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ON TARIFFS AND TRADE

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WORKING PARTY ON THE ACCESSION OF CHINESE TAIPEI

Questions and Replies

UNITED STATES

The representative of Chinese Taipei has submitted the replies reproduced hereunder to the questions submitted by the United States, 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.

CHAPTER II: THE FOREIGN TRADE REGIME

1. The tariff system

Question II-1-1

Follow-up Reply 4 (United States questions)

Concerning the explanation in Reply 4 to the United States questions, dealing with "average effective duty rate" calculations:

We wish to note that the average duty rate of 11.9 per cent given for agricultural products and 4.64 per cent for non-agricultural imports does not constitute an accurate representation of Chinese Taipei's level of market access for such products. There is a downward bias in the calculation, based on the inclusion of duty-free and duty draw-back trade in the trade-weighted basis for the calculation. More significantly, the nominal rate assigned to certain products is rarely, if ever used due to quantitative import bans which are relatively common in the agricultural import regime.

Approximately what percentage of the total value of imported goods, as determined by the trade statistics of Chinese Taipei's Customs Bureau, fall into the categories of drawback and duty free? Could we have a figure on the average duty rate for dutiable items only?

Reply II-1-1

Chinese Taipei's average nominal duty rate is arrived at by dividing the total of tariff rates with the number of tariff items. This is consistent with the simple averaging method used by many countries. With respect to the average effective rate, it is arrived at by dividing the total of the duties collected with the total value of imported products. Duty-free and duty-drawback trade is not excluded for the following reasons:

1. Duty-drawback trade

For imported raw materials that are eligible for duty-drawback, it is difficult to know at the time of importation the extent to which such raw materials will be used in the manufacturing of export products. Therefore, when compiling import statistics, it is not possible to exclude that part of the raw materials that will be actually used in the manufacturing of export product after importation. Furthermore, the current duty-drawback practice does not compile statistics of import value related to the drawback amount. Therefore, it is not possible to exclude duty-drawback trade in the calculation of average effective rate.

2. Duty-free trade

Duty-free trade in the case of Chinese Taipei covers not only those zero-rate items but also the transactions described in Reply 45 of document L/7189/Rev.1. The current statistics does not separate import value of duty-free items from dutiable items. Therefore, it is difficult to exclude duty-free items from the calculation of average effective rate.

Duty-free items have positive effect on trade liberalization and its exclusion from trade statistics may make the relevant statistics unable to reflect the actual duty burden of the import as a whole.

If members of the Working Party think that it would be a meaningful exercise, Chinese Taipei would appreciate their assistance in resolving the statistical difficulties that Chinese Taipei encounters in excluding the duty-free and duty-drawback trade from its trade statistics.

Question II-1-2

Reply 6 (United States questions)

Chinese Taipei states in its response to this question that it does not intend to bind its entire tariff schedule, but only those tariffs that have been specifically requested, and that the "offer" to bind tariffs excludes its intent to apply Uruguay Round tariffication provisions to certain import restrictions currently in place, and the conversion of the current monopoly tax system.

We believe these exclusions from the concept of comprehensive tariff bindings are inappropriate. Chinese Taipei should expect to bind its entire tariff schedule and should anticipate the elimination of GATT-inconsistent import barriers currently in place.

Reply II-1-2

Chinese Taipei has taken note of the United States delegation's comments.

2. The customs system

(1) Valuation

(3) Unfair trade laws

(4) Customs procedure

(5) Other charges and fees

(6) Export processing zones (EPZs)

3. The import licensing system

(1) General description

(2) Non-automatic licensing

Question II-3-(2)-1

In follow-up Reply No. 17 to United States questions from the April Working Party meeting, Chinese Taipei indicates that import bans and quantitative restrictions are necessary to allow for gradual reduction of the farm population and to protect relatively inefficient agricultural production as farm size and structure improves.

This justification is at odds with the fact that agriculture provides only 3 per cent of total GDP, and with the probability that continued absolute protection of certain agricultural markets in Chinese Taipei will penalize consumers in order to perpetuate the current system.

Chinese Taipei should indicate its willingness to bring its non-tariff measures in this sector into conformity with the General Agreement and to negotiate a schedule for compliance agreeable to all interested parties.

Reply II-3-(2)-1

Although agriculture provides 3.67 per cent of the total GDP, the agricultural population accounts for 20.46 per cent of the total. With the ageing of the farm population, 46.6 per cent of those employed in the agricultural sector exceeds the age of fifty, and, therefore, labour mobility is low and industry restructuring is difficult.

The Government of Chinese Taipei in recent years has endeavoured to assist farmers to transfer to other sectors. However, because of the small farm size and structure, such restructure is difficult and requires time to get results.

Agriculture has been a common problem to most trading nations; it is not simply an economic concern but also involves high political sensitivity. High guarantee prices, import quotas, variable levies, tariff quotas, and export subsidies are commonly employed by contracting parties to protect their domestic farmers. The level of Chinese Taipei's agricultural protection is still lower than many other countries.

Question II-3-(2)-2

Chinese Taipei indicates in the response to several interventions that it intends to apply Uruguay Round tariffication principles in replacing current import licensing restrictions in the area of agricultural products.

While we appreciate Chinese Taipei's willingness to address contracting party concerns and to alter its current import licensing system to bring it into conformity with the General Agreement, we wish to indicate for the record that application of Uruguay Round tariffication to GATT-inconsistent quantitative restrictions and import bans is not necessarily an acceptable GATT accession approach.

We wish to see establishment of a date by which such restrictions will be eliminated and replaced by bound tariff levels negotiated with interested GATT contracting parties.

We believe this is consistent with Chinese Taipei's level of development, and will provide the necessary flexibility to address contracting party concerns while providing adequate time for domestic interests to adjust to the new, GATT-consistent régime.

The issue of providing for the reduction and removal of these barriers within a GATT framework must be addressed prior to, not after, accession. Indications of future GATT conformity are welcome as an indication of Chinese Taipei's commitment to GATT principles, but cannot be a substitute for an established agreed framework for implementation in the protocol.

Reply II-3-(2)-2

Chinese Taipei appreciates the comments made by the United States delegation and would give serious thoughts to them.

Question II-3-(2)-3

Concerning follow-up Reply 14 (United States questions):

The response appears to indicate that BOFT will retain great discretion in the selection of imports for restrictive licensing, since there will be no formalities to the decision to apply such restrictions. There is no indication that consistency with the General Agreement is part of the decision-making process.

Could the delegation of Chinese Taipei please elaborate on how BOFT and the relevant agencies will select the tariff items to be covered by the licensing system and what criteria will be used? What specific GATT Articles will Chinese Taipei cite to defend such restrictions if they are not eliminated in the context of accession to the General Agreement?

Is Chinese Taipei prepared to commit to the administration of this system in conformity with GATT provisions, and to eliminate the restrictions that cannot be justified as consistent with GATT provisions prior to GATT accession?

Reply II-3-(2)-3

There are different reasons for commodities to be included in the Negative List. Some commodities are included in order to preserve public morals, to ensure national or social security, to protect human life or health, or to conserve the environment, as the General Agreement permits. Others are included to assist industry restructure or to implement the limitation measures authorized by the Foreign Trade Act, which will be carried out in a GATT-consistent manner.

For the restrictions that cannot be justified as consistent with GATT provisions, i.e., the restrictions designated for agricultural and industrial protection, the elimination or modification will depend upon the outcome of the accession negotiation and the commitment Chinese Taipei makes during such process.

Question II-3-(2)-4

Concerning the reply in L/7189 to question No. 117:

The Customs Tariff and Classification of Import and Export Commodities indicates that an import license is required for imports of recovered paper (HS#4707.10-4707.90). The import licence must be obtained through the Chinese Taipei Paper Industry Association. It appears that this import

licensing requirement for paper is being used to limit imports of recovered paper. Domestic mills have been required to report the percentage of imports versus domestic paper purchases to public entities and the Paper Association. It has also been reported that imports of recovered paper are restricted to only direct users (i.e., to mills).

