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WORKING PARTY ON THE ACCESSION OF CHINESE TAIPEI

Questions and Replies

JAPAN

The representative of Chinese Taipei has submitted the replies reproduced hereunder to the questions submitted by Japan, for circulation to members of the Working Party on the Accession of Chinese Taipei. This text and the earlier documentation reproduced in documents L/7189/Rev.1 and L/7097 and Addenda will be considered at the meeting of the Working Party scheduled to take place on 12-15 October 1993.

1. Business tax

- Concerning Reply 320, why are imported passenger cars treated differently from other goods in the imposition of the business tax?
- Why is the business tax imposed not just on the amount of taxable value proscribed by the customs import tariff but on the total amount of taxable value proscribed by the customs import tariff, harbour construction dues and commodity tax, if any?

Reply 1

- The fact that business tax for some imported goods, including passenger cars, is levied at the time of importation and not at a later stage of sale is only a result of tax-levying expediency, not a scheme to differentiate imported goods from domestic ones.

The business tax system of Chinese Taipei, like that of many other contracting parties, is a value-added tax system, which will tax the various values added in goods at each transaction stage. In other words, when one product is turned over from the wholesaler, to the seller, and from the seller to the customer, each person, at each transaction stage, is only liable for the business tax on the value he adds into the product. At each transaction stage, a seller pays business tax (i.e. the input tax) for his purchase and collects the business tax (i.e. the output tax), from his buyer. Through this offset mechanism, he only needs to pay the difference between the input tax and output tax to the government.

Almost all countries using VAT levy such tax upon imported goods at the time of importation, but Chinese Taipei generally does not do so. In countries where VAT is levied on imports at the time of importation, the importer can deduct the up-front paid input tax from the output tax he collects from his buyer when he sells the product.

In this instance, the tax burden is actually split into two parts: one is at the importation stage, and the other is at the stage when value is added to the product. Although Chinese Taipei simplifies the procedure by levying the business tax (VAT) on sales by VAT taxable importers (excluding importers of passenger cars) at a later stage, the tax burden on these importers is the same as that in other countries using the VAT system. This is because Chinese Taipei merely levies the business tax (VAT) once on both the imported value and the value added by the importer together rather than separately.

Although to tax the business VAT for imported goods at a later sale stage does simplify the levying procedure, there are some loopholes where the tax authority may not possibly levy the business tax (VAT) unless it levies at the time of importation. For example, the passenger cars imported for self-use, or the goods imported by the financial service industry. Therefore, imported passenger cars as well as the goods imported by the financial service industry are taxed with VAT at the time of importation. The reason not to differentiate the levying measure for the passenger cars imported for self-use and those imported for sale is because the importer can always deduct his input tax, which is paid at the importation, from the output tax, which he has collected from his customers upon later sale, if he sells cars as his business.

It was not anticipated that some imported goods still need be taxed VAT at the time of importation when Chinese Taipei simplified the levying procedure by taxing most of the imported goods at the sale stage instead of the importation stage. Therefore, while reviewing our own VAT system, Chinese Taipei is also studying the possibility to follow the practice of countries using VAT, which tax all imported goods at the time of importation.

It is a common practice among almost all countries using VAT to calculate VAT on the total value of domestic goods and imported goods, including custom duties, harbour construction dues, and commodity tax, if any. In other words, if the goods are subject to commodity tax, the commodity tax forms part of the tax base for the business tax (VAT) whether the goods are imported or domestically produced. Therefore, there is no discrimination against imported goods. Furthermore, VAT taxable business entities can deduct the input tax from the output tax, and eventually only be taxed on the value they add to the goods. If the retail prices of imported goods and domestic goods are the same, their business tax burden is also the same. There is no double-counting or "tax on tax" problem.

The business VAT for domestic goods and imported goods are both levied upon their sales amounts, which include all the value added. If there is commodity tax, the commodity tax certainly shall be the added value of the goods and counted as the tax base for the business VAT no matter how the goods are imported or domestically produced. Therefore, there is no discrimination against imported goods. Furthermore, the business importer can deduct the input tax from the output tax, and eventually only be taxed for the value he added to the goods; so there is no double-counting or "tax on tax" problem.

