

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

RESTRICTED
L/7429/Add.1
13 July 1994
Limited Distribution

(94-1444)

Original: English

ACCESSION OF THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU,

KINMEN AND MATSU

Consolidated Questions and Replies

Addendum

The present document consolidates the information provided by Chinese Taipei in documents Spec(94)16, 17, 18 and 19.

1. Tariff System

1.1 Tariff structure

1.1.1 General

1. On 21 December 1993 the Vice-Chairman of the Council for Economic Planning and Development was quoted as saying that Chinese Taipei would cut the tariff on 94% of tariff items by 30% and on the remaining 6% of tariff items by 50%, with the effect that the tariff on industrial products would be lower than 10% and the tariff on agricultural products would be lower than 20%. Is this report correct? If so, what items are covered in the 6%? Are the 10% and 20% figures quoted ceilings or average tariff levels? When does Chinese Taipei expect the detail of these proposed changes to be announced? [WP4 Spec(94)16.add, Q.2]

Reply:

The report is not correct. The statement to "cut the tariff on 94% of tariff items by 30% and on the remaining 6% of tariff items by 50%" may be in reference to the statement made in Chinese Taipei's Memorandum on Foreign Trade Regime (GATT Doc. L/7097), which as we explained before, only described the general tariff rate structure at the time we delivered our Memorandum and cannot be interpreted as our tariff bindings commitments which are subject to Chinese Taipei's accession negotiation.

2. It was also reported that Chinese Taipei would make one round of tariff reductions prior to accession and a further round on accession. When does Chinese Taipei propose to make the first round of reduction? On what times would reductions be made? [WP4 Spec(94)16.add, Q.3]

Reply:

Chinese Taipei is now making preparation for partial modification to its Tariff Schedule as a part of its continuing effort to liberalize international trade. This proposed modification covers more than 700 items and is expected to be submitted to the Legislative Yuan in the middle of May. When the proposal meets legislative approval, Chinese Taipei will announce the details of the plan. The timing for implementation of the plan would depend upon the legislative progress and may be before Chinese Taipei's accession to the GATT/WTO.

1.1.2 Industrial products

1.1.3 Agricultural products

1.2 Tariff bindings

1.3 Tariff quotas

3. Chapter II-1: Tariff System

In reply to question I-2 from Mexico (Spec (93) 41/Add.1), Chinese Taipei has indicated that it does not have any tariff quotas. Can Chinese Taipei confirm that it will not use tariff quotas in the future? [WP5 Spec(94)18: Q.1]

Reply:

The use of tariff quotas are not prohibited by the GATT; Chinese Taipei does not wish to rule out the possibility of using tariff quotas in the future.

1.4 Customs system

1.4.1 Classification

1.4.2 Customs procedures

4. Chapter II-2(4): Customs Procedures

What recourse does a firm have if, according to the customs authorities, its goods do not conform to Chinese Taipei's import laws and regulations? [WP5 Spec(94)18: Q.2]

Reply:

If the documents required for importing the goods concerned are not in order and the goods fall within the category of permitted imports, the goods can be imported when the deficiency in the documentation is remedied. In the case of fraud, forgery or other violation of laws and regulations, the Customs will penalize the violator according to the Customs Anti-smuggling Law. The Customs' decision can be challenged by initiating an administrative appeal proceeding. Normally, the administrative appeal proceeding consists of three stages: first, filing a request to the original agency for review of its decision; then, appealing the decision to the higher authority for review; and finally, filing an

administrative suit with the administrative court whose proceedings are similar to that of the court of law. The administrative court, being at the highest level of the administrative appeal system, is the equivalent of the Supreme Court in the judicial system.

1.4.3 Other charges and fees

1.4.4 Export processing zones

5. Chapter II-2(6): Export Processing Zones

Can Chinese Taipei describe the type of tax breaks and other forms of incentives that are available to enterprises located in Export Processing Zones (EPZs), and not available to enterprises outside of the EPZs? [WP5 Spec(94)18: Q.4]

Reply:

Special tax incentives accorded to enterprises located in the EPZs are (1) exemption of import duties on machinery, raw materials, fuels, semi-finished products, and other products used in the manufacturing of the final products exported from the EPZs; and (2) exemption of deed tax on first acquisition of plants from the EPZ Authorities. It is noteworthy that the deed tax is not exempted in the case of sale of second-hand plants, and there are only two new standard plants left for sale by the EPZ Authorities. Other tax treatment accorded to EPZ firms are the same as that for firms outside of the EPZs.

6. Export processing zones (EPZs)

We remain concerned that Chinese Taipei appears to exempt production equipment used in its Export Processing Zones from import duty.

In our view, this clearly conflicts with current and prospective GATT provisions that consider such exemptions as countervailable subsidies unless there is some form of physical incorporation of the duty-exempted inputs in a final export product. [WP4 Spec(94)19: Q.2]

Reply:

Chinese Taipei has abolished the export performance requirement previously imposed on EPZ firms. Therefore, exempting production equipment from import duty should not be considered as an export subsidy. The current scheme is at most an actionable subsidy under the new Subsidy Code. Chinese Taipei does not think that the trade effects, if any, of such practice are likely to be substantial.

2. Non-Tariff Measures

2.1 Quantitative restrictions

1. Australia wishes to take up the invitation given in GATT/AIR/3537 to submit follow up questions in relation to the accession of Chinese Taipei to the GATT. Our questions are listed hereunder. We are also sending a copy to the delegation of Chinese Taipei.

Chinese Taipei's reply to New Zealand's question 3/4 in GATT document Spec(93)42 and comments in the Working Party prompt the following question in relation to milk imports:

Chinese Taipei indicates that the reason for the ban on liquid milk is to protect unwitting domestic consumers who could not tell the difference between fresh and reconstituted milk and to protect them from dumped product. This is a questionable justification particularly as the ban on fresh milk consequently penalizes the less unwitting. Has Chinese Taipei considered labelling requirements as a better way of protecting all consumers? [WP4 Spec(94)16.add, Q.1]

Reply:

Chinese Taipei has implemented a scheme to enable consumers to distinguish reconstituted milk from fresh milk. For domestic liquid milk, based on the volume of fresh milk a milk factory collects, the Council of Agriculture grants to the milk factory a certain number of labels through Department of Agriculture and Forestry, Taiwan Provincial Government to be placed on the fresh milk containers for consumers to recognize. For imported liquid milk, Chinese Taipei intends to open the market by way of quotas as a part of its plan to reduce production surplus in fresh milk, especially in the winter.

2. Reports also suggest that Chinese Taipei proposes to follow that Japan and Korea formulas to open its rice market. Is this what Chinese Taipei proposes? What would Chinese Taipei propose to do regarding the guaranteed purchasing price for rice? [WP4 Spec(94)16.add, Q.5]

Reply:

Chinese Taipei is planning to follow Korea formula to open its rice market with a ten-year transitional period, which is very important for the success of the agricultural adjustment. The guaranteed purchase price will be included in the calculation of AMS and gradually reduced according to the Agreement on Agriculture of the Uruguay Round.

3. The same reports also indicate that Chinese Taipei also proposes a package of aid and measures to assist rice farmers affected by the opening of the rice market. What measures are proposed? Are they all reconcilable with GATT rules? [WP4 Spec(94)16.add, Q.5]

Reply:

The measures have been or will be taken to adjust rice production include:

- 1) reducing the production cost to increase the competitiveness of rice farming,
- 2) improving the quality of rice and encouraging rice consumption, and
- 3) adjusting the use of rice farm land -- rice farm land has been reduced from 646,000 hectares in 1983 to about 400,000 hectares in 1993.

2.2 Area restriction

2.2.1 Industrial products

4. Regarding reply 3 in Spec(93)40

In their follow up questions on import restrictions on the automotive industry the distinguished delegate from Korea sought information on Chinese Taipei's plans to liberalize access to the automotive industry.

In the past Australia has made clear its view that both the practice of applying area restrictions to automotive imports and Chinese Taipei's assertion that the domestic automotive industry is not yet fully developed and therefore is entitled to protection are not justifiable in GATT terms.

Our understanding is that Chinese Taipei has applied area restrictions to automobiles for a number of reasons: in order to exclude Japanese imports; to limit competition from vehicles which are direct equivalents of domestically produced vehicles which would arise should the trade be fully liberalized; and to favour imports from other sources for reasons of the trade surplus which Chinese Taipei has with these countries.

We note from Reply 3 that as of 1994, Japan will be allowed quota access for passenger cars of greater than 3000 cc, but that a ban will remain on vehicles of less than 3000 cc. We also note that the Reply also states that imports from other sources will be opened gradually.

Can Chinese Taipei explain why access is to be granted to Japan for cars of greater than 3,000 cc, but not for less than 3,000 cc? Can Chinese Taipei explain the meaning of "gradual opening" of access for other sources? [WP4 Spec(94)16, Q.4]

Reply:

Cars of less than 3,000 cc constitute the bulk of the domestic car sales; Japanese cars of less than 3,000 cc are in direct competition with locally manufactured cars. Complete opening of the car market in a short period of time will cause great disruption to the local market; therefore, Chinese Taipei intends to open up the local market for cars from sources that are currently subject to import restriction by applying quotas which will be increased annually. The quota for each of the areas currently subject to restrictions will be established through consultation with trading partners.

5. As the question from the distinguished delegate from Korea implies, there are other producers (such as Korea) who are also excluded by the area restriction on Europe and North America. Indeed, Australia is also a modest exporter of passenger vehicles, and would benefit from access to the Chinese Taipei market. Australia is also an emerging exporter of automotive parts, and seeks access to this market in Chinese Taipei.

In these circumstances, we are of the opinion that the area restrictions currently imposed are completely unjustified, and Australia seeks their earliest removal.

Can Chinese Taipei clearly define exactly what industry interests need to be protected until the Chinese Taipei automotive industry becomes "fully developed"? [WP4 Spec(94)16, Q.5]

Reply:

Chinese Taipei's car industry is currently not a competitive one, as the size of the market is not substantial enough to allow for scale economy. The production cost is high. However, the car industry is an industry with high linkage effects. The total production value in 1992 is US Dollars 8.2 billion, representing 5% of the total production value of the whole manufacturing sector. Workers directly employed in the car industry are in the number of 120,000. A sudden opening of the market will result in serious economic and social problems.

6. Can Chinese Taipei provide measurable indicators which will determine when the automotive industry has reached this level of development? [WP4 Spec(94)16, Q.6]

Reply:

Chinese Taipei plans to restructure its car industry and would need a period of protection to assist the restructuring. Initially, Chinese Taipei would like to control car imports until the year of 2000 to assist the restructuring, and the need for extension of time will be assessed at the end of the initial period. During the initial period, car imports from sources currently subject to restrictions will be limited by way of quotas which will be annually increased.

7. Can Chinese Taipei assure Contracting Parties that only those restrictions justifiable by this analysis, and for which GATT consistent mechanisms could be applied (such as tariffs), will continue to apply prior to full liberalization, and that access to the market outside these restrictions will be allowed without preference or prejudice to national origin? [WP4 Spec(94)16, Q.7]

Reply:

Chinese Taipei is studying various possibilities to resolve the issue and would like to explore such possibilities with its trading partners.

2.2.2 Agricultural products

8. Regarding reply 3/5 (a) in spec(93)42

In their response to New Zealand's follow up questions on area restrictions applied to grapes and plums by Chinese Taipei, the measure is presented as a long-term safeguard action.

However, there is area preferential access for these products, so that

- a) it is a discriminatory safeguard measure, and**
- b) the answer given would seem to only partially explain the action.**

Why did imports from some countries, but not all countries, face these measures? [WP4 Spec(94)16, Q.3]

Reply:

The area preferential access for the products concerned is intended to reduce Chinese Taipei's trade surplus with the areas that enjoy such preferential market access. Eliminating the discriminatory elements under the current scheme by removing restriction on imports from other areas will have disruptive market effects. Chinese Taipei is studying the various possibilities to improve the current scheme by reducing its discriminating effects.

2.3 Import licensing/negative list

9. **INTERVENTION BY AUSTRALIA
CHINESE TAIPEI'S "NEGATIVE LIST" ON IMPORT REGULATION**

We would like to take the opportunity to raise the issue of the draft Negative List of items which will continue to be subject to Import Regulation to which the distinguished representative from Chinese Taipei referred in his Opening Statement and which we understand is being circulated to Contracting Parties.

We would like to take this opportunity to make some comments on the draft Negative List and to seek clarification on a number of issues raised by it.

Australia would like to begin by commending the efforts of Chinese Taipei to eliminate regulatory provisions applying to a wide range of traded goods and it is to be hoped that this move will significantly reduce restrictive and technical barriers to trade. We note however, that one or another form of regulatory requirement continue to cover virtually all items for which regulation has been a matter of concern.

Australia appreciates the opportunity to comment on the Negative List in draft form, and hopes that its views and those of other Contracting Parties can be taken into account in the finalization of the Negative List.

We would be grateful for clarification of the process of bringing the Negative List into effect. What is the timetable for implementation? What legislative procedures will be necessary to bring it into effect? Is there any indication to date of the attitude of the Legislative Yuan to the draft Negative List? [WP4 Spec(94)16, Q.12]

Reply:

According to the Foreign Trade Act and its implementing regulation -- the Regulation Governing Imports of Commodities, the implementation of the Negative List does not require legislative action. Chinese Taipei welcomes comments by Australia and other trading partners on the draft Negative List and will consult with interested parties before finalizing the Negative List. The Negative List is tentatively scheduled for implementation in the first half of 1994. When it is implemented, it may not incorporate all changes that trading partners would like Chinese Taipei to make to the current system. After the completion of Chinese Taipei's accession negotiation, Chinese Taipei will revise the Negative List to incorporate changes agreed upon in the course of the accession negotiation.

10. Appended to the draft Negative List are details of the regulations which apply to the items on the draft Negative List. We note that this list of regulations does not include a number of regulations previously applied (eg, 201, 222, 223, 225, A01, A02, A03, B01, C01, C02, etc.) which we presume have been or will be removed as part of a process of rationalization.