Under what circumstances are import licences denied for imports of recovered paper? Under what circumstances are they currently allowed?

Why has the authority to issue imports licences been given to the industry association which represents domestic paper companies?

Will the licensing requirement for recovered paper be removed when Chinese Taipei implements a Negative List system? Will import licences for other paper and paperboard products be removed? If not, how will Chinese Taipei justify the retention of such licenses?

Reply II-3-(2)-4

It has to be clarified that the Chinese Taipei Paper Industry Association plays a very limited and passive rôle in the import licence issuing process for recovered paper (waste and scrap paper). Although it has the function to co-ordinate the purchase of the recovered paper (waste and scrap paper) in the territory of Chinese Taipei, its co-ordination is never a factor considered by the licensing units. The import licence issuers are the designated licensing banks. There has never been any authority given to the Association for issuance of import licences.

Furthermore, the import licensing requirement for recovered paper (waste and scrap paper) has never been designated to limit imports of recovered paper (waste and scrap paper). This can be easily perceived from the licence type - automatic licensing, which has no restrictive effect.

The reason to require import licences for recovered paper (waste and scrap paper) is because the National Police Administration thought that if there were no monitoring of the recovered paper (waste and scrap paper) imports, the gun or contraband smugglers might employ the imported recovered paper (waste and scrap paper) to cover their smuggling activities. In order to avoid such an administration loophole, but not to affect the operation of the legal importers too much, it is required that every importer of recovered paper (waste and scrap paper) file with the Paper Association an affidavit stating that it would not smuggle gun or engage in any illegal conducts. The Paper Association then submits such affidavits to the National Police Administration. With the consent letters issued by the National Police Administration, every recovered paper (waste and scrap paper) importer, not limited to paper mills, can obtain the import license directly from the designated licensing banks.

In the negative list, which will be implemented soon, the licensing requirement for recovered paper (waste and scrap paper) will likely be removed because most automatic licensing items will become subject to no licensing in the Negative List system and also because such licensing may not be a very appropriate way in carrying out the function the National Police Administration wanted to achieve. Based on the same consideration, import licences for other paper and paperboard products will be removed as well in the Negative List. However, the Environment Protection Authority and the Legislative Yuan of Chinese Taipei have paid attention to the pollution caused by large recovered paper (waste and scrap paper) imports and the high costs born by local people in cleaning such pollution. The related measures to recovered paper (waste and scrap paper) may be under consideration.

Question II-3-(2)-5

Concerning follow-up Reply 15 (United States questions):

Would Chinese Taipei please specify the legislative provisions that it considers to be inconsistent with the Licensing Code?

How long a transition does Chinese Taipei contemplate will be necessary to bring its licensing practices, and the relevant legislation, its conformity with the provisions of the GATT Licensing Code?

Since Chinese Taipei has confirmed its intent to adopt the Licensing Code at the time of its accession to the GATT, Chinese Taipei should begin immediately to alter its administrative practices and change those aspects of its legislation that are not consistent with the provisions of the Licensing Code.

Reply II-3-(2)-5

Chinese Taipei has started reviewing its law and regulation in order to identify the provisions that may need to be amended under the new negative list system. For example, for conditional import items under the Negative List, the conditions for importation shall be clearly specified in law and regulation. If there is no authority for limitation or prohibition of import, the importation shall be free from licensing requirement unless relevant law and regulation are amended. On the other hand, if there is authority limiting or prohibiting imports, the importation cannot be liberated unless relevant law and regulation are amended. No matter under what circumstances the law and regulation require amendment, it is the same that the amendment process takes time. Accordingly although the new import licensing system, i.e. a negative list system, designated to meet the transparency requirement of the Licensing Code can be implemented in the second half of this year, a transitional period to complete the amendment of relevant law and regulation is still required. Since Chinese Taipei has not finished reviewing its law and regulation, it is not easy to estimate the transitional period. The preliminary estimate, which may not be accurate, is about three years.

(3) Automatic licensing

Question II-3-(3)

Can the follow-up Reply to the United States question 19 be understood to indicate:

(1) that the licences currently obtained from authorized banks are all "automatic" licences;

(2) that some items currently on the "automatic licence" list will become subject to quantitative restriction or import ban under the "negative list" system to be implemented; and

(3) that there will be a category of import items subject to the "negative list" that are only there to "keep updated import statistics, before the Customs administration if adequately equipped to perform such functions?"

Reply II-3-(3)

The above understanding basically is right. However, Chinese Taipei would like to emphasize that the reason for some items currently subject to automatic licensing to be subject to quantitative restrictions or import bans under the future "negative list" is not because Chinese Taipei would like

to put more import restrictions. As a matter of fact, with the implementation of the negative list, Chinese Taipei not only commits to make its import regulation system more transparent, but also endeavours to eliminate import restriction as much as it can. The adjustment for some current automatic licensing items to be among the conditional import items under the new system is to cure the non-transparency of the current import licensing system. For some categorization mistakes, some restricted items, such as wildlife under CITES, and CFC as well as Halon products under Montreal Protocol are currently put in the automatic licensing column despite the fact that their importation is subject to restrictions. Therefore, the negative list re-categorizes these items and puts them under quantitative restrictions. In other words, such adjustment at most makes the categorization of import licensing meet the real situation of import regulation, and does not add any new restrictions.

(4) Permit application procedures

(5) Future directions

4. The export licensing system

5. The labelling system for imported products

Question II-5

Chinese Taipei's follow-up Reply 21 to United States questions is not fully responsive to the question, and we would appreciate a more detailed response. Specifically, in what fashion is the treatment of imported goods not identical to the treatment accorded to domestic products with respect to commodity labelling requirements. We would appreciate knowing what is meant by "essentially the same" in this context.

Reply II-5

In order to protect local consumers, Commodity Labelling Law requires that imported goods shall be labelled with the names and addresses of the importers, otherwise, the treatment of imported goods are the same as that of domestic products. As this additional requirement is reflection of the difference in nature between imported and domestic goods, it does not affect the equivalency of treatment between imported products and domestic products. Chinese Taipei believes that its practice in this area is consistent with Article III of the GATT.

6. Standards, inspection and quarantine

Question II-6-1

In responses to questions 203-232, Chinese Taipei provided information concerning policies regarding sanitary and phytosanitary measures, including quarantine and inspection provisions. Does Chinese Taipei have a transparent rule-making system regarding these measures? Are sanitary and phytosanitary measures based on sound scientific evidence? Is Chinese Taipei prepared to accept the sanitary and phytosanitary measures of other countries which may differ from its own but which offer equivalent levels of health protection?

Reply II-6-1

Chinese Taipei does have a transparent rule-making system regarding sanitary and phytosanitary measures.

Chinese Taipei believes that such measures are based on sound scientific principle and evidence, but would appreciate the United States delegation's further clarification of the meaning of "scientific evidence."

Chinese Taipei is prepared to deal with measures of other countries which differ from its own but achieve appropriate levels of sanitary and phytosanitary protection, and would, at the request of interested parties, evaluate scientifically the sanitary and phytosanitary measures of other countries to find a reasonable solution.

Question II-6-2

30 June 1993 Third Working Party Meeting

The laws and regulations governing standards, quarantine and food safety on agricultural products are under review by technical experts within relevant Government agencies in the United States and we will be submitting written comments and clarification questions to Chinese Taipei. However, we wish to reiterate our position taken during the April Working Party meeting:

The United States believes that Chinese Taipei should commit, in the application of all laws, rules, or regulations governing the import and quarantine of food and agricultural products, to base all measures on sound scientific principles. We hold that such measures should not be applied in an arbitrary manner or otherwise unjustifiably discriminate against imports or in a manner which would constitute a disguised restriction on international trade. The information contained in the documents received by Chinese Taipei is being reviewed by United States technical agencies with these principles in mind.