2. Inward investment

It is stated in Reply 341 that all investment applications which meet the requirements set forth in the Statute for Foreign Investment and Commission. What is meant by "normally"? Is there any case where investment applications are not "normally" approved?

Reply 2

"Normally" means any investment application which fulfils the requirements set forth in the Statute for Investment by Foreign Nationals in respect of the investor's qualification, investment type, investment method and type of capital contribution and is submitted to the authority according to the prescribed procedure will be granted approval. If the documentation is incomplete or inaccurate, the application would be turned down. There have been very few cases where application is turned down by the authority.

3. Foreign investment

- Concerning Reply 343, please specify the meaning of the statement that "the Investment Commission is considering making appropriate changes to foreign investment laws and regulations as Chinese Taipei's development needs change".

Reply 3

In order to improve the investment environment and continue to bring in foreign investment to facilitate the upgrading of industries and technologies, 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 OECD. It has been Chinese Taipei's firm policy to encourage inflow of foreign investment and continue to liberalize and internationalize its economy.

4. Local content requirements

- Concerning Reply 344, we believe that the local content requirements are GATT-inconsistent and cannot be justified by national treatment. What is the view of Chinese Taipei on this?

Reply 4

The local content requirement will be removed five years after Chinese Taipei's accession to the GATT.

5. Six-Year National Development Plan

- Regarding Reply 350, how does Chinese Taipei intend to realize the opening of "extensive new procurement opportunities to trading partners" under the Six-Year National Development Plan? Please provide a detailed picture on this.

Reply 5

Under the Six-Year National Development Plan, the construction or expansion of the telecommunication equipment, power plants, steel mills, petro-chemical equipment, anti-pollution equipment, high-speed transit system, incinerators, rolling stock, highways, high speed railways, and airports have been under way or under planning. Many foreign firms have participated in the process and it is anticipated that more foreign firms will be invited in the above projects.

6. General rules on government procurement

- What is the basis for the distinction between open tenders, restricted tenders and

negotiation? Under what conditions and criteria is open tender used?

- It is stated that "only local parties, including foreign company's agents may participate in the open tender..."(page 168). Please specify the requirements to be an "agent"? Can a foreign company participate in the open tender without its agent? If not, why not?
- Is a foreign company invited to use restricted tenders in restricted tenders? How can a foreign company have access to information on restricted tenders?
- Is notice of restricted tenders and negotiations published?

Reply 6

- As to open tenders, restricted tenders and negotiation, please refer to Follow-up Reply 2 in the response of June 1993 to the questions of the United States and Sections J and L of Follow-up Reply XXIII in the response of June 1993 to the questions of Canada.
- The quote referred to in the question in fact is a requirement on domestic tenders. In other words, the whole sentence shall read as follows: "[in the case of domestic tenders], only local parties, including foreign company's agents may participate in the open tender and must submit their bids in New Taiwan dollars". The reason to restrict domestic tenders to local parties is because the payment of the contract proceeds cannot be made until the procurement entity receives the Uniform Invoice from the supplier, and a supplier cannot have the Uniform Invoice until it has registered business operation with the relevant authority of Chinese Taipei. Foreign suppliers are not qualified to issue Uniform Invoices and accordingly cannot participate in the domestic open tenders. The "agents" of a foreign company refer to the foreign company's distributors which enter into agency agreements with the foreign company and according to the law have establishments in Chinese Taipei as well as business licences and uniform invoices.
- A foreign company may still be invited to participate in restricted tenders. However, since restricted tenders are not required to give public notices, foreign suppliers can only get access to information by contacting directly with the procurement entities or contacting the procurement entities through their agents.
- Currently, restricted tenders and negotiations in Chinese Taipei are not required to be published.