Can Chinese Taipei confirm that those regulations appended to the draft Negative List are all regulations which govern import of goods into Chinese Taipei? Have other regulations been repealed or will be repealed when the Negative List takes effect? [WP4 Spec(94)16, Q.13]

Reply:

The regulations appended to the draft Negative List are all regulations which govern imports of goods into Chinese Taipei. Those regulations with headings A, B, or C, which are regulations for products the imports of which are subject to inspection of permits by the Customs which is delegated by the Department of Health, or the Commodity Inspection Bureau to perform such function, when

such permits are required for the products to be circulated in Chinese Taipei. These regulations, which also apply to domestic products, are not import licensing regulations, and therefore are not part of the Negative List.

11. What is the practical effect of the removal of some regulations? We note, for example, that Regulation 201 which specifically excluded Japan from the Chinese Taipei market for apples has disappeared, but that Regulation 211 which limits those countries with access or quota remains, and Japan is still excluded by those area restrictions, so that the practical effect is nil. Are the changes only a rationalization of provisions as in this example? [WP4 Spec(94)16, Q.14]

Reply:

The main purpose of removing Regulation 201 and other changes is to rationalize import regulations. The existing regulation is not clear enough to show the restriction applied to apple imports from Japan. The proposed change will make such restriction transparent.

12. We note that the draft Negative List is divided into three parts:

- * Commodities Entrusted to Customs for Import Examination (808 Items);**
- * Commodities Subject to Import Restriction (449 Items): and**
- * Commodities Subject to Import Restriction (Regulation Code 111 Only) (230 Items)**

Imports Subject to Customs Controls

Our reading of the first part of the list is that the items contained therein are only subject to customs procedures technical specifications and/or documentation requirements.

Can Chinese Taipei confirm that the items on the first part of this list are not subject to any quantitative restrictions or area restrictions? [WP4 Spec(94)16, Q.15]

Reply:

The items on the Commodities Entrusted to Customs for Import Examination are not subject to any GATT-inconsistent quantitative or area restrictions.

13. We have not yet had time to examine the regulations covering this part to assess whether they constitute significant technical barriers to trade, and will revert, probably with further questions on the regulations concerned, at a later date.

Imports Subject to Restrictions

The second group of commodities includes items which are subject to import restrictions, and this is where Chinese Taipei's most clearly GATT-inconsistent regulations apply, including quantitative restrictions, quotas, monopoly controls and area restrictions.

While not strictly a GATT matter, Australia has no problem with regulations restricting imports of protected wildlife and wildlife products (covering 128 items) designed to meet international standards on wildlife conservation, not restrictions on the import of ozone depleting substances (23 items) which enable Chinese Taipei to comply with controls contained in the Montreal

Protocol. Our only interest would be in the effectiveness of the measures to achieve the objectives of the relevant international instruments.

We note that area restrictions remain on a number of agricultural products (duck and turkey meat, 4 citrus items, grapes, plums, apples and peaches) and 34 automotive items (passenger cars, trucks and motorcycles).

Australia wishes to reiterate its firm view that those import regulations which include area restrictions [those being Regulations 203, 205, 209, 210, 211 and 413] are inconsistent with the fundamental principle of MFN contained in Article 1 of the GATT and must be removed prior to Chinese Taipei's accession to the GATT.

Can Chinese Taipei assure Contracting Parties that these regulations will be brought into consistency with the requirements of Article 1 of the GATT on or before accession? [WP4 Spec(94)16, Q.16]

Reply:

Chinese Taipei has the intention to bring its area restriction applied to imports of certain agricultural products, automobiles and motorcycles into consistency with the requirements of Article 1 of the GATT, but a transitional period for each of the products concerned may be required.

14. While the draft Negative List provides an indication as the regulation under which quantitative restrictions may be applied and the authority which has the authority to apply such restrictions, the List does not indicate which items and on what basis.

Can Chinese Taipei provide a list of which items on part 2 of the draft Negative List are subject to quantitative restrictions and in each case detail the method of determining the size of the restriction and the basis for applying a restriction allowable under GATT? [WP4 Spec(94)17, Q.17]

Reply:

The requested information will be contained in a complete list of non-tariff trade measures to be provided to members of the Working Party at a later stage. Chinese Taipei is now discussing with its trading partners, in particular, the U.S., on the format of the list.

15. We note that items subject to restriction in this part are either subject to an import permit issued by BOFT (Regulation 121) or an import permit issued by an authorized licensing bank (Regulation 122). It appears that Regulation 122 is used where importation of the product is subject to a monopoly control or regulation by a major end-user agency. This suggests that the issue of an import permit under Regulation 122 is a formality dependent on the decision of a different control body.

Can Chinese Taipei explain the difference in purpose between Regulations 121 and 122? Is Regulation 122 merely a formality, and if so why can it not be eliminated as an unnecessary technical obstacle? Do the authorized banks have the power to reject applications on any basis other than the other regulatory requirement contained in the draft Negative List? [WP4 Spec(94)16, Q.18]

Reply:

The only difference between Regulation 121 and Regulation 122 is the issuer of the import license concerned. In the case of Regulation 121 the issuer is the Board of Foreign Trade; in the case of Regulation 122 the issuers are agencies authorized by the Board of Foreign Trade for the purpose of issuing the import permit. In both cases, there are no elements of technical barriers to trade.

Under Regulation 122, the authorized banks do not have the power to reject applications on any basis other than the regulatory requirement contained in the draft Negative List.

The reason to keep Regulation 122 in place is to make customs administration easier. This is because under the Negative List system there will be more than 92% of the tariff lines free from import permits, and the Customs will be solely responsible for the import administration. The increase in workload for the Customs is tremendous and the Customs is not able to prepare itself for such increase in a short time; it will require time to make the necessary preparation, including recruiting and training of new staff. Therefore, in the interim, some of the items will be left to the authorized banks for examination of whether the necessary formalities, such as obtaining the required permits from agencies other than the Board of Foreign Trade, have been completed. When the Customs is ready, the responsibility will be transferred to the Customs and Regulation 122 at that time will be removed.

16. Imports Restricted Under Regulation 111

The third part of the draft Negative List comprises items subject to restriction under Regulation 111. Our understanding is that Regulation 111 provides for a complete ban on importation.

While Australia accepts that some items should properly be subject to import bans [such as opiates, amphetamines and narcotics], Regulation 111 appears to be being used primarily as a barrier to trade in order to protect some "sensitive" industries in Chinese Taipei. Of the 230 items covered by Regulation 111 in the Negative List, 180 are agricultural products, including Animal Offal, Meat of Fowls and Ducks, a variety of fish (Catfish, Yellowfin Tuna, Herring, Sardine, Anchovies, Mackerel, Caranoid Fish, Puffer Fish, and Squid, Liquid Milk, Potatoes, a range of Fruits (Bananas, Lychees, Papaya, Pineapple, Guavas, Mangos, Shaddocks, Other Citrus, Longans and Pears (exc European Pear)), Wheat Flour, Rice and Pork Meat.

Australia continues to believe that these restrictions are not justifiable under the terms of the GATT and urges Chinese Taipei to remove such bans as part of the accession by converting them into bound tariffs at reasonable levels.

Can Chinese Taipei undertake to remove these import bans, or provide an explanation (on an item by item basis) as to the justification in the GATT for maintaining these restriction? [WP4 Spec(94)16, Q.19]

Reply:

Chinese Taipei has drawn up a plan to remove import bans by converting them into quantitative restriction with annual growth in quotas allocated to exporting countries. The quantitative restriction for some products will be completely removed after a transitional period, and quantitative restrictions for some other products will be converted again into tariffs at acceptable levels after a transitional period. Chinese Taipei wishes to have opportunities to consult with trading partners on the proposed plan before its finalization.

With respect to the GATT justification for maintaining some of the restrictions, please refer to Reply 17.

17. It has been indicated that Chinese Taipei has decided that discriminatory trading practices need to be abolished for GATT accession. Could Chinese Taipei please confirm which discriminatory trading practices it acknowledges will need to be removed? [WP4 Spec(94)16.add, Q.4]

Reply:

Chinese Taipei is currently examining each of the non-tariff measures to see whether the reason for implementing such measure is GATT-justified. As to the area restriction currently imposed on certain agricultural and industrial products, such practices will be removed with adjustment periods to be negotiated with interested trading partners.

18. Chapter II-3 Import Licensing:

a) In general, what factors are taken into account when consent letters are issued by relevant authorities prior to the issuance of an import license? In particular, what factors does the Council of Agriculture consider before issuing a consent letter to qualified importers? On what grounds could such letters be refused? What criteria are applied? Are those criteria published?

b) Can Chinese Taipei confirm that import controls on all seafood products, except those applied on mackerel, sardine, carangid and squid, have been removed? Could Chinese Taipei explain the reasons why import controls remain on these products? What are Chinese Taipei's plans which respect to lifting such controls?

c) Could Chinese Taipei provide for each tariff line appearing on the Negative List a specific GATT justification for the use of import controls? [WP5 Spec(94)18: Q.5]

Reply:

a) Consent letters will be issued in special circumstances. For instance, when domestic production of a commodity is grossly inadequate, and the prices at the place of production is thirty percent higher than the contract prices negotiated between producers and processors, the Council of Agriculture will allow importation of the commodity. The import quotas will be auctioned to interested parties who then will be granted the necessary consent letters. If there is adequate supply of the commodity concerned, no consent letter will be issued. The special circumstances justifying the issuing of the consent letters and the criteria applied vary from product to product. The criteria are not published, but the Council of Agriculture is making preparations for publication of the criteria in the short future.

b) Fishery products, with the exception of mackerel, sardine, carangid and squid, can be freely imported into Chinese Taipei. Those products that are still subject to import controls are coastal line fishing products and are the main sources of income for small scale local fishermen. It is difficult to lift such import controls; Chinese Taipei wishes to resolve the issue through consultation with interested contracting parties.

c) Chinese Taipei is preparing a special version of the Negative List which will provide line-by-line justifications for the use of import controls. Chinese Taipei is now discussing with its trading partners on the format of the List.

19. As a follow up to question 3/12 (p) from New Zealand, we would like to know which agricultural products are subject to the approval of the domestic agricultural authority before they can be imported? [WP5 Spec(94)18: Q.9 (b)]

Reply:

The agricultural products that are subject to the approval of the domestic agricultural authority are set out in the Table of Discretionary Licensing Commodities on Importation, which has been made available at the GATT Secretariat.

20. Concerning Chinese Taipei's replies on the subject of non-automatic licensing of imports of "recovered paper" classified under HS item numbers 4707.10 through 4707.90 (Reply II-3-(3)-4:

We are pleased to note that licensing requirements for "recovered paper" have been eliminated under the rough draft of the negative list. We share Chinese Taipei's assessment that the use of import licensing requirements for recovered paper is not an effective way of addressing problems associated with the smuggling of guns or other contraband items. By removing current licensing requirements on recovered paper, Chinese Taipei's practices will be in conformance with global standards.

However, we found Chinese Taipei's statements concerning the possible need to enact "additional measures" to regulate importation of recovered paper due to environmental concerns most disconcerting. My government would strongly object to the imposition of new import restrictions on recovered paper under the guise of environmental protection.

In 1992, the OECD adopted a control system for transfrontier movements of recyclable wastes destined for recovery operations. The system draws a clear distinction between hazardous and non-hazardous wastes.

Wastes intended for recovery in authorized facilities, which do not exhibit any of the hazardous characteristics set out in the "Basel Convention," are assigned to a "green list." Such wastes are allowed to move subject to those control normally applied to trade. Wastes which exhibit one or more of the hazardous characteristics are listed as "amber" or "red." In these cases, their transfrontier movements will be strictly controlled.

The final, adopted decision by the OECD assigns waste and scrap paper – HS Heading 4707 – to the "green list." Therefore, the imposition of import controls on recovered paper by Chinese Taipei due to "environmental concerns" would clearly be inconsistent with international standards. [WP4 Spec(94)19: Q.4]

Reply:

Chinese Taipei has become a major and stable market for exports of waste paper from the United States West coast. The vast amount of imports from the United States has made recovery operation and disposal of local waste paper difficult, and resulted in environmental problems. For disposal of local waste paper, Chinese Taipei considers it necessary to have the flexibility to take appropriate measures on waste paper imports. Chinese Taipei, however, will take into account of the relevant international rules and the views of trading partners in making the relevant decisions.

21. Concerning the reply follow-up U.S. question 15 at the last meeting, and Reply II-3-(2)-5 of Spec(93)46 (U.S. questions) regarding the Negative List:

This reply seems to state that the development of the "negative list" does not, in itself, constitute a change in Chinese Taipei's legislation concerning the application of licensing restrictions.

Rather, it appears to be only an organizational step, preparatory to the alteration of laws and regulations.

Is this a correct interpretation of the reply?

Can Chinese Taipei confirm that even with the development of this list, all laws and regulations previously restricting imports are still in place and enforced?

In this regard, how should contracting parties view the information in the "negative list" document? [WP4 Spec(94)19: Q.5]

Reply:

The draft "Negative List" not only contains the import licensing requirements but also collects other non-tariff measures, which will serve an informative function for traders. For non-tariff measures not covered by the Agreement on Import Licensing Procedures, whether they are GATT-justified or not, should be separately dealt according to the General Agreement (such as Articles XX or XXI) and/or the Agreements on Agriculture, TBT or SPS. If the laws or regulations previously restricting imports are GATT-justified, the development of the Negative List should not become a reason for them not to be enforced in the future, because the purpose of the List is not to abolish all import laws and regulations but to make the import regime more convenient and more transparent for traders.