Reply II-6-2

Chinese Taipei appreciates the comments of the United States delegation made herein.

7. Trade agreements

CHAPTER III. OTHER POLICIES AFFECTING FOREIGN TRADE

1. Industrial policy

Question III-1-1

In response question No. 49 raised by the Canadian Delegation in the responses circulated yesterday concerning domestic industries or sectors which may require protection, Chinese Taipei responded:

There may be GATT inconsistent legislation that cannot be identified in such preliminary review [of relevant laws and regulations]. Discovery of such legislation may require consultation with trading partners...in respect of the specific legislation found by them to be GATT inconsistent.

We do not understand the connection. Canada asked for a list of industries or sectors that Chinese Taipei considered sensitive. The response appears to imply that the delegation of Chinese Taipei believes current practices in these areas to be GATT-inconsistent and is asking the contracting parties to guess as to which aspects need change.

Transparency requirements of GATT Article X and in the procedures of Article XXXIII presuppose that Chinese Taipei would respond to the original question.

Moreover, we believe that Chinese Taipei should be willing to discuss frankly with GATT contracting parties its legislation which may be inconsistent with GATT regulations.

We assume that Chinese Taipei is in the process of conducting a more detailed review of its legislation to determine its GATT consistency; it should not be waiting for contracting parties to "discover" such legislation.

We seek an unambiguous commitment from Chinese Taipei that it will operate its laws and regulations in conformity with GATT provisions after its accession to the GATT, whether or not GATT-inconsistent provisions are subsequently "discovered".

Reply III-1-1

Chinese Taipei regrets that the United States delegation misunderstands its intention in making the quoted statement. What is meant by the statement is that Chinese Taipei, because of its past absence from the GATT, may not fully understand the operation and rules of the GATT so as to ensure a thorough review, especially the initial review of the GATT consistency was conducted within a rather limited time. The statement is made to provide for the situation where one or more existing contracting parties may have a different view from that of Chinese Taipei in the assessment of the GATT-consistency of a particular law or regulation. It is intended to be an expression of Chinese Taipei's willingness to review the issue with such contracting parties; and if the law or regulation is later found by members of the Working Party or a GATT Panel to be GATT inconsistent, Chinese Taipei is prepared to make appropriate correction within an acceptable time-frame.

Take the harbour construction dues for instance, Chinese Taipei was not aware of its possible GATT-inconsistency until the issue was raised by some of the contracting parties. Chinese Taipei, after being advised of the views of such contracting parties, has conducted a review of its related practices and consult GATT Secretariat to determine its GATT-consistency. Chinese Taipei has indicated on several occasions that if the practices are ultimately determined to be GATT-inconsistent, it will make appropriate adjustment within an acceptable time-frame.

Chinese Taipei wishes to emphasize that it is always its intention to discuss frankly with contracting parties its legislation which may be inconsistent with the GATT rules.

Question III-1-2

Concerning the response to question 8 in L/7189 concerning public sector involvement in the industrial restructuring of Chinese Taipei:

It is stated (in the Statute for Upgrading Industries) that technology acquired as a result of publicly financed R & D will be provided directly to private firms at a "reasonable price". How does Chinese Taipei define a "reasonable price" in this regard. Are there any restrictions on the access to this technology by firms invested in Chinese Taipei?

Could the Chinese Taipei delegation specify which areas currently, and are anticipated in future to qualify under the "Statute for Upgrading Industries" as "important enterprises or projects relating to industrial upgrading or improvement of industrial structure?"

What specific programmes have been put into place to support efforts of private firms to create "internationally renowned brands and images?"

Reply III-1-2

The provision of publicly financed R and D to private firms is dealt with in Article 22 of the Statute for Upgrading Industries which provides that "in order to introduce or transfer advanced technology from abroad, technical assistance organizations ... shall provide technical assistance as required". The Rules for Providing Technical Assistance to Industries is now in place and enclosed herewith (Annex I). The reasonable price for technology transfer is determined by taking into account market value, development cost and marketability of the concerned technology, and through negotiation between the provider and recipient of the technology. The price is determined on a case-by-case basis and there is no set formula for its determination.

Any company or institution which is organized in Chinese Taipei according to the relevant laws has access to the technology provided by the Government-financed R and D unit. For transfer of the technology to parties outside of Chinese Taipei, prior approval of the Ministry of Economic Affairs is required.

"Important enterprises or project relating to industrial upgrading or improvement of industrial structure" refer to companies or projects that are within the scope of ten promising industries and eight key technologies as specified in the Six-Year National Development Plan. The industries and technologies concerned are listed in the Section on Science and Technology Policy of document L/7097, paragraph 33.

The participation of the development fund in the investment of a particular project is usually through development banks. Therefore, investment which falls within the ten promising industries or eight key technologies has to be assessed by the banks on a case-by-case basis. The banks would invest on commercial terms in projects that may yield good investment returns.

Chinese Taipei provides tax incentives to support efforts of private firms to create "internationally renowned brands and images". Under the tax incentive programme, any company established in the form of a company limited by shares according to the Company Law of Chinese Taipei which has expenditures for establishing internationally renowned brand and image exceeding NT$3 million in a tax year is entitled to a tax credit of 5 per cent of the tax payable. Any company with such expenditure exceeding NT$5 million in a tax year and uses the symbol of "Excellence" authorized by the Ministry of Economic Affairs is entitled to a tax credit in the amount of 10 per cent of the tax payable.

Question III-1-3

Concerning the Statute for Upgrading Industries:

Article 21 (2) states that "financial facilities" will be provided important enterprises or plans which are relating to industrial upgrading..."

Under what terms can private firm access such financial assistance?

What is the total NT$ value of the "development fund"?

Reply III-1-3

According to Article 21(2) of the Statute for Upgrading Industries, the terms and conditions for the development fund to provide financing facilities to private firms are the same as that of the

development banks which the development fund works with in providing such facilities. As mentioned previously, the development banks would assess the feasibility and investment return of a particular plan and grant facilities based on commercial considerations. The development fund is a revolving fund; its net worth is approximately NT$5.5 billion at the end of July 1993.

Question III-1-4

Concerning the follow-up Reply 3 of the Korean questions, Chinese Taipei indicated that, for its civil aircraft industry, "Although Chinese Taipei presently does not have any measures to assist the aerospace industry in a way inconsistent with GATT provisions, in the future, there may be needs for measures that are not strictly in accordance with the provisions of GATT. Therefore a transitional period is required in this regard."

We believe this statement is unfortunate in two respects. First, we are concerned that current offset practices have negative implications for GATT-consistency. But we are even more concerned that Chinese Taipei is contemplating additional measures for the future that will violate GATT provisions.

We believe that this is inappropriate, and that Chinese Taipei should endeavour to avoid measures for its civil aircraft industry that are not in conformity with GATT agreements and provisions.

Reply III-1-4

Currently, Chinese Taipei's industry does not have the capability to assemble commercial aircraft, and there are only three or four local private companies that have passed the quality certification for certain, not many, components and parts. At this development stage of the aerospace industry, Chinese Taipei is an importer of technologies; it needs to import technologies and to establish sales network through co-operation with manufacturers in more advanced countries in order to narrow down the gap between its industry and that of advanced countries. Offsets at this stage are a policy significant instrument for the establishment of the aerospace industry. This is the main reason why Chinese Taipei hesitates to accede to the Civil Aircraft Code.

In the future, Chinese Taipei's offset programme will be carried out in a transparent, fair and just manner, in order to meet the expectation of the trading partners who are concerned about the development of Chinese Taipei's aerospace industry.