7. State enterprises

- Reply 370 indicates that Chinese Taipei will gradually nullify the State enterprises' monopoly rights. Please specify the plan.
- Please provide the reasons why the Taiwan Sugar Corporation monopolizes the import and export of sugar. What impact does this monopoly have on the domestic production of sugar?
- Concerning Reply 371, please explain the relationship between the Taiwan Fertilizer company's monopolization of liquid ammonia and "general agricultural policy"? What are the reasons for monopolization of liquid ammonia?

- Reply 376 lists fifteen different State and provincial enterprises engaging in international trade. Do all of these fifteen enterprises fall within the scope of the State-trading enterprises of Article 17 of the GATT? If not, why not?
- Reply 383 confirms Chinese Taipei's intention to notify all the State-trading enterprises and to report on their activities as required by Article 17. Please provide an exhaustive list of the State-trading enterprises to be notified to the GATT under Article 17.

Reply 7

- The monopoly rights of State enterprises will be gradually nullified, depending on the condition of each of the industries concerned, as the economy of Chinese Taipei further develops.
- Sugar production has been one of the most important parts of Chinese Taipei's agricultural economy. Taiwan Sugar Corporation has the responsibility to support farmers growing sugar cane and maintain the order of the sugar market. In recent years, domestic production of cane sugar has been substantially reduced; in case of need, the Taiwan Sugar Corporation would import sugar to stabilize the local sugar market. The monopoly right of Taiwan Sugar Corporation has helped stabilize sugar-cane growers' income and prevented drastic fluctuation in domestic sugar production. At this time, Chinese Taipei does not think it appropriate to nullify the company's monopoly.
- Liquid ammonia is an important raw material of fertilizers. As agriculture still plays an important rôle in Chinese Taipei's economy, there is a need to ensure stable supply of ammonia. Currently, liquid ammonium for disposal of waste acid gas can be freely imported; while ammonia for other purposes is still subject to Taiwan Fertilizer Company's monopoly.
- The ten State enterprises under the auspice of the Ministry of Economic Affairs, in Chinese Taipei's view, fall within the definition of State enterprises provided in Article XVII of the GATT. The five provincial enterprises are not State enterprises that would fall within the meaning of the term under Article XVII. Among the five provincial enterprises, only the Taiwan Tobacco and Wine Monopoly Bureau has nominal monopoly on imports of wine and cigarette products, while the rest of them do not enjoy any import/export monopoly right. Even in the case of TTWMB, private importers can now also import wine and cigarette products under the name of TTWMB. This is to reconcile the current law which gives TTWMB the monopoly rights in importing wine and cigarette products and the need to liberalize the import. TTWMB would give private importers the consent letters required for them to import wine and cigarette products as a matter of course. Therefore, although TTWMB has the legal monopoly right, in actuality it does not exercise such rights. Chinese Taipei therefore is not prepared to treat TTWMB as one that is covered by Article XVII of the GATT.
- The State enterprises to be notified to the GATT for the purpose of Article XVII are the ten State enterprises that are under the auspice of the Ministry of Economic Affairs, which are as follows:
 1. Taiwan Power Company;
 2. Chinese Petroleum Corporation;
 3. Taiwan Sugar Corporation;

4. Taiwan Fertilizer Company;
5. China Steel Corporation;
6. China Shipbuilding Corporation;
7. Taiwan Machinery Manufacturing Corporation;
8. BES Engineering Corporation;
9. China Petrochemical Development Corporation; and
10. Taiwan Salt Works.

8. Intellectual property rights protection

- When is the bilateral copyright agreement with the United States expected to come into force?
- Does Chinese Taipei plan to have any other agreements on copyright protection than the one with the United States? If any, please explain the contents of such agreements.
- When is the Patent Law to come into force? What about the Trademark Law, the Integrated Circuit Layout Protection Law and the Industrial Design Law?
- Please outline the new policy against the infringement of copyrights.
- Concerning Reply 405, does Chinese Taipei have any policy to protect foreign-owned copyrighted programmes from being transmitted without authorization? If any, please outline such policy.