Chinese Taipei would like to emphasize that the most important purposes of the Negative System are: (1) to transform the current licensing system which generally requires import permits for most imported items to a system under which only those included in the Negative List require import permits, and (2) to achieve transparency so that traders would be able to know limitation as well as licensing requirements for the importation of particular products. It is an organization step, preparatory for future improvement of the import system. The Negative List will provide a clear basis for future consultation with trading partners for further liberalization of trade in those items currently subject to import control.

The Negative List is tentatively scheduled for implementation in the first half of 1994, and Chinese Taipei may not be able to complete consultation with interested trading partners by that time. Therefore, when it is implemented as scheduled, it may not incorporate all changes that trading partners would like Chinese Taipei to make to the current system. After the completion of Chinese Taipei's accession negotiation, Chinese Taipei will revise the Negative List to incorporate the changes agreed upon in the course of the accession negotiation.

Chinese Taipei wishes to note that the reform of the import licensing system requires enormous amount of work on the part of Chinese Taipei. It is not simply an exercise of writing new rules and putting them into a binder. The task involves a great deal of coordination among the agencies relevant to the control on imports, including but not limited to, the Board of Foreign Trade, the Industrial Development Bureau, the Council of Agriculture, the Environmental Protection Agency and the Customs. It is Chinese Taipei's belief that a simple change of policies and rules cannot give a new life to the system, unless education and training of the enforcement personnel can catch up with the changes. Chinese Taipei would appreciate the patience of its trading partners.

22. We do not believe that any form of discretionary licensing can be considered consistent with the transparency norms of the Licensing Code.

We would appreciate more information from the delegation of Chinese Taipei concerning how the "negative list" licensing system will eliminate this aspect of the current system that, in effect, results in import bans inconsistent with GATT provisions.

In addition, Chinese Taipei should be prepared to negotiate the liberalization of GATT-inconsistent licensing restrictions currently in place in the context of its accession to the General Agreement.

With the elimination of these measures, the task of amending current law will be much simpler, and a lengthy transition period to bring the application of licenses in Chinese Taipei into conformity with the provisions of the Licensing Code will be much less necessary.

We urge Chinese Taipei to use the time during this negotiation to bring its licensing system into conformity with the GATT and the Licensing Code, and to adhere to the Code at the time of its accession. [WP4 Spec(94)19: Q.6]

Reply:

Chinese Taipei appreciates the comments made by the U.S. delegation, and is prepared to negotiate the liberalization of GATT-inconsistent licensing restrictions currently in place.

23. Automatic licensing

We thank the delegation of Chinese Taipei for its response, confirming that some items that are nominally under the automatic licensing system at the current time will be transferred to conditional licensing under the negative list system. We note that Chinese Taipei intends this transfer to more accurately classify goods already under restriction rather than to increase the incidence of such restrictions.

Could Chinese Taipei please provide a separate list of the items that have been transferred from automatic to conditional licensing under the new system? [WP4 Spec(94)19: Q.7]

Reply:

The items that will be transferred from automatic to conditional licensing under the new system are listed in Table II of the List of Commodities subject to Import Restriction. The List will be provided to the Working Party and interested contracting parties at a later stage. Chinese Taipei is now discussing with its trading partners on the format of the List.

24. Chinese Taipei will be receiving our request for the elimination of licensing requirements which act as quantitative import restrictions and which cannot be provided for under existing GATT rules, in addition to an overall Protocol commitment. [WP4 Spec(94)19: Q.13]

Reply:

Chinese Taipei is prepared to work with contracting parties to identify areas which are considered as trade barriers so as to improve its licensing practices. Chinese Taipei intends to bring its licensing practice in line with the requirement of the GATT and the Licensing Code.

With respect to agricultural protection, Chinese Taipei will make such element transparent in its licensing practice. Chinese Taipei is also prepared to discuss with the contracting parties on non-tariff measures applied to agricultural imports.

2.4 *Standards inspection and quarantine*

25. Can Chinese Taipei assure contracting parties that it will not introduce new quarantine requirements on agricultural products which would result in an effective prohibition on imports once quantitative restrictions are lifted on its GATT accession? [WP4 Spec(94)16.add, Q.5]

Reply:

Chinese Taipei will follow the Agreement on Agriculture of the Uruguay Round to deal with quantitative restrictions on agricultural products, and the quarantine requirements will also be made consistent with the Agreement on SPS.

26. Chapter II-6: Standards, Inspection and Quarantine

In reply to question 203 in doc 7189/Rev 1, Chinese Taipei has indicated that the policy of the Bureau of Commodity Inspection is to "promote the quality of commodities, ensure their safety, protect consumers interests and prevent the dissemination of plant and animal disease and insect pests". With respect to quality, we believe that such an issue is a matter to be dealt with between importers and their suppliers. In this context, what steps are being taken to ensure that quality is not used as a criteria for inspection and that no standard will be used in a discretionary manner? [WP5 Spec(94)18: Q.7]

Reply:

Chinese Taipei agrees that quality is a matter to be dealt with between the importers and their suppliers. For imported and domestically manufactured commodities that are announced to be subject to mandatory inspection, the inspection is to ensure the minimum quality to protect the health and safety of consumers. CNS Standards, drafted or modified by taking JIS, DIN, BS, etc. as references and by taking the ability of the local manufacturing industry into account, are the standards for conducting the above inspection. Therefore, the quality standard is not an arbitrary one and is not used in a discretionary manner.

27. As has been repeatedly demonstrated by past requests, we remain interested in obtaining the specifics on the quarantine concerns that prohibit these products from sale in Chinese Taipei. [WP4 Spec(94)19: Q.9]

Reply:

Chinese Taipei proposes that the quarantine issue be dealt with in the forthcoming bilateral consultation between the U.S. and Chinese Taipei on quarantine to be held in Washington D.C. later this year.

28. We would also appreciate Chinese Taipei's clarification concerning:

- 1) how restrictions applied for "agricultural restructuring" will be justified under GATT Articles; and

- 2) what the relationship of such restrictions to the "health, sanitation, or quarantine" restrictions that are simultaneously applied.

In our view, a bias against imported agricultural products has evolved in Chinese Taipei's food safety and commodity quarantine standards and procedures in recent years, and the tightening of such restrictions to replace straightforward protection of domestic interests appears to be a growing phenomenon. [WP4 Spec(94)19: Q.9]

Reply:

Chinese Taipei is prepared to work with the contracting parties on reduction of non-tariff trade measures applied to agricultural products. In some product areas, Chinese Taipei needs a transitional period to bring its relevant practices in line with the GATT requirements. In other areas, Chinese Taipei would like to replace the current measures with measures that are less distortive and would allow progressive liberalization of the trade in the products concerned. This is the intended meaning of the term "agricultural restructuring" as used by Chinese Taipei.

With respect to sanitation or phyto-sanitary measures, Chinese Taipei intends to bring its practices in line with the requirement of the GATT and the relevant codes developed in the Uruguay Round. Chinese Taipei wishes to note that the exercise would require substantial work on the part of Chinese Taipei; Chinese Taipei may not be able to bring its practices fully in line with the relevant requirements upon its accession and may require a transitional period. The relevant authority of Chinese Taipei is now conducting a survey on the extent to which its SPS practices need be modified to meet the relevant legal requirement of the GATT and the Uruguay Round Codes.

2.5 Labelling requirements

29. Chapter II-5: Labelling System for Imported Products

In its reply to question 3/15 from New Zealand (Spec (93)42), regarding Art. 4 of the Commodity Inspection Law, Chinese Taipei has indicated that the requirement to indicate the quality on labels in the case of imported goods would be removed from the wording of the legislation the next time the legislation is amended. When will the legislation be amended? [WP4 Spec(94)16.add, Q.6]

Reply:

At the end of April, the Bureau of Commodity Inspection and Quarantine will hold a public hearing in order to draft an amendment to the said legislation.

30. The labelling system for imported products

Chinese Taipei's clarification contained in Reply II-5 of Spec(93)45 indicates that imported products are required to be labelled with the importer's name and address, and implies that there is no corresponding requirement for domestic goods to bear the names and address of their distributor or producer.

Is this an accurate description of the reply?

Is it required that the importer's address be incorporated in the imported product's label, or can it be stamped or attached to the label separately? [WP4 Spec(94)19: Q.8]

Reply:

There is no requirement for the labelling of the distributor's name and address, no matter whether the product is locally made or imported. The reason why imported products are required to be labelled with the importer's name and address is to protect domestic consumers, just like domestic products are required to be labelled with the manufacturer's name and address.

The Commodity Labelling Law does not require that the importer's address be incorporated in the imported product's label. It can be stamped or attached to the label separately.

2.6 Anti-dumping, subsidies and other trade measures

2.7 Others

31. Chapter III-2: Agricultural Policy

In reply to question 3/10 from New Zealand (Spec(93)42), Chinese Taipei has indicated that it is considering abolishing the regulation governing "relief and aid for major agricultural products damaged by importation" by the end of 1993. Can Chinese Taipei confirm that such regulation will indeed be abolished before the end of this year? [WP5 Spec(94): Q.9 (a)]

Reply:

Article 18 of the Foreign Trade Act of 1993 calls for the establishment of an import relief scheme to provide assistance to the industry which has suffered injury as a result of increase in imports. The scheme is to cover all kinds of products, including agricultural products. Detailed rules for implementing this article will be incorporated into the Regulation Governing the Handling of Import Relief Cases, which is expected to be approved by the Executive Yuan and to take effect at the end of June, 1994. When the Regulation is in place, Chinese Taipei will abolish the Regulation Governing Relief and Aid for Major Agricultural Products Damaged by Importation.

3. MTN Agreements and Arrangement

3.1 Government Procurement Agreement

1. Chapter III-8: Government Procurement

a) By what standards does Chinese Taipei judge the "need for development of the industry concerned" when awarding procurement contracts?

b) We note that in its reply to Japan (Spec(93) 39), Chinese Taipei has indicated that under the Six-Year Development Plan it is anticipated that more foreign firms will be invited to bid in the various projects underway or being planned. Does this mean that Chinese Taipei would continue to exclude some countries from bidding on projects if they had a large trade surplus with Chinese Taipei?

c) The government of Chinese Taipei has indicated that 94 percent of Central Trust (CTC) above-threshold procurement was awarded to foreign suppliers (reply to Canada Q.17-A, Spec(93) 37). It also indicated that 25 percent of the above-threshold procurement for CTC was restricted

or negotiated tenders. Could Chinese Taipei confirm the percentage of restricted or negotiated tenders that was awarded to foreign suppliers by the CTC as well as the other state enterprises?

d) Chinese Taipei has indicated, in response to the United States (Reply III-8-4(vi) Spec(93) 45), that its procurement procedures in the area of "technical specifications" are generally consistent with article VII of the GATT Procurement Code, except for a few tenders where the technical specifications are set out by designs or brand names, without specifying allowances for equivalents. In its reply to our question (Reply 17-D Spec(93) 37), Chinese Taipei indicated that if referenced brands are used in the specifications, equivalents will be considered. Will Chinese Taipei be changing its procurement procedures to reflect this new requirement?

e) Does Chinese Taipei seek or accept advice which may be used in the preparation of specifications from firms that have a commercial interest in the procurement?

f) Chinese Taipei has indicated that in the consideration of resolving a bid contract award, the higher authority or audit authority would request the procurement entity to "resolve the issue and report accordingly". How frequently have such events occurred and how have such matters been resolved?

g) In reference to question 6 from Japan (Spec(93)39), can Chinese Taipei elaborate on the conditions to be met in order for a foreign company to have a local agent with a business license or are there other requirements?

h) What percentage of tenders are considered to be "restricted tenders"? [WP4 Spec(94)18: Q.12]

Reply:

a) The standard is whether the particular government procurement project has such linkage effects and/or scale that can significantly contribute to the establishment of a new and promising industry.

b) The issue is currently under review by the relevant authorities of Chinese Taipei.

c) In the case of CTC, 98% of its restricted or negotiated tenders which are above threshold were awarded to foreign suppliers. In the case of the ten state enterprises, the percentage is approximately 63%. The percentage in the case of CTC is higher, because the primary procurement function of CTC is to procure goods for state enterprises and government entities from foreign sources.

d) Before Chinese Taipei is legally subject to the discipline of the Government Procurement Code, Chinese Taipei would advise the procuring entities that are likely to be subject to the Government Procurement Code to make their best efforts to reflect this new requirement in their procurement procedures, i.e. to specify allowances for equivalents where the technical specifications are set out by designs or brand names. In the meantime, Chinese Taipei will conduct a survey on whether the requirement will pose any special difficulties to its procuring entities and will assess the time-frame within which such difficulties can be removed.

e) Chinese Taipei seeks the advice of firms that have a commercial interest in the procurement only in a very limited number of cases, as the procuring officers may not be experienced enough or equipped with the necessary technical knowledge.

f) The occurrence of such events is not frequent. If a complaint is found to be valid, appropriate measures will be taken, e.g., the contract may be awarded to another party.

g) Chinese Taipei does not impose requirement on the establishment of local agency relationship. It is more of a contractual arrangement between a foreign firm and its local agent.

h) In terms of contract value, the percentage of tenders that are handled by the Central Trust and considered as restricted tenders in the fiscal year of 1992 is approximately 4%, and that of tenders handled by the ten state enterprises and considered to be restrictive tenders in the calendar year of 1992 is approximately 17%.

2. Concerning projects under the Six-Year Plan will require industrial cooperation programs (ICP's): Reply III-1-6

My government is concerned over the trend in Chinese Taipei to expand the use Industrial Cooperation Programs (ICPs) as a component of industrial policy.

Requirements under ICPs, which frequently include technology transfer, local sourcing requirements, and other offset obligations are inconsistent with the current GATT Procurement Code.

Moreover, they go against the trend of developed economies which are seeking to prohibit all offset requirements on publicly procured projects in the Uruguay Round. We expect such a prohibition to be included in the new Procurement Code.

