the U.S. initial demands tend to be less exaggerated, harsher contentious tactics are curtailed, the problem-solving tactics happened to the U.S.. Both sides had strong needs and honesty and begin to negotiate in good faith. They finally take the form of joint problem solving, in which there is an honest exchange of information about the needs and priorities that underlie the parties' positions.

If judging the negotiation only on the result of outcome that CT finally liberalized its trucking market as the U.S. initial demand, we tend to jump to the conclusion that the U.S. won the negotiations. As a matter of fact, from the initial negotiation to final opening trucking (1987-1997), both sides negotiated in good faith, stuck to their plans and worked together toward their goals. Although the U.S. put sanction pressure on CT, it finally changed to a positive force in pushing CT to overhaul CT inland trucking access and taking gradual approaches to liberalizing its market, leading to a win-win situation.

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