Question III-1-5

Regarding the responses in L/7189 to questions No. 252-255 and to follow-up Reply 1 to the United States questions concerning Chinese Taipei's Policy on trade in Civil Aircraft and the requirement for offsets in this trade:

The GATT Agreement on Trade in Civil Aircraft has been signed by all major large aircraft and aircraft component manufacturing nations in the GATT. The 1992 bilateral agreement between the United States Government and the EC/Airbus Governments is intended to serve as the basis for improving the existing agreement.

The United States Government-EC/Airbus Government bilateral specifically prohibits Government offset demands or similar forms of trade distortive inducements. The Agreement emphasizes that procurement and supplier decisions should be made on the basis of commercial and technical considerations without bias between the signatories.

Many firms for both the United States and the EC have been active in the establishment of

partnerships and joint ventures with Taiwan. These developments are not consistent with the characterization of an industry "in its infancy", since Chinese Taipei will be involved in production with industry leaders.

Chinese Taipei's reluctance to adhere to the Agreement on Trade in Civil Aircraft leads us to question its full commitment to the principles of the GATT. Moreover, failure to join will inevitably raise the question for the United States and the EC whether investment in Chinese Taipei would cause indirect violations of their GATT agreements.

In order to avoid the probable confrontations and concerns over the emerging rôle of Chinese Taipei in the international aerospace industry, Chinese Taipei should agree to sign on to the GATT Agreement on Trade in Civil Aircraft.

Reply III-1-5

In addition to the reasons set forth in Reply III-1-4 herein, accession to the Civil Aircraft Code is not mandatary under the GATT; rather, it is at the option of the contracting parties. Nor does the draft MTO document make the accession mandatary. Chinese Taipei's aerospace industry is not matured enough to benefit from the accession to the Code. Chinese Taipei's aerospace industry is not matured enough to benefit from the accession to the Code. Currently, there are only three or four local companies that have passed the quality certification for some parts. In light of the technology and capital-intensive nature of the aerospace industry and current market conditions, even if local companies form joint ventures with foreign partners, they are still not likely to achieve the degree of maturity comparable to that of their foreign partners in the short run.

Question III-1-6

Concerning the response to question 256 in L/7189:

With as much detail as possible, please indicate what projects under the Six-Year Plan will require industrial co-operation programmes (ICP's).

Will Chinese Taipei impose industrial co-operation programmes on domestic as well as foreign firms bidding on major projects?

Reply III-1-6

The projects under the Six-Year Plan which require industrial co-operation programmes (ICP's) include the High Speed Railway, the Metropolitan Rapid Transit System, Tai Railway's Electric Connected Locomotive, National Defence Procurement, Incinerators, and Nuclear Power Plants.

If a project is required to be accompanied by an ICP, the requirement applies no matter whether the bidders are foreign or domestic firms.

2. Agricultural policy

Question III-2-1

Concerning follow-up Reply 18 to the United States questions tabled at the April Working Party meeting and the opening statement of the Chinese Taipei delegation:

We find these statements somewhat contradictory on the issue of agricultural policy after

accession to the GATT. Chinese Taipei has indicated that it is prepared to bring its trade regime into conformity with GATT obligations, but has also indicated that it wishes to maintain import bans and quotas for certain agricultural products after accession.

We would appreciate clarification from the delegation of Chinese Taipei on how these positions can be reconciled. Does Chinese Taipei intend by this response to indicate that it seeks exclusions or waivers of certain agricultural products or sectors from the application of the General Agreement in the context of its accession? If so, what form does Chinese Taipei intend that these exclusions take? Which products would be affected? Why does Chinese Taipei feel that such exclusions are justified?

We are opposed to exclusions or waivers for Chinese Taipei in the agriculture sector. We do not believe such exclusions can be reconciled with existing GATT rules, let alone those being prepared for the GATT post-Uruguay Round.

Such exclusions should not even be necessary, given recourse to normal GATT provisions for temporary safeguards and in light of the opportunity presented by the accession negotiations themselves to address these issues.

We do not favour an accession protocol for Chinese Taipei that would include such provisions, particularly in light of the near-term conclusion of the Uruguay Round agreement that would eliminate such waivers that exist for other contracting parties.

Reply III-2-1

Chinese Taipei has taken note of the United States delegation's position.

Question III-2-2

Concerning follow-up reply 25:

Chinese Taipei indicates that its policies on substitution and disposal of surplus stocks have resulted in a substantial reduction of rice production. Recently, however, there has been an increase in the support price to producers and increased public purchasing of rice which would appear to reverse the progress noted in this response.

We remain concerned, as noted in earlier interventions, that Chinese Taipei needs to address the problem of over-production and export disposal of agricultural surpluses through subsidized exports. How does this recent development be reconciled with the statement in Reply 25?

Is Chinese Taipei willing to commit formally in the context of its GATT accession that it will not support excess production or its export for disposition of any surplus?

Reply III-2-2

Over the last five years, the price index relative to farmers' expenditure (in the category of finance and wage) has increased by 50.2 per cent, while the price for guaranteed purchase for rice had not been adjusted. The relative low level of farmers' income has caused serious concern of the Legislative Yuan.

In April this year, the agricultural authority's refusal to increase the guaranteed purchase and its price has twice resulted in the Legislative Yuan's suspension of its review of the agricultural budget. This has forced the authority to agree to the increase of purchase of rice by 20 per cent.

Despite the authority's decision to increase purchase by 20 per cent, it continues to carry out its crop-substitution plan. With the implementation of the plan to gradually reduce rice production, excess production will be reduced and the need for disposal of such excess through export will accordingly be reduced.

Chinese Taipei's goal is to gradually reduce excess production and avoid disposal of surplus through exports, and this is consistent with the general expectation of its trading partners. It is prepared to commit that it will continue to implement its policy to reduce rice production and strengthen its efforts in this regard.

4. Foreign exchange policy

5. Financial policy

(1) Money and banking and (2) Securities

(3) Insurance

Question III-5-(3)-1

Concerning the response to question No. 310 in L/7189, the required offering of cessions to the Central Reinsurance Company (CRC) is clearly not a sign of a liberal insurance market. Does Chinese Taipei have any plans to liberalize this requirement?

Reply III-5-(3)-1

Chinese Taipei intends to privatize the Central Reinsurance Company by gradually increasing participation of private insurance companies in the Central Reinsurance Company. Chinese Taipei has in several occasions indicated its intention to liberalize its insurance market according to the negotiation result of the Uruguay Round and in addition to plans that have been drawn up to open the insurance market to foreign insurers other than United States insurers, further plans to liberalize the sector will be established when the Uruguay Round produces a more concrete result for Chinese Taipei to follow.

Question III-5-(3)-2

The response to question 312 states that several public insurance programmes (e.g. "Civil Servants' Insurance", "Labourers' Insurance", and "Farmers' Insurance") which are administered by authorities, are social insurance rather than commercial insurance.

My Government is not convinced that these programmes should be categorized as "social insurance" simply because they are administered by the authorities and not open to commercial insurers. Please provide information on these programmes and their purposes.

Reply III-5-(3)-2

There are currently thirteen different types of social insurance programmes. Among them, labour insurance, civil servants' insurance, insurance for employees of private schools, insurance for civil service retirees, farmers' health insurance, and health insurance for councilmen at different government levels of the Taiwan Province and local council directors of the Taiwan Province are integrated insurance programmes covering cash payment and medical expenditure payment, and the remaining seven insurance programmes (medical care for civil servants' family members, medical care

for civil service retirees, medical care for spouses of civil service retirees, medical care for retirees from private schools, medical care for spouses of retirees from private schools, medical care for family members of employees of private schools, health insurance for low income families) are health insurance programmes.

The purpose of the labour insurance programme is to provide protection to labours and increase social security. The purpose of the farmers' health insurance programme is to provide health care to farmers, increase farmers' welfare, and maintain stability in the farm area. The purpose of other insurance programmes (i.e. public insurance programmes) is to improve the welfare of civil servants and employees of private schools.