We would like Chinese Taipei to further clarify both the scope and overall operation of ICPs. In particular:

Reply III-1-6 lists projects under the Six-Year Plan which require ICPs. Is this a comprehensive list? Could Chinese Taipei confirm that telecommunications projects are not subject to ICPs, since they are not listed here? [WP4 Spec(94)19: Q.12-1]

Reply:

The list of projects which require ICPs under the Six-Year Plan is not a comprehensive one. Telecommunications projects may require ICPs, if the authority considers it necessary to require the suppliers to provide service or cooperation in the light of the long term operational needs of the projects involved, e.g. maintenance and repair, emergency breakdown rescue, reduction of operation cost and lowering of the life cycle costs.

3. The Six-Year Plan is due to expire in 1996 – does Chinese Taipei expect to continue imposing ICPs on projects after the Plan's completion? If so, how will Chinese Taipei determine which projects will be subject to ICPs? [WP4 Spec(94)19: Q.12-2]

Reply:

Chinese Taipei may still have the need for ICPs after the completion of the Six-Year Development Plan. However, if Chinese Taipei decides to continue imposing ICPs after 1996, it will make its practices consistent with its obligations under the GATT/WTO rules.

4. What role will the newly formed "Committee for Industrial Cooperation" (CIC) serve in the implementation of ICPs? Will the committee determine which projects must contain ICPs, the components of a specific ICP, etc.? [WP4 Spec(94)19: Q.12-3]

Reply:

The Steering Committee of ICPs is established under the Ministry of Economic Affairs, responsible for the implementation of the ICPs approved by the Executive Yuan.

At present, the functions of the Steering Committee are as follows:

- 1) review industrial cooperation rules and approve industrial cooperation proposals,
- 2) supervise and monitor the implementation of ICPs, and
- 3) approve the completion of individual ICPs.

Under the Steering Committee of ICPs, there are industrial cooperation committees responsible for identifying the forms of industrial cooperation for individual cases, such as local sourcing or part of the requirement, cooperation in the production, system maintenance and repair, domestic investment, joint venture, technology transfer and training in research and development, market development, and authorized local production.

5. Since ICPs are designed to assist in the development of local industry through foreign technology transfer and/or other assistance programs, we are confused as to how such requirements could or would be imposed on domestic industry. Could Chinese Taipei cite specific cases in which ICPs were applied to domestic firms? To whom would domestic firms transfer their technology? [WP4 Spec(94)19: Q.12-4]

Reply:

Technology transfer is not only way to implement an ICP. If the bid-winner is a local party, it may implement an ICP by way of local sourcing of its requirement, cooperation in production, or domestic investment.

6. How will ICPs be factored into a procuring entity's decision for a contract award? [WP4 Spec(94)19: Q.12-5]

Reply:

In a procurement project requiring ICPs, a bidder will be required to submit a commitment letter together with its bid, stating that after being awarded the contract, it will implement an ICP to an extent which is a certain percentage of the contract price or to be agreed upon by both parties. The form of industrial cooperation and other details will be discussed with the authority responsible for implementation of ICPs after the contract is awarded. Therefore, the implementation of ICPs will not delay the procurement or affect the pricing; nor is it a scoring factor.

7. Will ICPs be of equal, greater, or less importance than price and technical qualifications? Who will be responsible for rating ICPs? [WP4 Spec(94)19: Q.12-6]

Reply:

Please refer to Reply 6.

8. Will ICPs be given a score which could be factored into scores given for price and technology? Will ratings depend on how much technology is transferred? [WP4 Spec(94)19: Q.12-7]

Reply:

Please refer to Reply 6.

9. The United States is disappointed by Chinese Taipei's initial reaction to our request that it sign the GATT Government Procurement Code.

As noted in our opening statement, my government firmly believes that Chinese Taipei must join the GATT Government Procurement Code upon accession. (III-8-5, USA 32).

During the last Working Party meeting, my delegation requested that Chinese Taipei implement transitional measures for uniform procurement procedures which would significantly improve the transparency and international consistency of the current procurement system. This statement is contained in III-8-5 of Spec(93)45.

These requested measures included:

- 1) Announcement of all tenders of all commissioning entities in a designated journal and/or newspaper with the provision of an adequate amount of time for interested parties to submit bids.
- 2) Understanding that contracts valued above agreed (reasonable) amount will be awarded through open tender (i.e., allowing for foreign participation), unless compelling need or necessity requires another method.
- 3) Agreement that in cases where contracts are awarded on the basis of a non-competitive tender, the contract and the contracting firm will be announced in the same journal/newspaper that is used to announce competitive tenders.
- 4) Agreement that commissioning entities will use non-proprietary, performance-based standards except when absolutely necessary, and that such tenders will include the working "or equivalent" when standards are based on other criteria.
- 5) Agreement for the creation of a centralized bid protest system to be used by bidders as a forum for addressing problems related to the procurement/selection process.
- 6) Agreement on reasonable restrictions on requirements that sellers assume unlimited liability for consequential damages.

My government firmly believes that these proposals should be included as part of Chinese Taipei's Protocol of Accession.

To prepare for Chinese Taipei's membership in the Code at the time of accession, Chinese Taipei should initiate negotiations immediately. My government stands ready to begin such negotiations at the soonest possible date. [WP4 Spec(94)19: Q.18]

Reply:

Chinese Taipei is prepared to enter into negotiation for accession to the Government Procurement Code within one year following its accession to the GATT/WTO.

With respect to the six requested measures, Chinese Taipei's response is as follows:

- 1) Chinese Taipei considers it acceptable to announce tenders in a designated journal and/or newspaper with the provision of a reasonable time for interested parties to submit bids. However, this would apply only to projects above a certain threshold for which Chinese Taipei's commissioning entities decide to award the relevant contracts through open tender or selective tendering. If this is included in the Chinese Taipei's protocol of accession, Chinese Taipei will need time to make the necessary preparations for implementation of the scheme.
- 2) Chinese Taipei considers it more appropriate to deal with the second request in conjunction with Chinese Taipei's negotiation for accession to the Government Procurement Code so that an overall balance can be achieved in respect of Chinese Taipei's position *vis-a-vis* other signatories to the Code.
- 3) Chinese Taipei is carefully assessing the feasibility of announcing contracts above a certain threshold and awarded on the basis of a non-competitive tender in the same journal/newspaper that is used to announce competitive tenders. If this is included in Chinese Taipei's protocol of accession, Chinese Taipei will need time to make the necessary preparation and to go through the necessary legal procedure for implementation of the scheme.
- 4) Chinese Taipei is now investigating whether its procuring entities will have difficulties in observing Article VI, paragraphs 2 and 3, which Chinese Taipei believes is the basis of the fourth request. If such request is included in Chinese Taipei's protocol of accession, Chinese Taipei will need time to make the necessary preparations and to go through the necessary legal procedures for implementation of the scheme.
- 5) The current law of Chinese Taipei does not provide a general legal basis for establishing a bid protest system to provide bidders with administrative or judicial remedies, when they feel they are not equitably treated. While the party who is awarded the contract may seek remedy on the basis of the contract signed with the procuring entity, other bidders do not have a legal basis to challenge the decision made by the procuring entity unless the government official in charge of the procurement is found to breach his/her duty and such breach results in criminal liability according to the Criminal Law. Therefore, there is a need for Chinese Taipei to make a new law to provide a general legal basis for establishing a legally effective challenge procedure. The making of the law can not be completed in a short time; Chinese Taipei has started the process by designating the Council for Economic Development and Planning as the agency responsible for the drafting of the law dealing with government procurement in general and the challenge procedure in particular.
- 6) Chinese Taipei wishes to clarify that there is no government regulation or policy requiring the incorporation of unlimited liability clause. The extent to which a contractual party should be liable for damages is a contractual matter.

10. Concerning the reply III-8-1-(v) and question USA 27:

In follow up Reply IV to Canada's questions (Canada 4) at the last meeting concerning the specific criteria used by Chinese Taipei to open bidding to foreign firms, Chinese Taipei noted that:

"it is in those cases where domestic industry has the ability to undertake the work or there is a need for development of the industry concerned that only domestic firms are invited to participate in bidding for products [under the Six Year Development Plan]."

The parameters set by this policy seem to contradict other statements which purport to allow the procuring director of the concerned procurement entity make the decision whether to have a domestic or international tender.

As noted during the last Working Party Meeting, the United States is concerned over the increasing number of public projects in Chinese Taipei which are closed to foreign competition.

Chinese Taipei's reply (Reply III-8-1-(v)) to U.S. questions concerning this matter addresses the issue of whether a procuring entity would choose to purchase imported merchandise through domestic importers or directly from the source, i.e., through an international tender.

While we appreciate this information, my delegation was looking for specific criteria used to determine if a project will be open to foreign participation, not the method in which foreign goods are to be purchased.

If indeed the only criteria used is that which is noted in response to Canada's questions, we would greatly appreciate a more detailed explanation of this policy.

In particular, please list sectors where procurement would be limited to domestic firms due to the need for local industrial development.

Is there any specific NT\$ amount which would be considered in determining if a bid will be open to foreign participation? [WP4 Spec(94)19: Q.19]

Reply:

Chinese Taipei's current procurement policy is that for public construction cases, open tender (which allows foreign participation) is used only when the local contractors do not have the capability to undertake the work. Foreign firms may undertake work reserved for local companies, if they establish local subsidiaries and obtain the necessary construction business licenses. For acquisition of goods, the industrial authority may require that the bids be not open for foreign participation in such sectors as machinery and electronic and electric equipment, when the contract amount exceeds U.S. Dollars six hundred thousand. Except for the dollar amount threshold, there is no other threshold in dollar terms used for determining whether a bid will be open for foreign participation.

11. Concerning Reply III-8-1-(vi)

We appreciate Chinese Taipei's efforts to clarify its intent behind the requirement that contractors sign a letter of commitment which contains the following wording:

"For any other exceptions, deviations, additional clauses and the like stated or scattered or hidden in various parts of our bid, if any, shall be null and void, can be regarded as non-existent, and we shall not cite them for any purpose whether they be deleted or not. (The end user)/CTC has the right to delete any of the above without asking our consent, and the price offer and the validity of our bid shall not be affected by the above deletion."

This language, however, appears inconsistent with Chinese Taipei's stated intent -- as noted in Reply III-8-1-(vi) -- to "make bidders state explicitly and collectively in their bids all the exceptions to or deviations from the tender requirements."

Rather, this statement gives the client carte blanche to interpret the contract as it wishes. We would point out that the contract clause does not have the phrase "from the tender requirements" as the explanation does. The contract clause also adds the phrase "additional clauses" which is hard to fit into the interpretation noted in Reply III-8-1-(vi).

My government requests that Chinese Taipei either eliminate the requirement that vendors sign a letter containing this contract clause, or modify the language to limit the scope of this provision to the stated purpose of ensuring that "bidders state explicitly and collectively in their bids all the exceptions to or deviations from the tender requirements." [WP4 Spec(94)19: Q.20]

Reply:

The fact that the above clause does not have the phrase "from the tender requirements" but has the phrase "additional clauses," does not affect the interpretation given in our previous reply. In order to interpret the aforementioned clause correctly, the other two preceding clauses contained in the letter of commitment cannot be neglected. They read as follows:

We, (name), the bidder, hereby certify that all the terms and conditions specified in the Invitation, clarifications, amendments, notifications, etc., which have been or will be issued to us by (end-user)/CTC before CTC's awarding of the Project to a successful bidder, are fully agreed and accepted by us without exceptions, deviations, additional clauses, and the like.

For those technical exceptions, collectively stated by us pursuant to Article ___ of the Invitation to Bid, whether they will be accepted or not will be decided by (end-user) prior to the issuance of Notice of Award. For the accepted technical exceptions, we shall fulfil in conformity; for the unaccepted ones, we shall withdraw them unconditionally.

Since there shall be no exceptions or deviations from the terms and conditions specified in the Invitation, clarification, etc., (as provided for in clause 1) and since all technical exceptions have to be collectively stated, (as provided for in clause 2) the procuring entity certainly can disregard any deviations scattered in various parts in the bid according to the letter of commitment.

12. Concerning Reply III-8-3-(i), United States 30

My delegation appreciates Chinese Taipei's explanation of the application of contingent liability provisions, including those which require contractors to assume unlimited liability for consequential damages.

As Chinese Taipei is aware, this practice is inconsistent with accepted international standards; Chinese Taipei is one of only a handful of economies – virtually all of which are underdeveloped – which impose such stringent liability provisions on foreign vendors.

There is a saying that "if I accidentally kill your hen, I'll pay you for the cost of the hen, but I should not pay you for all of the eggs that the hen would have laid for the rest of its life."

Payment for the hen and a lifetime of eggs essentially represents the current policy of a number of key state trading enterprises in Chinese Taipei.

As noted by Chinese Taipei in Reply III-8-3-(ii) to U.S. questions, the application of contingent liability provisions is optional under the Civil Law of Chinese Taipei.

In fact, my delegation is not aware of any contracts in Chinese Taipei prior to 1992 which contained provisions shifting consequential damage liability to contractors, and placing no limits on such liability.

Because consequential loss or damage is inherently a risk of ownership – contractors cannot even obtain insurance for consequential damage or loss – international practice exempts contractors from liability for these items.

Moreover, since responsible repeat responsible contractors cannot assume the large risks associated with these many liabilities, it is a common international practice to provide a clause which specifically limits a contractor's overall liability.

This policy change by Chinese Taipei is not a reasonable approach to contractor liability but an overt barrier to the participation of foreign contractors in procurement contracts in Chinese Taipei.

Therefore, the United States requests that Chinese Taipei – which had maintained internationally consistent practices with respect to liability for major projects until last year – return to its pre-1992 standards, i.e., that caps be placed on a contractor's overall liability, and that owners exempt contractors from liability for consequential loss or damage. [WP4 Spec(94)19: Q.21]

Reply:

The consequential loss or damage in practice is not so unreasonable as the "hen and eggs" example. It will not require the damage of all the eggs that the hen would have laid for the rest of its life but the eggs that the hen would have laid before the cost of the hen is paid and a new hen can be purchased. For example, when the defect of a power plant's equipment causes stoppage of the operation of the plant, the consequential damage an equipment supplier shall be responsible for is only the loss incurred before the equipment is fixed and starts operating again. Such loss can be calculated in a formula specified in the contract or determined at a later stage when the contingency occurs.

