



The Heritage Foundation Executive Memorandum

No. 773

September 7, 2001

NEEDED: A STRONG RESPONSE TO BEIJING'S BOYCOTT OF FOREIGN BUSINESSES DEALING WITH TAIWAN

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On August 31, the *Asian Wall Street Journal* reported that China had barred a top Swiss-American investment bank, Credit Suisse First Boston (CSFB), from making future business deals in China because it had hosted a Taiwan government-backed investment promotion in Europe and a conference in Hong Kong. Following this news, two U.S. securities houses, Goldman Sachs and Merrill Lynch, reportedly cancelled their plans to provide similar services to Taiwan. While it is not clear that Beijing's sanctions against CSFB are its first against foreign banks, one banker in Taipei insists that "it's fairly unprecedented."

Beijing's move marks the opening salvo in a new economic boycott campaign against democratic Taiwan that puts companies at risk of violating U.S. law. The Administration and Congress must act quickly if they are to preempt further Beijing pressure on U.S. companies doing business in Taiwan and challenges to Taiwan's democracy that could escalate into a trade war.

Flagrant Rhetoric. According to a recent article in the *Financial Times*, China's top securities regulator explained its action by asserting, "if you have some foreign company that supports the forced overthrow of the Chinese government, we do not do business with them." He added that CSFB's services to Taiwan "go against the very principle [of 'one China'] and treats Taiwan like a country." It is,

of course, absurd on its face to charge that CSFB supports the "forced overthrow of the Chinese government" simply because it handled a contract for the Taiwan government. Moreover, the U.S. Taiwan Relations Act of 1979 (P.L. 96-8) mandates that Taiwan be treated like a country and states that economic boycotts are a matter "of grave concern" to the United States.

Why It Qualifies as a Boycott. The Export Administration Act (EAA) of 1979 (P.L. 96-72) defines a boycott as countries' or companies' "refusing, or requiring any other person to refuse, to do business with or in the boycotted country... pursuant to an agreement with, or requirement of, or a request from... the boycotting country." The Bureau of Export Administration has noted that the law "encourages, and in some cases, requires U.S. firms to refuse to participate in foreign boycotts that the United States does not sanction." This includes agreements in which they refuse to do business with companies blacklisted by a foreign

Produced by the
Asian Studies Center

Published by
The Heritage Foundation
214 Massachusetts Ave., NE
Washington, D.C.
20002-4999
(202) 546-4400
<http://www.heritage.org>



This paper, in its entirety, can be
found at: [www.heritage.org/library/
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boycotting nation—so-called secondary and tertiary boycotts.

U.S. anti-boycott laws provide for the imposition of sanctions against countries that launch such hostile action against America's friends and allies, and they prescribe both civil and criminal penalties against foreign and domestic companies that participate in such boycotts and fail to report them. Political boycotts in situations that are no threat to national security run counter to the rules of the World Trade Organization (WTO), to which both China and Taiwan will seek formal admission at the General Council meeting in Qatar in November.

Section 2(b)(4) of the Taiwan Relations Act declares that "it is the policy of the United States to...consider any effort to determine the future of Taiwan by other than peaceful means, *including by boycotts or embargoes*, a threat to the peace and security of the Western Pacific and of grave concern to the United States." (Emphasis added.) Indeed, the conference report on the Taiwan Relations Act (Report No. 96-71) explicitly mandates that, under the provisions of this section, "Taiwan shall be considered a 'friendly' country under the anti-boycott provisions of the Export Administration Act." Congress correctly foresaw a Chinese campaign of "secondary and tertiary boycotts" against Taiwan as a non-peaceful alternative to outright military action.

China's attempts at a new economic boycott of Taiwan represent a dangerous escalation of non-peaceful pressure on Taiwan and, under Section 3(5)(A) of the EAA, qualify as a classic secondary boycott and "restrictive trade practice" against "a country friendly to the United States." It is not difficult to predict that if Beijing's latest moves to intimidate foreign banks from doing business with Taiwan are successful, the next targets could be U.S. defense and technology firms.

How the U.S. Should Respond. The Administration and Congress must move quickly to prevent China from increasing economic pressure on Taiwan that would negatively affect U.S. businesses. The inevitable result would be a trade war. The most important steps for Washington in the near future should be to:

- **Remind Beijing that U.S. law regards an economic boycott against Taiwan as a matter "of**

grave concern." To demonstrate its concern, at the very least, the Administration should be prepared to scale back official exchanges with China's securities regulatory bodies. The President should be prepared to express this "grave concern" during his summit with Chinese President Jiang in October. Treasury Secretary Paul O'Neill should also express this concern at the upcoming Asia-Pacific Economic Cooperation (APEC) forum ministerial meeting in Suzhou, China.

- **Begin to monitor, as required by the EAA, whether any U.S. persons or businesses have reported requests from Chinese entities to participate in such boycotts against Taiwan.** The U.S. Department of State should make clear to U.S. firms doing business in China that aiding Beijing's boycott is illegal.
- **Consider additional anti-boycott legislation that protects U.S. companies, especially defense and technology firms, from Chinese pressure.** Such legislation should explicitly prohibit U.S. companies from complying with China's boycotts of firms doing business with the Taiwan government. A review of anti-boycott legislation designed to counter the secondary Arab boycotts against Israel provides a basis for such legislation.
- **Consider new disincentives to participate in Chinese boycotts of countries friendly to the United States.** One powerful disincentive to investment banks against joining a Chinese boycott of Taiwan would be legislation that denies boycott participants the right to be primary dealers in U.S. Treasury securities.

The mere prospect of congressional consideration of special Taiwan anti-boycott legislation should quickly focus Beijing's attention on the gravity of U.S. concerns. It should also convince Beijing to step back from a policy that could result in a contentious trade war.

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