Labour insurance is mandatory for employers which are companies with more than five employees. Eligible farmers may participate in the farmers' health programme through local co-operatives. Employees of and retirees from Government entities and private schools, as well as their family members may participate in the public insurance programmes through their employers. Civil servants' insurance and insurance for employees of private schools are compulsory; insurance for retirees and family members are optional.

The above insurance programmes are categorized as social insurance, not simply because they are administered by the authorities. They are categorized as such because the programmes are part of the Government's social welfare programme. The programmes have been in existence for a long time and general public favours the Government being the provider of such insurance services. Over the last twenty years, the Government has established several other types of health insurance programme. It is planned that by 1994, the Government will establish a national health programme.

The second reason for the Government to be the provider of the social insurance programme is that it is the most cost-saving way of providing such insurance service. This is supported by the experience of other countries in their administration of health insurance. In the case of Canada, the administrative cost of the Government in providing the relevant insurance service accounts for 2.28 per cent of the payment made to hospitals and physicians in 1985, and in the case of Chinese Taipei the administrative cost accounts for 2.65 per cent of total benefit payment in 1991; whereas in the case of the United States where the relevant insurance services are provided by private insurance companies, the administrative cost accounts for 11.7 per cent of the total benefit payment by private insurers in 1987.

The third reason for the Government's provision of social insurance is to redistribute income among different sectors and ensure a fairer distribution of income. Those that are financially weaker would be better assured of the access to the insurance services, when the provider is the Government.

Question III-5-(3)-3

In the response to question 313 in L/7189, Chinese Taipei indicates that foreign nationals may own land if the home country allows Chinese Taipei people to own land.

My Government's understanding is that Chinese Taipei's Land Law strictly prohibits foreign persons from owning real estate except for that limited to direct business use. Please provide further clarification on this point, especially as it regards portfolio investment by insurance companies and by branches of foreign insurers.

Reply III-5-(3)-3

As regards whether foreign nationals may obtain title to land or create interest on land, Article 18

of the Land Law, based on the principle of reciprocity, provides as follows:

Foreign nationals who may obtain title to land or create interest on land in the Chinese Taipei shall be limited to those from countries in which people of Chinese Taipei may enjoy similar rights pursuant to treaties or the laws of such countries.

With respect to the purposes for which they may lease or purchase land, Article 19 of the same law, as required by the national situation, provides as follows:

"Foreign nationals may lease or purchase land for any one of the following purposes. The area and location of such land shall be subject to the restrictions prescribed according to law by the city or county Government having jurisdiction over such land.

1. Residences.
2. Shops and factories.
3. Churches.
4. Hospitals.
5. Schools for children of foreign nationals.
6. Embassies, consulates and meeting places of public welfare groups.
7. Cemeteries".

Question III-5-(3)-4

In the response to question No. 319 (2), Chinese Taipei states that foreign insurers can engage in the business of reinsurance with the same treatment accorded to domestic insurance companies.

This appears to contradict a previous response which spells out the special status and treatment accorded to the Central Reinsurance Company. Please explain how foreign firms are accorded equal treatment in the area of reinsurance given the rôle of the Central Reinsurance Company.

Reply III-5-(3)-4

Chinese Taipei intends to liberalize its insurance market according to the negotiation result of the Uruguay Round. When foreign insurance companies are permitted to engage in reinsurance business, they would be accorded the same treatment as domestic companies.

6. Fiscal policy

Question III-6-1

Replies No. 89, 323, and 324 of L/7189:

These replies are not fully helpful in assisting us to better understand the relative incidence of the monopoly tax on imports and domestic goods.

We do not understand how the ad valorem taxation of net profits of the Monopoly Bureau for domestic goods can be considered equivalent to a specific tax on imported goods.

For example, are monopoly taxes on domestic products entirely dependent on changes in revenue and operating expenses of TTWMB? If TTWMB's revenues increase significantly, will the domestic monopoly tax rise or fall? What is the effect on the tax if operating expenses increase?

Our information indicates that the last time TTWMB raised prices for domestically produced cigarettes was in 1980. Is this correct? Have operating expenses for the production of cigarettes and revenues from the sale of cigarettes increased or decreased over this period?

These questions are illustrative of the problem we have in assessing the credibility of the assertion that the system is GATT consistent. The information provided by Chinese Taipei up to this point simply fails to support the contention that the current system for applying monopoly taxes is consistent with Article III of the General Agreement.

Based on the best available information, we have reason to believe that the monopoly tax for imported wine, cigarettes and distilled spirits is significantly higher than the effective tax assessed on similar domestic products.

Reply III-6-1

According to Article 33 of the Provisional Statute for Monopoly of Tobacco and Wine in Taiwan Province, the prices for domestically produced wine and tobacco products are determined by operating expenses (i.e. costs) plus monopoly tax. The monopoly tax rate, in practice, varies with the changes in the prices and/or costs of the TTWMB. According to the statistics of the most recent ten years, the costs of TTWMB have been maintained at 35 per cent of its prices. Despite, there have been changes in TTWMB's prices and costs, the monopoly rate on average, is still maintained at the level above 60 per cent to its prices and above 150 per cent to its costs respectively for the following reasons:

1. Because of the increase of the consumption following the increase of GNP, the unit fixed cost is reduced;

2. although the Monopoly Bureau has been successful in lowering its costs by improving its production method and equipment, the increases in wages and other costs have offset in the price increases;

3. the prices for new products are determined on the basis of monopoly tax being 185 per cent, which is the target set by the Government.

When the monopoly tax system is abolished, normal tax and duty will apply in place of monopoly tax; such tax and duty will be applied in a manner consistent with Article 3 of the Government Agreement.

Question III-6-2

Article XVII of the General Text requires contracting parties to supply information on State trading enterprises which are considered to adversely affect the interests of other contracting parties. In order to satisfy the requirements stated in Articles III and XVII, Chinese Taipei is requested to provide the following detailed information:

the methodology (including costs and revenue figures) which is used by TTWMB to determine the monopoly tax rates for domestic wine, cigarettes and distilled spirits.

a list of the individual taxes applied to imports, the rates of those taxes, and the value basis of application for each.

- a description in detail of the method used to determine that imported spirits and wine products are subject to a monopoly tax rate of "approximately 120 per cent of the import price." Please provide the figures (e.g. average import prices) used in this calculation.

- a description in detail of the method used to determine that domestic tobacco, spirits and wine products are subject to a monopoly tax rate of "approximately 185 per cent of the cost."

Reply III-6-2

Please refer to response to Question III-6-1 for methodology used by TTWMB to determine the tax rates for domestic wine, cigarettes and distilled spirits.

Comparison of Monopoly Tax Burden between Domestic and Imported Products of Tobacco, Wine and Spirits

Items	Imported Products		Domestic Products
	Monopoly Tax (Specific basic)	Average tax burden to cost (ad valorem basic) Fiscal Year 1992	Average tax burden to cost (ad valorem basic) Fiscal Year 1992
Cigarettes	NT$ 830/1000 sticks	(Marlbore and Parliament) 122%	(long-life) 171.15%
Beer	30/litre	163%	168.10%
Wine	119/litre	105%	131.90%
Scotch and Irish whisky	440/litre	64%	319.82%
Other whisky	198/litre	169%	
Cognac and Armagnac brandy	1,000/litre	71%	137.36%
Other brandies	500/litre	208%	
Rum, gin vodka and other non-oriental spirits	225/litre	214%	147.86%

The monopoly tax for imported spirits was first determined at the time Chinese Taipei announced the lifting of ban on import of foreign spirits in 1991, by converting the ad valorem rate of 185 per cent for domestic products to specific tax amounts. The initial specific tax amounts were later reduced to the levels as shown in Table.