That consequential damage in practice has limits does not mean that it need be capped. The information available to Chinese Taipei does not show that imposition of consequential damage on contractors is inconsistent with international standards. For instance, the Federal Acquisition Regulations

of the United States (FAR§49.402-2, §49.402-7, §52.246-24, and §52.247-21) does not impose a cap on the damage for which a contractor shall be liable to the government. In the case of the United States v. Franklin Steel Products, 482 F.2d. 400 (9th Cir., 1973), the court held that the contractor should be liable for the price paid for discrepant bearings and also the cost of all consequential damages which were the direct and proximate result of the breach of warranty. Furthermore, if the premium and insurance condition are attractive enough for an insurer, there is no reason for an insurer not to provide insurance for consequential damage.

Since the insertion of a consequential damage clause, a pure commercial decision, does not discriminate against any foreign contractors or contravene any GATT provision, it may not be appropriate for Chinese Taipei to use administrative measures to intervene in the contractual relationship between the procuring entity and the supplier.

13. Concerning Reply III-1-7-(1), USA 25

We appreciate Chinese Taipei's explanation of its application of local content requirements.

We are confused, however, how local content requirements for purchases of "incinerators and electric connect locomotive" can be considered "exception to the national treatment permitted under Article III of the GATT."

Please explain. [WP4 Spec(94)19: Q.22]

Reply:

The purchases of incinerators and electric connect locomotive are by government agencies for governmental purposes and not with a view to use in the production of goods for commercial resale. Therefore, such purchases fall within the exception of Article VIII, paragraph 8 of Article III.

14. Concerning Tendering--Follow-up to Reply 2, USA 4

Of the projects awarded by open tender during fiscal year 1992, what percentage were open to foreign bidding?

Please provide the same information for projects by single and selective tenders. [WP4 Spec(94)19: Q.23]

Reply:

In terms of dollar amount, 93% of open tender and 98% of single and selective tenders were open to foreign bidding in the fiscal year of 1992. The reason that the percentage is so high is because most tenders handled by the CTC is procurement from foreign suppliers.

15. Concerning Licensing Requirements for Foreign Firms Applying for Construction--Follow-up Reply 31, USA 17

My government is very concerned over current licensing requirements for firms seeking to participate in construction contracts in Chinese Taipei. As currently applied, the system provides de facto protection to domestic industry, and discriminates against experienced, qualified foreign firms.

The requirements set out by Chinese Taipei to obtain Class A licenses force construction firms to maintain a subsidiary in Chinese Taipei for at least four years prior to competing for large-scale projects.

While in theory these firms should be able to compete on small-scale to medium-sized projects -- which is required under the current licensing system to obtain a Class A license -- in practice, it is unlikely that small to medium scale public contracts which can be supplied or serviced by local firms would be awarded to subsidiaries of foreign firms.

Therefor, during the four year period prior to qualifying for a Class A license, these firms have little chance of operating at a profit. Moreover, at the end of the four year period, they have no guarantee that they will have met the performance criteria necessary to obtain a Class A license.

These regulations, together with the current policy which discounts overseas experience (i.e., outside of Chinese Taipei) in qualifying for construction licenses has created a system which blatantly discriminates in favour of local construction firms.

Class A licenses -- participate in the majority of large and complex construction projects as joint venture partners of foreign firms. Many of these projects require technology transfer and other offset requirements as conditions of participation.

The operation of the current licensing system is inconsistent with the spirit of the GATT Government Procurement Code and GATT principles concerning national treatment.

My government requests that Chinese Taipei modify current requirements for obtaining construction licenses to bring them into conformity with the GATT.

Such action would include the implementation of objective, transparent criteria applied equally to domestic and foreign firms. It would include basing the issuance of licenses for large and complex construction projects on technical qualifications, including overseas experience, rather than time spent operating on the island and involvement in smaller-scale projects.

An article published in The China News on August 9 reported that changes were proposed by the Ministry of Interior (MOI) in the regulations determining the eligibility of foreign contractors to register for construction licenses in Chinese Taipei.

The change would, subject to certain conditions, enable foreign contractors with the appropriate qualifications to apply immediately for a Class A license without having to obtain licenses in Classes B and C.

According to the article, the Productivity Center, a private research organization, was appointed to study this matter and was given until December 1992 to issue a report to MOI. The MOI would then draft new legislation based on the findings of the study. This legislation would be submitted to the Legislative Yuan by June 1993.

Has MOI received the report from the Productivity Center? If so, what were the recommendations of the report? Will MOI be submitting legislation during this session of the Legislative Yuan concerning this matter? [WP4 Spec(94)19: Q.24]

Reply:

The Construction and Planning Administration, the Ministry of Interior, has received the report from the Productivity Center. Following the recommendation of the report, the CPA has held three meetings to discuss the general framework of the draft Construction Business Law, which has taken into account the principle of national treatment. The draft law will be submitted to the Legislative Yuan as soon as possible.

16. Pre-qualification Requirements

My government is also concerned about pre-qualification requirements (i.e., criteria to be satisfied before a company's bid can be considered). Such requirements are frequently impossible to meet and are often inequitable and arbitrarily enforced.

Often, a contractor is required to have previously undertaken a project in Chinese Taipei similar to the one for which he hopes to bid. This is a "Catch 22" situation for companies outside of Chinese Taipei who are seeking to enter the market for the first time.

Again, while the intent may not be to discriminate against foreign firms, such a requirement places local firms at a competitive advantage (otherwise competent foreign contractors may be disqualified from bidding due to lack of experience on Chinese Taipei), and offers them de facto protection from foreign firms.

Such discriminatory measures are inconsistent with the GATT Government Procurement Code and GATT principles of national treatment.

My government requests that Chinese Taipei eliminate all discriminatory elements of current pre-qualification procedures, and asks that Chinese Taipei account for overseas experience in evaluating pre-qualification criteria. [WP4 Spec(94)19: Q.25]

Reply:

The pre-qualification procedure does not discriminate against foreign firms because the bidders meeting the pre-qualification requirement may not necessarily be local firms but foreign firms or their local agents. Despite so, Chinese Taipei will assess the feasibility of bringing its practices in line with the requirement of Article VIII, Paragraph (b), of the Government Procurement Code in the short run and would like to deal with the issue in the context of its negotiation for accession to the Code.

3.2 Civil Aircraft Agreement

17. Concerning the statements by this delegation and others urging Chinese Taipei to join the Agreement on Trade in Civil Aircraft at the time of accession to the GATT, and the responses of Chinese Taipei to U.S. questions contained in Spec(93)45:

The United States is disappointed by Chinese Taipei's initial reaction to our request that it sign the GATT Agreement on Trade in Civil Aircraft. As Chinese Taipei is aware, this agreement is being multilateralized on the basis that all economies with aspirations to continue or develop commercial aircraft manufacturing industries become signatories.

We understand that Chinese Taipei is continuing its consultations with British Aerospace (BAE) on the establishment of Chinese Taipei as the manufacturing center for joint production of BAE regional jets and resulting technology transfer. Boeing has also announced that it will establish a quality assurance laboratory for commercial aircraft parts in Chinese Taipei.

The United States views Chinese Taipei as a modern and sophisticated economy and a future major participant in the globalization of the world's aerospace industry. In the course of multilateralizing the GATT Aircraft Agreement, the United States will find it necessary to discuss the status of non-signatories and whether separate conditions may be necessary.

As it is clear that both the U.S. and the E.C. major aircraft companies view Chinese Taipei as a trade and investment partner for the future, we consider it imperative that Chinese Taipei sign the GATT Aircraft Agreement. [WP4 Spec(94)19: Q.11]

Reply:

Chinese Taipei appreciates the comments made by the U.S. delegation, and will investigate the issue further.

3.3 Import Licensing Code

3.4 Other agreements and arrangements

4. State Enterprises

1. Chapter III-1: Industrial Policy

Could we obtain a list (with HS Number) of those products currently subject to price controls and a list of additional products which could be subject to price controls in the future? Could we also obtain a copy of the laws and regulations which apply to price controls? [WP5 Spec(94)18: Q.8]

Reply:

Products currently subject to price control:

Item	Product	Legal Basis	HS Number	Remarks
1	Electricity	Electricity Business Law/ Table for Dividing the Responsibilities of the MOEA ¹ and the EY. ²	Nil	No HS number. As electricity cannot be stored, it is impossible to import.
2	Salt	Salt Administration Statute/ Table for Dividing the Responsibilities of the MOEA and the EY.	2501	

¹ MOEA: Ministry of Economic Affairs

² EY: Executive Yuan

3	Petroleum	Table for Dividing the Responsibilities of the MOEA and the EY.	2710.00.11 2710.00.12 2710.00.23 2710.00.31 2710.00.33	Chinese Taipei is short of energy resources and 99.5% of its needs are met by imports. In order to ensure national security and stabilize price, oil prices are subject to the government's control. However, Chinese Petroleum Corporation is authorized by the government to adjust price on its own initiative to a certain extent. The government is drafting the Oil Business Law with a view to liberalize the oil market.
	Natural Gas, Liquefied Petroleum Gas	Statute Governing Surveillance on Privately Run Public Utilities	2711.21.00 2711.19.10	
5	Sugar	Table for Dividing the Responsibilities of the MOEA and the EY.	1701.11	To facilitate the implementation of agricultural policies, particularly in regard to farmers' income, prices are subject to the government's control, but will be liberalized in the long run.
6	Fertilizer		3102.10.10 3102.21.10 3102.30.10 3102.70.10 3103.10.00	

The translations for the laws and regulations cited above are not available. The Electricity Business Law and the Salt Administration Law are to be amended soon. The following are the English translations of the provisions in the laws that deal with price controls:

Article 59 of the Electricity Business Law:

Electricity business, when making or amending its business operation rules, or fixing or changing electricity price and all kinds of charge rates, shall submit its proposal to the local authority or the authority to which it belongs, which shall in turn submit the proposal to the central competent authority for approval; when the proposal is approved, it shall be published in the relevant localities.

In those geographical areas where traffic is not convenient, the proposal can be implemented after the relevant provincial or city government has approved the proposal, provided, however, if the central competent authority requires the reduction in charge rates, the excess shall be refunded.

Electricity fees charged by state enterprises shall be determined according to Article 20 of the Statute Governing State Enterprises.

Article 12 of the Salt Administration Law:

Selling prices charged by salt producers shall be the field prices, which shall be determined by the salt administration agencies on the basis of the approved standard costs for different kinds of salt plus reasonable profits.

Article 7 of the Statute Governing Surveillance over Privately-run Public Utilities:

Privately run public utilities, when making or amending rules relating to charges on the general users and other rules, shall submit its proposal to the local supervising authority, which shall in turn submit the proposal together with its comments to the central competent authority for its approval.

2. Chapter III-9 State Enterprises:

Does the central government have the power to ensure that provincial enterprises comply with all aspects of the GATT, not just government procurement provisions? Can Chinese Taipei provide examples of matters that are considered to be "national in nature" and those that are "provincial in nature"? [WP4 Spec(94)18: Q.III-9 a]

Reply:

In the case where the specific GATT issue involved is national in nature, the government has the power to ensure compliance with the GATT by provincial enterprises.

Article 107 of the Constitution sets out the matters that fall within the legislative and executive powers of the government which include, among others, foreign relations, defense, the judicial system, aviation, navigation administration, roadway and railway, postal and electricity administration, finance and tax, state enterprises, international trade and economic and financial matters involving foreign elements.

Article 108 of the Constitution sets out the matters that fall within the legislative power of the government, but can be executed by the government or delegated to the provincial or county governments for execution, which include, among others, forestry, industry and mining, commerce, banking and clearing systems, navigation and ocean fishing, public utilities, cooperatives, and sea or road transport between more than two provinces.

Article 109 of the Constitution sets out the matters that fall within the legislative power of provincial governments, and can be executed by provincial governments or delegated to county government for execution, which include, among others, provincial transportation, provincial enterprises, provincial cooperatives, provincial financial administration and tax, and provincial banks.

3. Commissary Stores: Concerning Reply III-9-2

The United States appreciates Chinese Taipei's detailed response to questions concerning the operation of publicly-run stores.

While my government does not object to the existence of these retail outlets in principle, the current operating procedures of the United Cooperative Association (UCA) and Military PX's harm both manufacturers, who are forced to sell at unrealistically low prices, and private retailers, who are forced to compete with subsidized state stores.

Of particular concern is the price survey conducted by UCA stores and military PX's -- which ultimately leads to prices set at 15-30 percent below retail.

The survey does not take into account current market dynamics that have depressed retailer margins on many items supplied to these outlets (current retail margins may be as low as 1-2 percent).

With publicly-run stores demanding unrealistically low prices, a situation has been created whereby manufacturers actually lose money selling to these stores.

Because publicly-run stores have as much as 40 percent of market volume, it is very difficult for manufacturers interested in selling to the Chinese Taipei market to refuse to supply these stores at the required, below cost prices.

Prices for goods offered by publicly-run stores, moreover, make it very difficult for local private retailers to compete in the marketplace.

For this reason, and because PX's/Commissaries use their market power to exact very low prices from suppliers, we are perplexed as to how the operation of these stores could fall outside the purview of the Fair Trade Law.

Such abuse of market power is a key concern of the Fair Trade Law.

My delegation would be interested in an explanation of the justification for the Fair Trade Commission's ruling that UCA stores fall outside the purview of the Fair Trade Law.

Does this ruling apply to Military PX's as well? [WP4 Spec(94)19: Q.26]

Reply:

The Fair Trade Commission does not exempt UCA entirely from the application of the Fair Trade Law. The exemption is limited to the organization of UCA as it falls within the definition of horizontal collaboration among the stores participating in the organization of UCA. Otherwise, business practices of UCA and its stores are not exempt from the application of the Fair Trade Law.