Reply 8

- The bilateral agreement with the United States was formally signed on 16 July 1993 and according to Article 21 of the Agreement, it takes effect from the signing date.
- Chinese Taipei welcomes any opportunity of entering into bilateral agreements with countries other than the United States. According to Article 4 of the Copyright Law, the reciprocity required for granting protection to foreign copyrights can be established by way of (1) treaty or agreement, (2) unilateral action by other countries through their laws, regulation, or other legal instruments which provide protection to Chinese Taipei's copyrights, or (3) practices.

Chinese Taipei is willing to discuss with interested parties to find a mutually accepted way to establish such reciprocity. Except the bilateral agreement with the United States, Chinese Taipei has established reciprocity with the United Kingdom and Hong Kong through unilateral legislative action. To establish reciprocal copyright protection, the consultation with the trading partners concerned always takes time. There are currently several discussions underway, but they are all at the preliminary stage and have not resulted in concrete results that Chinese Taipei can report here.

- The draft amendments to the Patent Law and the Trademark Law are pending at the Legislative Yuan and the legislative process is scheduled to be completed by the end of 1993.

The draft frameworks for the Integrate Circuit Layout Protection Law and the Industrial Design Law have now been completed; the draft laws are scheduled to be forwarded

to the Legislative Yuan by the end of 1994.

- The Action Plan to Comprehensively Protect Intellectual Property Rights approved by the Executive Yuan on 29 June 1993 has set out the following eight directions for efforts to strengthen protection of intellectual properties:

1. Improving the relevant legal framework;
2. strengthening the relevant administrative organization;
3. enhancing enforcement of the relevant laws and regulations;
4. increasing education and promotion;
5. increasing the capability in negotiating with other countries;
6. strengthening investigation and research capability;
7. providing adjustment assistance to the industries; and
8. monitoring the implementation of the plan.

In addition, Chinese Taipei has decided to establish the Intellectual Property Bureau whose responsibility is exclusively for dealing with intellectual property matters.

- According to Article 4 of the Copyright Law, copyrights (including programmes transmitted through satellites) of countries or territories which have established reciprocity with Chinese Taipei are protected by Chinese Taipei. Protection also extended to foreign works published for the first time in the territory of Chinese Taipei, or foreign works which are published in Chinese Taipei within thirty days of their first publication in territories outside of Chinese Taipei.

9. Science and technology policy

- concerning Reply 422, please explain the specific measures taken to support "new and promising industries"?

Reply 9

The steps taken to support the industries are as follows:

- (1) The relevant authority of Chinese Taipei would first determine the generic technologies to be developed for the relevant industries (including new industries). The decision is made by a group of specialists from the government, the industry and academic institutions.
- (2) The Executive Yuan and the Legislative Yuan would then review and approve the budget required.
- (3) The Ministry of Economic Affairs contracts with non-profit research institutions for carrying out the research project.
- (4) Private companies may participate in the project from the beginning in order to jointly develop the technologies, or after the completion of the project they may obtain the technologies at the market price.
- (5) Private companies may also contract with the non-profit research institutions at the market price to meet its specific R & D needs.
- (6) If the private companies have the capacity to self-develop the required technologies, the authority

will assist them in acquiring the necessary financing or other assistance.

10. Telecommunication policy

- When is the Telecommunications Act to come into force?
- Concerning Reply 425, does Chinese Taipei intend to open the "Category I" market to foreign companies? If not, why not?
- Reply 426 provides two conditions that foreign-owned companies should fulfil in order to provide value-added services. Are there any other conditions than these two? If a foreign-owned company fulfils these two conditions, will that company be automatically allowed to provide value-added services?