The reduced amounts, when converted back to ad valorem rate is approximately 120 per cent. As to the precise current ad valorem levels of monopoly tax on foreign imports, the time from the first importation of foreign spirits (which is nine months in the case of brandy) is not long enough to make the statistics meaningful for an accurate assessment. The issue is further complicated by the change in exchange rates, sales policies and price quotations since the first announcement of free import.

Question III-6-3

We appreciate Chinese Taipei's recognition in Reply 10 of the United States follow-up questions that the monopoly tax system needs to be altered to bring it into conformity with Article III.

The United States opposes however, a revision of the current system that would merely perpetuate the current very protective market access conditions for the products covered by the system while changing its organization.

We would be interested in knowing why three years is necessary to fully repeal the current system. In addition, we would appreciate knowing the date contemplated for the starting point of the three-year period of reform and describe in some detail how the new, reformed system would operate. What steps, if any, have been taken thus far?

Chinese Taipei should negotiate new tariffs with contracting parties that, in conjunction with equally applied domestic excise taxes, would bring the monopoly tax system into conformity with GATT provisions on national treatment and transparency.

Finally, can Chinese Taipei please explain how the privatization of the Taiwan Tobacco and Wine Monopoly Bureau can be considered a separate issue from reform of the monopoly tax system that it implements? Please describe how privatization of the Bureau is envisaged?

Reply III-6-3

Since July 1992, Chinese Taipei has established three task forces to study the following three issues: the normal tax system to be applied, the administration of wine and tobacco production and sale, and the future organization form of TTWMB. It is contemplated that under the new system, the regulation of wine and tobacco production and sale will be separated from the business operation of TTWMB, and the monopoly tax will be replaced by normal taxes (including commodity tax, business tax, income tax) and customs duty. With respect to customs classification and tax rates to be applied to foreign products under the new system, Chinese Taipei will take into account the international classification, practices of its trading partners, and the need for special classification for Chinese traditional wine and spirits. The TTWMB under the new system will be any ordinary business enterprises separate from the Government, and will be placed on the privatization list of enterprises owned by the Taiwan Provincial Government.

Question III-6-4

My Government is also concerned about the growth in the trade of counterfeit distilled spirits on Taiwan.

Please provide specific information on steps Chinese Taipei has taken to curtail the growing trade in counterfeit distilled spirits.

To address this problem, foreign distilled spirits manufacturers have suggested the implementation of a requirement that all distilled spirits imports be accompanied by a certificate of origin issued by the producer or the appropriate authorities of the country of manufacture. Would Chinese Taipei consider implementing such a system?

Reply III-6-4

On the issue of counterfeits of distilled spirits, the current law imposes severe penalty on

counterfeiters. Unfortunately, we do not have the relevant statistics concerning the growth of the trade in counterfeits of distilled spirits. We would appreciate the delegation of the United States to provide the information it might have. As a preventive measure, the General Operating Regulation of TTWMB for Importing Foreign Spirits in its Articles 4 and 9 requires submission of a certificate of origin when applying for the relevant import permit; this is in line with the suggestion of the United States delegation.

Question III-6-5

Concerning the Reply to question No. 329 in L/7189, concerning the point of application of the commodity tax:

The response does not address the basic inequity of application of the tax on domestic and imported goods. Ex-factory value for domestic goods excludes the cost of delivery and transfer of the goods to the wholesale level, while the duty-paid import value incorporates all transportation, insurance and other customs charges, in addition to the duty.

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.

Reply III-6-5

Chinese Taipei's practice in this regard is the same as most of other countries levying the commodity tax (or excise tax), i.e., domestically produced goods are taxed at the ex-factory level, while imported goods are taxed on the basis of c.i.f. value plus customs duties and harbour construction dues (or other similar fees).

Another factor in the calculation of the commodity tax is the 12 per cent promotional expense. The promotional expense is a manufacturer's expenditure for promoting its sale of goods. In order to simplify the determination of the promotional expense, a 12 per cent ratio to the price is assumed. Since the manufacturer does not need to promote its sale of goods and has no promotional expenditure when the goods are sold through wholesalers/distributors, such manufacturer cannot deduct the 12 per cent promotional expenses from its commodity tax base. Chinese Taipei treats imported goods the same as the goods sold through distributors. There is no discrimination against imports.

7. Foreign investment policy

(1) Inward investment

Question III-7-(1)

The memorandum notes that except for auto and motorcycle manufacture there are no local content requirements for foreign companies. This statement appears at odds with Chinese Taipei's enunciated aircraft trade policy, and with statements concerning the use of offsets in industrial development.

We seek a fuller explanation from the delegation of Chinese Taipei on its local content policies and how they will be applied to trade in aircraft and other industrial goods.

Reply III-7-(1)

Although there are local content requirements imposed on automobiles and motorcycles, currently there is no local content requirement on aircraft because up to now there is no civil aircraft assembled in Chinese Taipei. As to the local content requirements on Government procurement of incinerator and electric connected locomotive, they are exceptions to the national treatment permitted under Article III of the GATT.

8. Government procurement

Questions concerning the Responses in L/7189

Question III-8-1

Question No. 352 requested additional information on the Law of Audit and the procurement procedures of the Central Trust. The following additional questions relate to that response:

- To whom is this "Government estimate" known? Is the estimate ever revealed to the public? What is the rôle of the Ministry of Audit in setting the "Government estimate"?

Reply III-8-1-(i)

According to Article 17 of the "Ordinance Concerning Inspection Procedure Governing Construction Work, Procurement and Disposal of Properties by Governing Agencies", the Government estimate shall be kept confidential, except in the case of disposing of Government property. Therefore, usually only the parties involving in setting the Government estimate, who are procurement personnel, accounting personnel, and the heads or the delegated directors of the agencies, may know the Government estimate. If the procurement amount exceeds certain levels, the Government estimate is required to be reviewed by the higher authority and the audit authority. The estimate is never revealed to the public, except in the case of disposing of Government property.

As to the rôle of the Ministry of Audit in setting the Government estimate, it has the authority to review and reduce the estimate in the setting process.

- My Government understands that Chinese Taipei does not maintain any formal bid protest system or a central contact point for the resolution of contested bid awards. How does Chinese Taipei handle bid protests? Does it vary depending on which entity issued the tender?

Reply III-8-1-(ii)

Bid protests may be filed with the procurement entities, the higher authority thereof, or the audit authority. In addition, the bid protests can also be brought to courts if there are illegal conducts involved. The procurement entity will investigate into the protested events upon its receipt of such protests. As to the higher authority or the audit authority, when it receives such filing of protest, it will request the procurement entity to resolve the issue and report accordingly. The aforementioned ways of dealing with bid protests are the same to all procurement entities.

- How would a supplier obtain pertinent information concerning the reasons why that supplier's application to qualify for a contract was rejected, or why that supplier was not invited or admitted to tender?

Reply III-8-1-(iii)

The rejected supplier can simply file a request with the procurement entity for explanation; the procurement entity then will give the rejection reasons.

- How would a supplier obtain pertinent information concerning the characteristics and the relative advantages of the tender selected, as well as the name of the winning tenderer?

Reply III-8-1-(iv)

Upon request, the procurement entity will reveal the aforementioned information to the requesting supplier except the part involving commercial secrets of the winning tenderer.

- Although "Chinese Taipei does not have decisive criteria for determining whether a procurement is done domestically or as an overseas purchase", could they provide specific examples of how these decisions were reached in actual cases? In general, who makes the decision to have a domestic or international tender?

Reply III-8-1-(v)

Since whether to have a domestic or international tender is determined by the head or the procuring director of the concerned procurement entity, how a decision is reached may vary from agency to agency. For example, in procuring foreign made fire engines, some entities had international tender to purchase directly from foreign manufacturers because the entities thought that international tender without going through importers would have better price offers or thought that domestic importers might not have enough capital to finance their imports from foreign manufacturers; but some entities had domestic tender because the entities thought domestic tender from domestic importers would save the trouble of dealing with foreign manufacturers and handling the import matters.