According to the Commission's survey, there are several privately run retail stores that are of the similar size to that of UCA in terms of sales revenue. As the purchase volume of UCA is substantial, its cost tends to be lower than that of smaller operations. The Commission has established a scheme to monitor the sourcing practices of stores of UCA nature, and will take measures when any abuse of market power is found to exist.

Military PX's to the extent that it does not involve governmental function are also subject to the application of the Fair Trade Law.

4. Chinese Taipei's response to questions raised on the operations of publicly-run stores is limited to those which are operated by the United Cooperative Association.

We would appreciate a response to the questions we raised concerning the 28 Military PX's currently operating in Chinese Taipei.

We would be interested in knowing how the rules associated with the operation of UCA stores and Military PX's are enforced.

Are random spot checks of ID's made?

Who is responsible for enforcing the regulation prohibiting the resale of merchandise purchased in one of these outlets?

What internal controls are there to prevent leakage to the outside?

We want to be very clear on one point: The United States is not asking Chinese Taipei to abolish the PX/Commissary system.

We would like Chinese Taipei to return the system to its original function of providing low cost necessities to public employees only.

We believe that Chinese Taipei should take the following steps to make the system more transparent and competitive:

Take active steps to control the number of people who have access to these stores and to limit the amount of product that authorized users may purchase.

Establish and publish new procurement and new product listing guidelines that reflect current market dynamics.

Establish a fairer price setting procedure.

Finally, my government would be interested in obtaining information on government subsidies (e.g., land, personnel) provided to PX's/Commissaries to support their operations. [WP4 Spec(94)19: Q.27]

Reply:

After transforming the bulk of its PX operations (including 22 county/city and 48 town stores) into civilian operations, the military currently maintains only 25 small stores operating in premises owned by the military to provide military personnel, retired servicemen and their families with daily necessities of lower cost.

The military PX has been imposing strict control over the access to the stores, and an employee is specially designated to check I.D. cards at the entrance of each store. It also imposes limitation on the quantity of necessities (e.g. milk powder, detergents, SMGs, cooking oil) that can be purchased each time in order to prevent resale of the merchandise.

The products sold at military PX stores are directly sourced from the manufacturers and no intermediates are involved. Therefore, the costs tend to be low. The selling price is 2% above the sourcing price. The 2% represents the personnel and administrative costs. The stores are for the purpose of serving military personnel and their families rather than making profits.

In the past, there were cases where military PX merchandise were resold. However, the resold merchandise were repurchased back by the military PX through the search by the police, military police and tax authority at the locality concerned. Recently, the emergence of large shopping centers, supermarkets and discount stores, which in many cases offer merchandise at the same or even lower prices than the military PX stores, resale of military PX merchandise is almost non-existent. The military PX headquarter has made rules to prevent resale and the stores are required to comply with the rules.

Before the military PX makes a decision to purchase new merchandise, it would conduct survey on the needs of the military personnel and their families as well as market conditions. The decision is then advertised on newspapers. All suppliers, no matter whether they are importers of foreign goods or local manufactures, whose merchandise meet the requirement as advertised may register with the military PX and then enter into negotiation on the terms and conditions for the supply of the goods concerned. However, because of the purchase volume of the military PX is limited, not every supplier has the opportunity to sell to the military PX.

The military PX stores are all located at military bases or premises provided by the military. Personnel working in the stores are civilians hired by the military with the exception of the top management personnel who are military personnel as well. The salaries of the personnel are from the 2% margin. There is no subsidy from the government.

With respect to UCA stores, the business is operated under the Implementing Rules for the Provision of Daily Necessities to Public Employees by Consumption Cooperatives of Government Agencies and Schools. The Rules are promulgated by the Executive Yuan. The UCA has further drawn up the Business Plan for the Provision of Daily Necessities to Public Employees as a guideline for operating its business. The Rules for UCA's Issuing of I.D. Cards to Public Employees for Purchase of Daily Necessities imposes restriction on and sets out the procedures for issuance of the I.D. In particular, the rules prohibit lending of the I.D. to other persons; if a holder is found to have violated this prohibition, his/her right will be suspended for a year and this violation will be referred to the government unit to which the holder belongs. The same applies to unauthorized changes by the holder, including change of the picture attached to the I.D.

The UCA has personnel specially designated for checking I.D. cards at the entrance of each store to prevent the use of the stores by parties that are not public employees.

The manager of each store carries the responsibility to prevent the resale of the UCA merchandise. The UCA has made and promulgated the Rules for Preventing the Resale of Daily Necessities of public Employees for the stores to follow.

The supervising authority of the UCA, i.e. the Government Personnel Bureau has required the UCA that:

- 1) it take effective measures to limit the access to the stores and the quantity each person may purchase,
- 2) it publish its procurement rules and policies, and new product catalogues to reflect market changes, and
- 3) it improve its price determination procedure.

5. Exchange Arrangements

1. We appreciate the statement by Chinese Taipei in its responses to United States questions circulated at the last WP meeting, that it is willing to negotiate a special exchange agreement, as provided for in Article XV:6 of the General Agreement.

We intend to have concrete proposals in this regard for discussion at the next meeting of the Working Party. [WP4 Spec(94)19: Q.14]

Reply:

Chinese Taipei would appreciate the receipt of the concrete proposal at the earliest possibility.

6. Fiscal Policy, including incentives

6.1 Monopoly Tax on Tobacco and Wine

1. Regarding reply III-(I)-1 in Spec(93)41 Add.1

In their response to Mexico's follow up questions on the monopoly tax which is applied to cigarettes and alcoholic beverages, Chinese Taipei refers to the tax being applied "in accordance with a bilateral agreement".

1) Is Chinese Taipei bound by this bilateral agreement to continue to apply the monopoly tax?

2) If the Answer is yes, in view of the concerns expressed by a number of delegations on the discriminatory effect of the monopoly tax, has Chinese Taipei sought or does Chinese Taipei intend to seek to be released from such obligation? [WP4 Spec(94)16, Q.1, Q.2]

Reply

1) Chinese Taipei is not bound by the bilateral agreement to continue to apply the monopoly tax.

2) Chinese Taipei is now drawing up plans to reform the wine and tobacco monopoly tax system. After the reform, monopoly tax will be replaced by normal customs duties and internal tax and charges, which will be applied in a non-discriminatory manner.

2. Import Restriction on Tobacco and Alcohol Products (Reply 12, Spec93(39))

Japanese tobacco and alcohol products, unlike those of other countries can be imported only by the TTWMB.

What is the domestic legal basis for this treatment? [WP4 Spec(94)17: Q.1.1]

Reply:

The domestic legal bases are Articles 5 and 6 of the Foreign Trade Act, which read as follows:

Foreign Trade Act

Article 5:

For the purpose of safeguarding national security, the competent authority may, in conjunction with the appropriate government authority or authorities, propose to the Executive Yuan for an approval to ban or control of trading activities with specific countries or territories provided that such prohibition or control shall be submitted to the Legislative Yuan within one (1) month from the date of publication thereof for its ratification.

Article 6:

Under any of the following circumstances, the competent authority may temporarily suspend import from or export to specific countries or territories or export/import of specific commodities or take any other necessary measures:

- 1) when any act of God, incident, or war occurs;
- 2) when national security is endangered or protection of public safety is hindered;
- 3) when the domestic or international market suffers a serious shortage of a specific material or the price thereof drastically fluctuates;

- 4) when the trade with a counterpart trading country results in a long-time and huge trade deficit;
- 5) when any international treaty, agreement, or international cooperation calls for it;
- 6) when a foreign country impedes import from or export with measures violating international agreements or principle of fairness and reciprocity or exports goods to the extent causing additional burden and great loss to local industries in direct competition with such imports;

Application of items 1 through 4 or 6 of the preceding paragraph shall be limited only to circumstances when there is an adverse impact or a threat thereof upon the normal development of the economy and trade.

Before suspending export/import or taking any other necessary measures pursuant to item 4 or 6 of paragraph one above, the competent authority shall try to settle trade disputes through consultation or negotiation.

Suspension of export/import enforced or other necessary measures taken by the competent authority shall be lifted when causes therefor cease to exist.

The ratification requirement provided for in the preceding Article shall also be applicable for the purpose of this Article.

In addition, Article 28 of the Provisional Statute for Monopoly of Tobacco and Wine in Taiwan Province provides that import and export of wine and tobacco products have to be approved by the monopoly authority, i.e. TTWMB.

3. Currently, tobacco and alcohol products imported from Japan can only be sold at 19 TTWMB outlets and 126 designated distribution centers, according to the explanation given by Chinese Taipei.

What is the share, in terms of their numbers and sales, held by these stores among the overall stores which can sell tobacco and alcohol products? [WP4 Spec(94)17: Q.1.2]

Reply:

The share in terms of the store number is about 0.24% (TTWMB has about sixty thousand stores); in terms of their sales volume, the share is about 0.65% for imported cigarettes, 0.24% for imported whiskey, 11.98% for imported wine, and 99.99% for Japanese sake.

4 Japanese tobacco and alcohol products are subject to price control by the TTWMB. Please explain the price-setting mechanism. [WP4 Spec(94)17: Q.1.3]

Reply:

Under the statute granting monopoly rights to TTWMB, Japanese alcohol and tobacco products can be imported and distributed only by TTWMB and therefore the prices are set by TTWMB as a normal trader and distributor. The price-setting in the case of Japanese alcohol and tobacco products is not different from that for alcohol and tobacco products from other countries and imported by TTWMB for local distribution.

5. Chinese Taipei stated that it is assessing the possibility of lifting the ban on the imports of Japanese tobacco and alcohol products. What is the current situation of the assessment? What is the final objective of this assessment? [WP4 Spec(94)17: Q.1.4]

Reply:

Chinese Taipei has not finalized its decision yet.

6. The United States therefore requests that Chinese Taipei undertake the following actions with respect to taxation on imported wine and distilled spirits:

1) Eliminate the monopoly tax on imports of wine and distilled spirits immediately upon accession to GATT. A Three year "transition period" proposed by Chinese Taipei would not be appropriate given that the monopoly tax imposed in 1987 is itself a transition measure from an import ban to an open market. Chinese Taipei has already had six years in the case of beer and wine and 2 years for distilled spirits to adjust to an open market.

2) Replace the monopoly taxes with reasonable ad valorem import duties and reform internal taxes to ensure that they are applied equally to imported and domestic wine and spirits alike. Adopt zero duty levels for products included in the distilled spirits zero-for-zero Uruguay Round Agreement (this would include brandy). Tariff levels for wine should be no higher than 5 percent ad valorem, the average U.S. duty on wine imports.

3) Bind tariff rates on wine and distilled spirits at agreed upon levels.

4) Impose internal taxes on "traditional Chinese wine and spirits" at the same rate as taxes on other wine and spirits. Per Chinese Taipei's request that such spirits receive special treatment, we would call Chinese Taipei's attention to a 1987 GATT panel decision which ruled that all distilled spirits are alike and are to be taxed in an equivalent manner, in accordance with Article III. The panel specifically rejected the notion that "traditional spirits" are different and should receive preferential tax treatment. [WP4 Spec(94)19: Q.15]

Reply:

Chinese Taipei is currently working on the reform of its monopoly tax system and the administrative authority is required by the Legislative Yuan to submit a proposal by June 30, 1995. The current plan is to replace monopoly tax with normal tariffs and internal taxes. The tariffs will be subject to ceiling bindings and negotiated reduction commitments as most of other products, and internal taxes after the reform will be applied in a non-discriminatory manner.

Chinese Taipei welcomes suggestions from its trading partners on the reform of its monopoly tax system.

7. Concerning Counterfeit Distilled Spirits: Reply III-6-4 (USA 24)

We appreciate the response of Chinese Taipei concerning trade in counterfeit distilled spirits. We agree with Chinese Taipei that accurate statistics on the amount of trade in counterfeit and smuggled distilled spirits are difficult to obtain.

However, some estimates suggest that counterfeit and smuggled goods represent as much as fifty percent of the total Chinese Taipei market for imported spirits.

While Chinese Taipei does require a certificate of origin when applying for a relevant import permit, these certificates are often and easily forged.

My government would like to see this requirement strengthened so that only certificates of origin issued by the producer or by competent authorities in the country of export would be accepted.

Reply:

Chinese Taipei request the U.S. provide it with the basis of its estimate that counterfeit and smuggled goods represent as much as fifty percent of the total Chinese Taipei's market for imported spirits. The following are statistics of smuggled spirits seized by the authority in Chinese Taipei, and the estimated value thereof.

brand name	from	volume (# of bottles)	estimated value (NT\$10,000)*
1991 total		137,165	20,575
Hennessy	France	71,394	10,709
Martell	France	18,657	2,799
Rémy Martin	France	14,384	2,158
Otard	France	3,905	586
Chivas	U.K.	1,776	266
Gekkeikan	Japan	889	133
Camus	France	837	126
Johnnie Walker	U.K.	810	122
Royal 21	U.K.	578	87
Ozeki	Japan	133	20
Others	--	23,802	3,570
1992 total		156,972	23,546
Hennessy	France	66,019	9,903
Martell	France	47,341	7,115
Rémy Martin	France	13,896	2,084
Otard	France	3,536	530
Napoléon	France	3,321	498
Courvoisier	France	2,887	433
Camus	France	1,821	273

Johnine Walker	U.K.	879	132
Chivas	U.K.	839	126
Royal 21	U.K.	749	112
Others	--	15,594	2,339
1993 total		52,290	7,844
Hennessy	France	20,157	3,024
Martell	France	18,194	2,729
Remy Martin	France	6,761	1,014
Otard	France	2,321	348
Camus	U.K.	1,546	232
Chivas	Japan	596	89
Courvoister	France	258	39
Johnine Walker	U.K.	240	36
Royal 21	U.K.	169	25
Others	--	2,048	307

* The value of each bottle is estimated to be NT\$1,500.