Reply 10

- The draft amendment to the Telecommunications Law is now pending at the Legislative Yuan which would commence its session after the summer recess in September. It is difficult at this time to predict the time when the amendment will be passed and come into force.
- According to the draft amendment to the Telecommunications Law, telecommunications business is divided into Category I and Category II business. Category I business is the basic telecommunication business which is of extreme importance to the general public and is to be operated by the government as a public service. Chinese Taipei's current plan is to have such business monopolized by a State-owned enterprise and no foreign participation will be permitted.
- For foreign business to operate the Category II services (VAN service) in Chinese Taipei, its investment has to meet the requirements of reciprocity and technology transfer, and specially approved by the Ministry of Transportation and Communications. In conjunction with the amendment to the Telecommunications Law in this respect, the telecommunications authority is now preparing two implementing rules: the Rules for Approving Foreign Nationals/Entities Operating Category II Telecommunications Services in Chinese Taipei, and the "Rules Governing the Category II Telecommunications Services Operation".

11. Other services

- Please outline Chinese Taipei's deregulation policy on services for air transportation.
- Please outline Chinese Taipei's deregulation policy on services for domestic freight forwarding and road transport services.

Reply 11

Air transportation

- Because the shortage of supply in the air transportation services, Chinese Taipei in 1987 relaxed the relevant restriction and allowed more airline companies to enter the market. As a result, (i) the number of international liners of Chinese Taipei registration increased from one to three; and there are two other air-line companies permitted to

operate international chartered flights, (ii) the number of airline companies operating domestic freights increased from four to eight, (iii) the number of international passengers increased from 5.67 million in 1987 to 12.11 million in 1992, and (iv) the number of domestic passengers increased from 3.5 million in 1987 to 7.19 million in 1992.

The deregulation applies only to domestic companies organized as companies limited by shares. Foreign participation in such companies may not exceed one third of the shareholding. Foreign airline companies may operate international flights only when their home countries have entered into bilateral arrangements with Chinese Taipei.

Road Transport

Land transportation at present is not open for investment by foreign parties. However, Chinese Taipei recognizes the need to lift restrictions and is in the process of amending the Highway Law to allow inland trucking operation related to intermodal transport. The proposed amendment has been forwarded to the Legislative Yuan. When the legislative process is completed, a foreign party may file application to establish and operate trucking business related to import/export sea container transport, provided that its home country grants reciprocal treatment to operators of Chinese Taipei.

The following is the relevant part of the draft:

Draft Amendment to the Highway Law as approved by the Legislative Yuan at the First Reading

Article 35

Non-Chinese Taipei national or legal entities may not invest in or operate motor vehicle transportation business within the territory of the Chinese Taipei.

On condition that the government of a foreign carrier permits a Chinese Taipei shipping carrier to transport its own containers with its own vehicles within the territory of such foreign country, a foreign shipping carrier which has established a branch office in the Chinese Taipei with a Foreign Carrier Branch Office Licence issued by the MOTC may apply to the MOTC through the Highway Authority-in-Charge for approval to operate container trucking business. Upon approval of its application, the foreign carrier may, with its own vehicles, transport shipping containers contracted by itself. The provisions in the preceding paragraph shall not apply to such foreign shipping carrier.

A foreign shipping carrier which has established a branch office in the Chinese Taipei and has been granted an approval to operate container trucking business in accordance with the preceding paragraph, shall not commence its business operation until it has completed the change of company recognition, change of branch office registration, business enterprise registration and has obtained a motor vehicle transportation business licence. The foreign carrier shall abide by Chinese Taipei Laws and Regulations governing the administration of such business. The profit and loss of the land transportation and the profit and loss of the shipping operation shall be calculated separately. Mutual subsidy between the land transportation and the shipping operation shall not be permitted. The business scope shall be limited to trucking of containers contracted by the carrier itself for import and export. It shall not include containers contracted by others for shipping by the carrier's vessels.

12. Other issues

- How does Chinese Taipei intend to review the area restrictions on imports of tobacco and alcohol products? When are the area restrictions expected to cease to exist?

Reply 12

Chinese Taipei intends to review the area restrictions on imports of tobacco and alcohol products in light of its overall trading conditions with the countries concerned. It will also take into account the views of its trading partners and the relevant GATT rules. Currently there is no timetable set for the lifting of the said area restrictions.