- The Central Trust of China frequently requires all bidders on international tenders to sign a "letter of commitment" which must contain 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 have the right to delete any of the above without asking our consent, and the price offered and the validity of our bid shall not be affected by the above deletion".

Are bidders on domestic tenders required to sign similar letters? What is the purpose of this clause? Could you provide specific cases in which this clause has been invoked?

Reply III-8-1-(vi)

The Central Trust of China requires bidders to sign a letter with the aforementioned clause only in large and complicated procurement. Therefore, the said clause is not particularly for international tenders. The bidders on large domestic tenders are also required to sign similar letters.

The purpose of the clause is to make the bidders state explicitly and collectively in their bids all the exceptions to or deviations from the tender requirements. If the bidders can put their exceptions to or deviations from the tender requirements in such a conspicuous way, the procurement entity will have less difficulties in reviewing bids. Furthermore, since they will not miss such exceptions and

deviations easily in the reviewing process, some unnecessary disputes may be avoided.

The cases where such clause was invoked include the procurement of incinerators and oil tanks:

- My Government understands that for certain tenders, bids made by a team of private firms may be rejected unless all members of the team meet all of the requirements specified in the bid documents. In such cases, even though the team as a unit may be very well qualified to bid, CTC may prohibit their participation. Conversely, there are certain contracts where teams are preferred or mandated.

What is Chinese Taipei's policy towards teams bidding on international and domestic tenders? Are teaming arrangements encouraged or discouraged? In what cases must each team member meet technical specifications as opposed to meeting such requirements as a unit?

Reply III-8-1-(vii)

If the teams bidding as mentioned above refers to the bids made by a joint venture or consortium, Chinese Taipei does not have any policy towards it. However, unless the tender requirements specify that team bidding is welcome, teaming arrangements are not encouraged. Generally only large procurement requires bidding by a joint venture or consortium because the size of the procurement may exceed the capacity of a single firm. Unless a procurement entity specifies that a team shall meet the requirements as a unit, each team member must individually meet technical specifications.

Question III-8-2

Concerning the additional information in the response to question No. 354 in L/7189, concerning publication of bids:

- Many of the projects open to foreign firms are advertised in only the Chinese language daily newspapers. Chinese Taipei has two quality English language newspapers. If entities are interested in soliciting bids from the broadest range of qualified firms, why are open tenders typically only listed in Chinese language publications?

Reply III-8-2-(i)

The reasons that many of the open tenders are only listed in Chinese language newspapers are as follows:

1. The two English language newspapers as mentioned do not have large circulation comparable to that of Chinese newspapers.

2. It is easier for the procurement entity to have tendering advertisements in Chinese.

3. Foreign firms rarely subscribe to the said two English newspapers, but their local agents in Chinese Taipei often subscribe Chinese newspapers. Therefore, listing open tenders in Chinese newspapers has a larger advertising effect than listing in English newspapers.

- We understand that frequently non-competitive bid announcements and contract awards for these bids appear in different publications, making it very difficult to track the status of public procurement contracts.

Please provide information on the process used to publish awards and announcements for non-competitive bids.

Where does Chinese Taipei publish tenders and announce contract awards for non-competitive bids?

Reply III-8-2-(ii)

Chinese Taipei assumes that the so-called "non-competitive bid" refers to the case of selective tendering or single tendering. Since the current audit law and regulation of Chinese Taipei do not mandate publication of such tenders and their contract awards, the procuring entity does not publish tenders or announce contract awards for non-competitive bids.

Question III-8-3

The following questions relate to the issue of contingent liability in government procurement:

- Chinese Taipei stated in its response to follow-up Reply 30 on the United States questions that "there are no guidelines or specific regulations on contingent liability for public tenders. Whether to apply a contingent liability clause to a public tender is solely at the direction of the procurement entity." The following statements on liability were taken verbatim from recent contracts issued by a State-run enterprise:

(1) "Contractor shall be liable to OWNER for consequential loss or damage, including but not limited to loss or damage resulting from loss of use, loss of profits or revenue, cost of capital, loss of goodwill, claims of owner's customers."

(2) "Contractor shall indemnify OWNER for all loss or damage arising out of or in connection with contractor's performance under this contract subject to [the] law."

- Other provisions which my Government has reviewed are less stringent, but still require firms to assume greater liability for consequential damages than virtually all other developed economies. That these requirements, moreover, can vary considerably among procurement entities raises concerns over the transparency of the procurement process.

Can the Ministry of Audit or the Central Trust of China set parameters for contract provisions which cover contingent liability?

Reply III-8-3-(i)

Since whether to apply a contingent liability clause for public tenders is solely upon the procurement entities, the Ministry of Audit does not set any guidelines covering contingent liability. As to the Central Trust of China, it cannot advise the procurement entity on the contingent liability provision except for the tendering made through the CTC. For the public tenders made through the CTC, the CTC often advises the procuring entities not to extend the contingent liability to the loss of profits or revenue, or loss of goodwill because these consequential damages may be too large and their calculation is seldom easy. If the procuring entities still insists on such stringent provisions, the CTC usually advises them to cap the damages with the rationale that the willingness of the firms to bid may be frustrated without the upper limit of the damages.

Are their any provisions contained in the Law of Audit and/or other laws/regulations which cover contingent liability?

Reply III-8-3-(ii)

The Civil Law of Chinese Taipei provides that a party of a contract may request from the counter party damages caused by contingency. However, the requesting party bears the burden of proof. If the amount requested is too large, the judge has the discretion to adjust the damage amount.

- How are liability provisions drafted for selective and single-tenders which are limited to domestic firms? Please provide examples.

Reply III-8-3-(iii)

The way that liability provisions are drafted for selective and single-tenders limited to domestic firms does not differ from other public tenders. For example, in procurement of police bullet-proof vests, the tendering will also require the tendering firms to be liable for the death or injury of policemen caused by bad quality of the vests and prescribe the amount of damages.

Question III-8-4

Concerning response to question No. 355:

- Under what conditions will a public entity impose technology transfer or local content as offsets? What other offset commitments can be imposed on contract awards? For how many procurement tenders over the past three years did the commissioning entity "impose technology transfer or local content" as offsets? If numerical data is not available, could Chinese Taipei provide specific examples of how such impositions were made?

Reply III-8-4-(i)

In order to facilitate the industry policy, the industry authority of Chinese Taipei sometimes requires a procurement entity to impose technology transfer or local content as offsets in its tender documents for major projects. Other offset commitments that have been imposed on contract awards include setting up local factories to manufacture important parts or assist exports. Over the past three years, the commissioning entities imposed technology transfer or local content as offsets only on the Metropolitan Rapid Transit System, aerospace, environment conservation, and power station projects. How such impositions were made can be illustrated by the technology transfer requirement for the Taipei Municipal Rapid Transit System. The commissioning entity of the System required firms to transfer the designing, assembling, and repairing technology to the project owners and domestic firms. The purpose of such requirement is to build up domestic designing, assembling, and repairing ability, upgrade domestic industry level, and reduce future operation costs.

- When a "scoring system" is used to evaluate the bid, are the criteria used to determine the "score" clearly explained in the tender documents? Are outside experts used in determining each bidders' score?

Reply III-8-4-(ii)

If a "scoring system" is used to evaluate the bids, the criteria used to determine the "score" will be clearly explained in the tender documents. Whether to invite outside experts to determine score is up to the procurement entities. However, outside experts are often used in determining score.

- How do procuring entities decide when to require a "quality certificate issued by the bidder's home country?" Must such certificates be issued by a Government entity?