Chinese Taipei is prepared to accept only the certificates of origin issued by the producers or the competent authorities of the exporting countries, if the exporting countries concerned confirm to Chinese Taipei that this is their desire and agree with Chinese Taipei on the format of such certificates.

6.2 Harbour construction dues

8. Chapter II-2(5): Other Charges and Fees

Has Chinese Taipei completed the review of the Harbour Construction Dues and is it now in a position to confirm that this tax will be abolished? [WP5 Spec(94)18: Q.3]

Reply:

Chinese Taipei has preliminarily determined to structure its Harbour Construction Dues as service fees, and is now investigating the extent to which the current system has to be adjusted in order to bring the relevant practice into conformity with the GATT. Chinese Taipei will need a transitional period for making such adjustment and is now assessing the length of time that may be required.

9. Has Chinese Taipei completed its examination of the GATT consistency of the Harbour Construction Dues? Can the delegation of Chinese Taipei respond to CP requests to explain how these charges are related to the cost of services rendered for processing specific exports?

The U.S. delegation expects that Chinese Taipei will report soon on its examination and then begin discussions in this Working Party as to how to bring it into conformity with the provisional of Article VIII. [WP4 Spec(94)19: Q.1]

Reply:

Chinese Taipei has preliminarily determined that the Harbour Construction Dues are service fees contemplated in Article VIII of the General Agreement and is now examining whether and to what extent the current system has to be changed in order to be consistent with Article VIII.

6.3 Business/Commodity Tax

10. Concerning application of the commodity tax:

We appreciate Chinese Taipei's responses to U.S. statements in this area, but they have not addressed the central issue of equal application of the tax.

There is a basic inequity of application of the tax on domestic and imported goods based on using the ex-factory value for domestic goods rather than a wholesale value, while using the duty-paid import value for imports.

In the first case, the ex-factory price excludes the cost of delivery and transfer of the goods to the wholesale level, while the c.i.f. duty-paid import value incorporates all transportation, insurance and other customs charges, in addition to the duty.

In addition, the incorporation of a 12 percent differential in the valuation of imports and domestic products based on the concept of promotional expenses cannot be unjustified.

The basis for the application of the tax to imports is artificially inflated by comparison to the base for domestic goods. Chinese Taipei should correct this inequity prior to accession. [WP4 Spec(94)19: Q.17]

Reply:

Chinese Taipei's commodity tax is a special excise tax. The determination of the tax base has taken into account the practices of other countries in relation to the various kinds of special excise tax. In the case of the domestically produced commodity, the tax base is the *ex factory* price of the commodity minus the commodity tax element contained in the price; in the case of imported products, the tax base is the import cost to the importer (i.e. the customs duty paying value plus import duties, and harbour construction dues.) This is the practice of many other countries. The bases for levying commodity tax in both cases are the same in light of the fact that commodity tax is an *ad valorem* tax.

In general, there are two ways to sell taxable commodities in Chinese Taipei: one is through a sole distributor, and the other is distribution without the use of a sole distributor. Commodity tax is an *ex factory* tax; therefore, it would not be appropriate to include promotional expenses into the tax base. If the sale is through a sole distributor, the manufacturer need not bear the promotional expense; if it is not through a sole distributor, the manufacturer need be allowed of the promotional expense. The current scheme in relation to promotional expense deduction allowed for the latter type of manufacturers is to equalize the tax bases for the two cases.

Under the current commodity tax scheme, commodities are broadly divided into seven categories and the number of the items are such that it would be overly complicated in practice to assess the promotional expense on an item by item basis. To simplify the levying procedure, the current fixed rate of 12% is arrived at by averaging.

For domestically produced goods to be entitled to the deduction for promotional expenses, their sales must not be through a sole distributor. Otherwise, the promotional expense may not be deducted. With respect to imported goods, the tax base is the import cost to the importer rather than the importer's own selling price; the promotional expense is not included in the tax base. Therefore, there is no question of discrimination in not allowing a deduction for promotional expenses for imported goods.

6.4 Statute for upgrading industries

6.5 Tax incentives

7. Investment Regulations

7.1 General policy

1. Chapter III-7 Foreign Investment Policy

In reply to Japan's question (Spec(93) 39) Chinese Taipei has indicated that the Investment Commission is now reviewing the relevant laws and regulations in the light of the investment laws of advanced countries and international bodies such as the GATT and the OECD. Could Chinese Taipei indicate what changes will be made to conform to TRIMs? [WP4 Spec(94)18: Q.11 a)]

Reply:

The main directions for future changes as a result of the review are as follows:

- 1) revising Article 5 of the Statute for Investment by Foreign Nationals (the "SIFN") regarding Negative List of businesses in which foreign investment is restricted in order to conform to the rules of the GATT/WTO and OECD;
- 2) revising Article 8 of the SIFN regarding investment approval procedure in order to fulfil the requirement of transparency; and
- 3) deleting Article 13 of the SIFN which limits the repatriation rights of foreign investors.

Chinese Taipei's foreign investment laws and regulations generally conform to the requirement of the Agreement on TRIMs with the only exception of the local content requirement for car and motorcycle manufacturers. Chinese Taipei plans to remove such inconsistency within a time-frame allowed for developing countries under the Agreement on TRIMs.

7.2 Local content requirements

2. In reply to Japan (Spec(93) 39) Chinese Taipei has indicated that local content requirements would be removed five years after Chinese Taipei's accession. How will Chinese Taipei be in a position to adhere to TRIMs if local content requirements remain for five years after Chinese Taipei's accession? [WP4 Spec(94)18: Q.11 b)]

Reply:

Chinese Taipei would appreciate the contracting parties' consideration of allowing Chinese Taipei to invoke the provision of the TRIMs which gives developing countries a phase-out period of five years.

8. Trade Laws

8.1 Fair Trade Law

8.2 Other trade laws and regulations

8.2.1 Foreign Trade Act

1. In its reply to question 3/13 para (c) from New Zealand (Spec(93)42), Chinese Taipei has indicated that the draft implementing regulations related to the Foreign Trade Act are into force in September. Are these new regulations now into force and if so, could copies of these regulations be made available to the Secretariat? [WP4 Spec(94)18: Q.add]

Reply:

The implementing regulation of the Foreign Trade Act has been in force since November 8, 1993, and is now being translated into English. As soon as the English translation is ready, it will be made available to the Secretariat.

2. Foreign Trade Act (Reply IV-1 to United States questions (Spec(93)45))

Article 6.4.:

What is the GATT basis for this provision? We believe that this provision constitutes a basis for taking unilateral actions based on the trade imbalance consideration. This is not justified by the GATT. Chinese Taipei should duly rectify this provision and bring it into conformity with the GATT provisions before its accession. [WP4 Spec(94)17: Q.2.1]

Reply:

The trade imbalance referred to in Article 6.4 of the Foreign Trade Act refers to global imbalance rather than imbalance with a specific trading partner. Chinese Taipei will apply this provision in a manner consistent with Article 15 of the GATT and the special exchange agreement that Chinese Taipei has preliminarily agreed to sign with the Contracting Parties.

3. Article 9 (Foreign Trade Act)

On what specific criteria does the BOFT permit the registration of a corporation which may engage in trade business? If a corporation meets the criteria, is registration automatically granted? Are there any other requirements which the corporation has to meet in order to engage in trade business? [WP4 Spec(94)17: Q.2.2]

Reply:

Any business entity that has capitalization of NT Dollars five million or more and includes import/export in its business scope as specified in its business license is qualified to apply for registration as a trader. The registration is automatically granted when the above mentioned criteria are met.

4. Article 13 (Foreign Trade Act)

What are the objectives of this article? Please specify the scope of the term "hi-tech commodities"? What is the GATT basis for this article? What is the relationship between this article and Article 6.2.? [WP4 Spec(94)17: Q.2.3]

Reply:

The purpose of Article 13 is to control the export of hi-tech commodities so as to ensure that hi-tech products imported or technologies transferred will not be re-exported or re-transferred to any countries that the original exporting or technology-transferring country finds objectionable. The Article also provides a basis for controlling export of Chinese Taipei's own high-tech products.

The hi-tech products that fall within the application of Article 13 are (i) those that are declared by the Ministry of Economic Affairs to be subject to hi-tech export control and (ii) those for which the original exporting countries require the issuance by Chinese Taipei of an international import certificate or other related documents ensuring control on re-export.

In Chinese Taipei's view, the export control on high-tech commodities as contemplated in Article 13 can be justified under the national security exception of the General Agreement.

5. Article 16 (Foreign Trade Act)

What are the objectives of this article? What is the GATT basis for this article? [WP4 Spec(94)17: Q.2.4]

Reply:

It is common for two trading partners to resolve their differences through consultations. If both parties agree to control import or export of a specific product as a way to resolve trade disputes, there should be domestic legal basis for the countries concerned to implement the agreement. The purpose of Article 16 is to provide for such domestic legal basis.

Despite Article XI of the General Agreement imposes limitation on the use of quantitative restrictions, this is not a rule without exception. For instance, the Multifiber Arrangement allows countries to impose quotas on imports of textile products. The exporting countries concerned would have to take corresponding measures to allocate quotas among their exporters. Moreover, it is also possible for a contracting party to be allowed of a transitional period to bring a specific practice in line with the requirements of the GATT. During the transition, there may be a need to impose quantitative restrictions in order to give the domestic industry concerned an opportunity to make adjustments. The purpose of Article 16 is to provide a domestic legal basis for exercising the necessary control over import or export.

6. Article 21 (Foreign Trade Act)

On which items is the trade promotion service fee imposed? Please provide specific examples. On what criteria do the Chinese Taipei authorities determine which items are to be imposed a trade promotion service fee? Is this fee imposed on all imports and exports without exception? Are there any items on which this fee is imposed at more than 0.05% of the price? What is the GATT basis for the imposition of this fee? [WP4 Spec(94)17: Q.2.5]

Reply:

The trade promotion fee is imposed on all imports and exports and is levied by the Customs. The fee is not to exceed 0.05% of the value of the imported or exported products. Imports or exports not for commercial purposes are not subject to the levy of such fee. Currently, the fee is levied at a level much lower than 0.05%. There is no instance in which the fee levied exceeds 0.05%. The proceeds of the fee are used to promote international trade, in the both directions of import and export. The fee is a service fee that falls within Article VIII of the General Agreement. Chinese Taipei would ensure that the cost of providing promotion services to importers and exporters in general approximate the amount of the fee levied.

7. Article 22 (Foreign Trade Act)

What are the objectives of this article? Please specify the scope of the "unfair trade barriers" and of "the competent authority"? On what criteria does "the competent authority" choose which exporters and/or importers are to be assisted in this article? Is this article applied to those foreign exporters who find "unfair trade barriers" in Chinese Taipei's? Specifically, what measures are to be taken to assist exporters/importers in this article and under what procedures? What is the GATT basis for this article? [WP4 Spec(94)17: Q.2.6]

Reply:

The competent authority for purposes of Article 22 is the Ministry of Economic Affairs. The unfair trade barriers are to be interpreted as any practices of foreign countries that are not justified under the GATT or other relevant international rules.

The article does not apply to foreign exporters who find unfair trade barriers in Chinese Taipei, as such issue should primarily be dealt with between the governments concerned.

The measures to be taken by Chinese Taipei to assist its traders are to hold consultations with the country concerned to find a mutually acceptable solution and, when justified by the GATT rules, to take retaliatory action.

The specific GATT basis for Article 22 is Articles XXII and XXIII of the GATT. Also, the GATT sets only minimum standards for trade practices; it does not prevent contracting parties from entering into bilateral consultations to further liberalize the world trade by removing unfair trade practices that are not specifically provided in the GATT.

8. Article 35 (Foreign Trade Act)

What are the objectives of this article? Can Chinese Taipei provides complete list of the business associations and the legal persons whose annual operating expenses are subsidized by more than half by the trade promotion fund? Could Chinese Taipei specify how many entities fall into these categories? [WP4 Spec(94)17: Q.2.7]

Reply:

The purpose of Article 35 is to make trade associations subject to the surveillance of the Ministry of Economic Affairs when they receive subsidies from the trade promotion fund to an extent that exceeds half of their operating expenses. The intention is to ensure that the money is well spent and not wasted in the inefficient operation of the trade associations.

There has been no trade association which receives subsidies from the trade promotion fund to an extent exceeding the threshold.

9. Concerning the response to the questions and statement in Reply II-3-(2)-3 of Spec(93)45:

Please elaborate on the limitation measures authorized by the Foreign Trade Act referred to in this response. [WP4 Spec(94)19: Q.3]

Reply:

Limitation measures referred to in Reply II-3-(2)-3 are:

- 1) limitation imposed on imports from countries referred to in Article 5 of the Act,
- 2) limitation on imports according to Article 6 of the Act,
- 3) limitation on imports imposed according to the proviso of Paragraph 1 of Article 11,
- 4) limitation on imports in the form of quotas imposed according to Article 16 of the Act, and
- 5) limitation imposed under the import relief scheme provided in Article 18 of the Act.

8.2.2 Regulations governing import of commodities

10. Regarding reply 20 in Spec(93)37

In their follow up questions on trade laws delegations sought to clarify whether treaties were self-executing under the law of Chinese Taipei.

In our view, the answer provided - that "an international treaty has the same validity as municipal law and in some cases is superior to municipal law" - raises more questions than it answers.

Australia therefore seeks clarification on this issue.

Can Chinese Taipei define specifically in which area do Chinese Taipei's treaty obligations take precedence over domestic laws? [WP4 Spec(94)16, Q.8]

Reply:

Treaties when ratified by the Legislative Yuan and promulgated by the President would have the same force and effect as domestic laws. In the case where treaty obligations conflict with domestic laws, the administration and the judiciary in practice tend to give precedence to treaty obligations, based on the general principle that special laws take precedence over general laws. In a letter dated July 27, 1931 of the Judicial Yuan, the highest judicial authority, to the then Ministry of Judicial Administration (with reference number 459), the Judicial Yuan holds the view that when there is a conflict between treaty obligation and domestic laws and the treaty concerned takes effect later than the domestic law, the treaty obligation shall take precedence. When the treaty obligations take effect before the domestic laws concerned, the case shall be submitted to the Council of Grand Justices for reconciliation, so that laws and treaties can be applied in a uniform manner. It should however be noted that the general practice and the Judicial Yuan's view have never been formally adopted to become a precedent having binding effects on future cases despite the fact that recently there have been some cases where the court's decisions support the Judicial Yuan's view.

11. In cases where treaty obligations and domestic law have "the same validity", what principles and mechanisms would be employed to resolve any conflict which might arise between the GATT and domestic law after accession? [WP4 Spec(94)16, Q.9]

Reply:

See supra Reply 10.

12. Does Chinese Taipei intend to introduce implementing legislation to eliminate inconsistencies between the GATT and domestic law? If so, in what area is legislative action necessary? [WP4 Spec(94)16, Q.10]

Reply:

Chinese Taipei is now conducting a survey on the extent to which domestic law has to be amended in order to reduce conflict between GATT obligation and domestic law. The issue also depends on the result of the accession negotiation.

13. Will Chinese Taipei introduce such implementing legislation to eliminate inconsistencies between the GATT and domestic law prior to its formal accession to the GATT in order to ensure it can meet the obligations contained in the GATT immediately on accession to eliminate inconsistencies between the GATT and domestic law? [WP4 Spec(94)16, Q.11]

Reply:

Chinese Taipei will make its best effort to meet its GATT obligations as specified in the protocol of accession, even though it can not have the legislative process completed prior to the accession.

9. Trade Related Aspects of Intellectual Property Rights (TRIPs)

10. Services

10.1 General

10.2 Financial services

1. Chapter III-5: Financial Policy

a) When does the Ministry of Finance expect to complete its review of quantitative restrictions on the establishment of foreign bank branches?

b) Chinese Taipei indicates that "the economic needs test" does not restrain multiple branching instead it provides an exemption to the multiple branching limitation. However, very few foreign banks have been able to obtain the exemption as a result of meeting the "economic needs test" criteria. Can Chinese Taipei indicate whether it will consider eliminating the economic needs test which would permit multiple branching?

c) What are the specific reciprocity provisions that must be met in order for a foreign bank to avoid being subject to the prior-business-activity requirement when applying for establishment of a branch?

d) While Canada welcomes the recent adjustment Chinese Taipei has made to the foreign liability limits as they apply to the foreign banks, limits on their overbought positions are much less favourable than is the case for the local banks. Will Chinese Taipei consider adopting national treatment in the determination of such overbought position limits?

e) If the revised guidelines for the screening and approval of the establishment of branch offices and representative offices by foreign banks retain restrictions on geographic location, would Chinese Taipei consider making the restrictions more flexible than is presently the case?

f) The ability of Canadian banks to effectively grow and compete in Chinese Taipei is hampered by current restrictions on private banking which prevent foreign banks from opening overseas accounts for Chinese Taipei customers in their branches outside Chinese Taipei. When does Chinese Taipei intend to modify or remove such restrictions?

g) The current deposit ceiling of 15 times branch capital for foreign bank branches established in Chinese Taipei is in our view discriminatory as it does not apply to the local banks. Will Chinese Taipei eliminate this restriction which impedes the competitive position of the foreign banks?

h) There is little incentive for Canadian insurers to enter Chinese Taipei's insurance market because of current limitations on foreign equity in joint ventures, and because of the necessity to use a U.S. subsidiary as a means of entry. When will these restrictions be completely eliminated?
[WP5 Spec(94)18: Q.10]

Reply:

a) The Bureau of the Monetary Affairs has completed most of its work in the review of the Guidelines for Screening Application for Establishing Branches or Representative Offices by Foreign Banks. After the completion of the review, the result will be submitted to the Ministry of Finance and the Executive Yuan for approval.

b) The economic needs test has been used by the banking authority as a way to provide exception to the limitation on the number of branches a foreign bank may establish in Chinese Taipei. The test has been loosely applied in individual cases. There are currently three foreign banks that have been permitted to establish three or more branches in Chinese Taipei.

c) The banking authority does not set specific criteria for the application of the specific reciprocity provision. Foreign banking authorities, if indicating to the banking authority of Chinese Taipei that they have approved or will approve the establishment of branches or other types of presence by Chinese Taipei's banks, may recommend their banks to Chinese Taipei's banking authority which will approve the application without being subject to the prior-business-activity requirement.

d) Chinese Taipei considers its current practice consistent with the principle of national treatment. The foreign liability limit is intended to ensure that foreign exchange risks assumed by banks are maintained at a reasonable level. In the case of overbought position, there are only two limits, i.e. U.S. Dollars 50,000,000 and 20,000,000 respectively, depending on the foreign exchange business volume of each of the banks. Currently, the five banks with the largest business volumes, i.e. Bank of Taiwan, The International Commercial Bank of China, Hua Nan Commercial Bank, First Commercial Bank and Chang Hua Commercial Bank, are subject to the higher limit, i.e. U.S. Dollars 50,000,000. The rest of the domestic banks (23 banks) and 37 foreign banks are all subject to the lower limit.

The average overbought position of the three Canadian banks having branch operation in Chinese Taipei accounts for 3.02% of their average business volume; whereas in the case of the five large domestic banks, the ratio is only 0.18%. The following is a table showing the business volume of the three Canadian banks and the five largest domestic banks.

FX Business Volume and Overbought Position
January - December 1993

Unit: USD Million

Bank	FX Business Volume (1)	Overbought Position (2)	Ratio (2)/(1) %
Bank of Taiwan	24,440	50	0.20
The International Commercial Bank of China	26,850	50	0.19
Chang Hua Commercial Bank	26,176	50	0.19
First Commercial Bank	28,758	50	0.17
Hua Nan Commercial Bank	33,457	50	0.15
<i>Average of the above five domestic banks</i>	<i>27,936</i>	<i>50</i>	<i>0.18</i>
Toronto-Dominion Bank	601	20	3.33
Royal Bank of Canada	1,203	20	1.66
Bank of Nova Scotia	183	20	10.93
<i>Average of the above three Canadian banks</i>	<i>662</i>	<i>20</i>	<i>3.02</i>

e) The banking authority has been employing the economic needs test to exercise flexibility in relaxing the restriction on geographic location.

f) Chinese Taipei does not prohibit its residents from opening accounts abroad in person. The banking licenses granted to foreign banks are to permit the banks' local branches operating business in Chinese Taipei, and do not extend to the banks' branches outside the territory of Chinese Taipei. Moreover, in order to protect the depositors and for tax consideration, local establishments of foreign banks may not assist offshore institutions in the raising of funds and/or other related activities, e.g. facilitate the opening of offshore accounts. This restriction will be maintained.

g) The statistics for the most recent four quarters (from the first quarter of 1993 to the fourth quarter of 1993) show that the highest ratio of NT Dollar deposits to branch capital among the four Canadian banks operating in Chinese Taipei is only 2.2. The average ratio for all foreign banks in Chinese Taipei is less than 7.5. Therefore, the ceiling of 15 times should not adversely affect the competitiveness of Canadian banks doing business in Chinese Taipei. In order to ensure stable operation and protect depositors, this ceiling restriction will be maintained.

h) Liberalization and internationalization of the insurance market has been the firm policy of Chinese Taipei. The Ministry of Finance has prepared a draft regulation which will set criteria for establishment of local presence by foreign insurers and make rules governing the operation of foreign insurers in Chinese Taipei. Once the regulation is finalized and promulgated, foreign insurers, not limited to U.S. insurers, will be permitted to set up branches in Chinese Taipei. Chinese Taipei is assessing whether to reduce or remove the current limitation on foreign equity in joint ventures.

10.3 Telecommunications

2. Concerning Reply III-17-1:

My government appreciates Chinese Taipei's responses to questions concerning Telecommunications liberalization. These responses raised a number of additional questions.

Does the DGT define "Category II" services as value-added network services? [WP4 Spec(94)19: Q.28-1]

Reply:

According to the draft amendment to the Telecommunications Act, Category I is defined as installation of telecommunications machinery, wire and equipment and provision of telecommunications services. Category II is defined as using the services of Category I to provide value-added telecommunications services by using additional software or hardware. The distinction between Category I and Category II is whether there is any value added; therefore, value-added network services are only a part of Category II.

3. As decisions we sending, we hope that this definition includes but is not limited to the following value-added services?

- 1) cellular and paging services
- 2) protocol conversion services
- 3) e-mail
- 4) voice mail, voice store-and-forward
- 5) store-and-forward facsimile
- 6) point-of-sale transactions
- 7) credit card verification
- 8) electronic data interchange (EDI)
- 9) data base access
- 10) home shopping and banking [WP4 Spec(94)19: Q.28-2]

Reply:

According to the current Regulation Governing Value-Added Telecommunications Network Business, telecommunications network services that local governments, public or private bodies, or citizens of Chinese Taipei can provide are:

- 1) information storage and retrieval service,
- 2) information processing service,
- 3) word processing and editing service,
- 4) remote transaction service,
- 5) voice storage and transmission service,
- 6) electronic mail,
- 7) electronic data interchange, and
- 8) bulletin board service.

4. What mechanisms will the DGT use to review the category II service market to define new services as category II services? [WP4 Spec(94)19: Q.28-3]

Reply

According to the draft amendment to the Telecommunications Act, the business items and scopes of Category I and Category II are to be proposed by the DGT, and then approved and promulgated by the Ministry of Transportation and Communications; they are to be reviewed every six months in the light of the market needs and technological development.

5. Will the directorate General of Telecommunications (DGT) accept requests from category II service providers to define new services as category II services? [WP4 Spec(94)19: Q.28-4]

Reply:

The draft Telecommunications Law is pending at the Legislative Yuan, whether the Legislative Yuan will make any change of the definition of category II service is not subject to the DGT's control. When the draft is passed by the Legislative Yuan and the DGT is required to define new services as Category II services according to the Law, the DGT will take into consideration suggestions made by the service providers. However, it should be noted that the DGT's decision at that stage has to be subject to the general principles set out in the Law in relation to the definition of category II services.

6. Does the draft telecommunications law stipulate that foreign ownership of category II service providers be limited to one-third? [WP4 Spec(94)19: Q.28-5]

Reply:

The draft amendment to the Telecommunications Act does not limit the extent of foreign ownership of Category II service providers.

7. How quickly does the DGT intend to implement the new foreign ownership regulations after the Legislative Yuan passes the draft telecommunications law. [WP4 Spec(94)19: Q.28-6]

Reply:

The draft amendment to the Telecommunications Act in its Article 13 provides that the license will be granted within two years after the amendment takes effect for international value-added services, and within four years for domestic value-added services.

8. What information will category II service providers have to submit to obtain a category II service license? [WP4 Spec(94)19: Q.28-7]

Reply:

To apply for a license, the applicant has to submit an application together with a business plan and supporting documents required. In the application, the following information shall be provided: (1) the applicant's name and address (in the case where the applicant is a company, the name of its representative and principal place of business shall be provided), (2) business items, (3) the geographical area where the applicant intends to operate business, (4) type of communications, and (5) general description of its telecommunications equipment.

Foreign service providers intending to operate Category II business in Chinese Taipei are further subject to the following requirements: (1) its providing services will transfer software/hardware hi-tech into Chinese Taipei, and (2) the foreign providers' home countries also provide the same right to citizens of Chinese Taipei.

9. What types of regulations will ensure that the Chinese Taipei Telecommunications Company (CTC) will not be able to leverage its monopoly position in the Category I service market to put its competitors in the Category II service market at an unfair advantage? [WP4 Spec(94)19: Q.28-8]

Reply:

According to the draft amendment to the Telecommunications Act, CTC shall separate its accounts for Category I and Category II operations, and may not have cross-subsidy between the two.

10. What measures will ensure that category II service providers have equal access to the CTC's public network and to information the CTC transfers between its category I service operations and its category II service operations? [WP4 Spec(94)19: Q.28-9]

Reply:

According to the draft amendment to the Telecommunications Act, CTC shall operate its business in an entrepreneurial manner, and shall provide its services on fair and reasonable terms and conditions. Also, CTC is required to generate as much use of its services as possible.

11. What accounting safeguards will the DGT require of the CTC to ensure that the CTC does not cross-subsidize its category II service operations with the monopoly revenues from its category I service operations? [WP4 Spec(94)19: Q.28-10]

Reply:

Please refer to supra Reply 9.

12. How does Chinese Taipei distinguish between healthy and desirable competition and so-called "cut throat" competition? [WP4 Spec(94)19: Q.28-11]

Reply:

Healthy and desirable competition means competition that would lead to lower prices and better services while there is no misallocation or waste of resources. Cut-throat competition means competition that leads to the destruction of the competitors and causes long-term misallocation and waste of resources.

13. Concerning Reply III-17-2:

Please provide English translations of the DGT's key points for its type approval testing of customer premises equipment. (This document is referred to as the "Key Points for Testing Process" in reply III-17-2. [WP4 Spec(94)19: Q.29-1])

Reply:

The English translations of the DGT's key points for its type approval testing of customer premises equipment will be available in July this year.

14. How does Chinese Taipei define "technical competency" in its current selection of digital cellular network equipment manufacturers?

Reply:

Technical competency is defined on an case-by-case basis in selecting digital cellular network equipment manufacturers by public tendering. For instance, in determining the qualification of U.S. bidders in the acquisition of digital cellular network, technical competency is defined as: " the bidders shall be those manufacturers and system integrating enterprises who can provide complete, detailed laboratory design documents, on-site testing report and records forming the basis of the report, and past sales records and performance, in order to prove their abilities to provide equipments with the capacity required by the DGT." However, the qualification requirements may be different in other cases.