Reply III-8-4-(iii)

The reason that procuring entities decide to require a "quality certificate issued by the bidder's home country" is to comply with the quality requirement prescribed by Government law or regulation. For example, the noise testing certificate and the exhaust emission certificate required for the procurement of automobiles are used by the procuring entities to evaluate whether or not the automobiles offered conform to the environment protection regulations. The quality certificates can be issued either by the Government agencies of the bidder's home country, or by the authorized or qualified independent testing institutions.

- Please explain how Chinese Taipei's procurement procedures in the area of "technical specifications" are consistent with Article IV of the GATT Procurement Code.

Reply III-8-4-(iv)

Chinese Taipei's procurement procedures in the area of "technical specifications" generally are consistent with Article IV of the GATT Procurement Code except in few tenders where the technical specifications are set out by designs or brandnames, without specifying allowance for equivalents.

- We understand that for regional procurement of less than NT$15,000,000 open tenders are not required. Could Chinese Taipei provide more information on tenders issued by the provincial authorities?

Reply III-8-4-(v)

The above information is not correct any more. The level of NT$15,000,000 has been raised to NT$50,000,000 since 1991. Furthermore, procurement less than NT$50,000,000 does not necessarily have no public tenders. Please refer to Reply 358 of document L/7189. As to tenders issued by the provincial authorities, they are also subject to the same audit law and regulation as the Central Government is. Please refer to Reply 349 of document L/7189.

Statement concerning Chinese Taipei's Adherence to the Government Procurement Code

Question III-8-5

We appreciate Chinese Taipei's explanation in its follow-up replies to United States questions concerning selection of Government procurement suppliers by other than competitive tender.

We are, however, concerned that there is an overall lack of transparency in Chinese Taipei's procurement process.

- While official procuring agencies generally operate under broad guidelines, established by the Central Trust of China, procurement procedures among some public entities -- especially State-owned enterprises - can vary significantly.

- We have received complaints about the lack of time provided to respond to complicated bids, which tends to ensure a limited number of bidders, which in turn can be used to justify a non-competitive tender.

- We are also concerned about the increasingly frequent practice of informally negotiating technical specifications prior to the publication of the tender in order to match prior to the proprietary standards, thereby "spec-ing out" all potential competitors.

- Bids are also being advertised with unreasonable delivery terms.

- Contract term requirements that sellers assume unlimited liability for consequential damages are discouraging firms from bidding on contracts. Such terms are at odds with world-wide standards, which normally allocate the risk of consequential damages to the owner and not the contractor because of the undue financial burden such a risk would place on the contractor. In addition, such requirements do not appear to be applied when domestic firms are selected for the procurement.

- These practices effectively restrict access to Chinese Taipei's public procurement in a fashion that can, and has been, manipulated against foreign suppliers.

Reply III-8-5

Chinese Taipei takes note of the above comments.

Question III-8-6

We also note with concern the growing number of tenders which are being classified as "non-competitive" (i.e., selective or single tendering) and/or restricted to local bidders, particularly in light of rumours that the Six-Year Plan will be significantly scaled back. The lack of publicly available information on "non-competitive" contracts is also of concern, since the results of non-competitive contracts are seldom made public and therefore have been difficult to track.

We believe these problems could be addressed most effectively through Taiwan's membership in the GATT Government Procurement Code. Chinese Taipei should commit to initiate negotiations to join the GATT Government Procurement Code within six months following its accession to the GATT.

In the period leading up to its Code membership, we would like to see Chinese Taipei implement transitional measures for uniform procurement procedures which would significantly improve the transparency of the procurement system.

These transitional measures should include:

- Announcement of tenders in a designated journal and/or newspaper with the provision of an adequate amount of time for interested parties to submit bids.

- Understanding that contracts valued above an agreed (reasonable) amount will be awarded through open tender, unless compelling need or necessity requires another method.

- 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.

- Agreement that commissioning entities will use non-proprietary, performance-based standards except when absolutely necessary, and that such tenders will include the wording "or equivalent" when standards are based on other criteria.

- Agreement for the creation of a centralized bid protest system which would be used by bidders as a forum to address problems relating to the procurement/selection process.

- Agreement on reasonable restrictions on requirements that sellers assume unlimited liability for consequential damages.

Reply III-8-6

Chinese Taipei will seriously consider the above valuable suggestions and proposals.

9. State enterprises

Question III-9-1

Concerning the response to question No. 373 addressing Chinese Taipei's privatization programme:

- With respect to privatization, in light of the dramatic under-subscription to this winter's offering of BES Engineering Corporation stock, has Chinese Taipei reevaluated its privatization plans?

- The other offerings mentioned in this Reply (51 per cent of BES, 60 per cent of Taiwan Machinery and Manufacturing, and 40 per cent of China Petroleum) have not yet been issued. They were scheduled for June 1993. Is there a new timetable?

Reply III-9-1

The current timetable for privatization of BES, Taiwan Machinery and Manufacturing, and China Petrochemical Development is as follows:

1. BES

The January 1993 public offering only disposed of 8.51 per cent of the company's share, as the market at that time was low. 51.49 per cent of the company's will be disposed of through public auction. The privatization is scheduled to be completed by the end of 1993.

2. Taiwan Machinery and Manufacturing

Sixty per cent of the company's shares will be transferred to the private sector through public auction; the privatization is schedule to be completed by the end of 1993.

3. China Petrochemical Development

One hundred and ninety million shares were transferred to the private sector in June 1991, which account for 20 per cent of the paid-in capital of the company. Thirty-five per cent of the company's shares are planned to be transferred to the private sector; the privatization is to be completed by the end of June 1994.

Question III-9-2

Concerning the operation and status of publicly-owned retail stores, as addressed in the response to question No. 379:

The pricing policy used by publicly-owned retail stores appears to be highly irregular in comparison to commissary-type operations throughout the world. Prices are fixed in a manner can undermine sales in the free market, especially given the reported level of access to these stores.

Article 19(6) of the Fair Trade Law prohibits an enterprise from "imposing improper restrictions on its trading counterparts' business activities as a condition of transacting business them." Nevertheless, publicly-owned retail stores require suppliers not to sell at a lower price to any store in the open market.

Please describe how this pricing policy is consistent with Article 19(6). Do these stores fall under the purview of the Fair Trade Commission and the Fair Trade Law?

How many publicly-owned retailed stores are currently in operation? Has the number increased or decreased over the last three years? How many outlets have opened in the past year?

What are the laws governing the operations of publicly-owned stores?

Please describe pricing policies of stores run by the United Co-operative Association?

How many or what percentage of these stores operate on publicly-owned land?

How are price negotiations conducted for sales to publicly owned stores? For the Ministry of National Defense PX stores, how does the panel of generals ultimately determine purchase prices? Is there a specific percentage discount based on the prevailing retail price? What are the grounds for rejecting an offered price?

Reply III-9-2

The Fair Trade Commission, in an interpretation letter with reference No. (82)-Kou-Yi-Tze-52568 dated 17 July 1993, holds the position that the United Co-operative Association is established according to the Law Governing Co-operatives and is commissioned by the Central Personnel Administration of the Executive Yuan and the Ministry of Education to supply products that are necessities for employees of the Government and educational institutions. It's practices do not fall within the application of provisions dealing with monopolies and horizontal collaboration of the Fair Trade Law; nor are they subject to Articles 19 and 24 of the Fair Trade Law.

There are currently fifty-five publicly owned stores in operation. There are two stores that have been opened in the most recent three years; but there are four stores closed in the same period of time.

There was only one store opened in 1992.

United Co-operative Association is established according to the Law Governing Co-operatives, and is otherwise also governed by that Law.

The United Co-operative Association is a private entity and is commissioned by the Government to supply daily necessities to employees of the Government and educational institutions. When performing such function, its pricing decisions are made according to the Rules Governing the United Co-operative Association's Negotiation Practices. The decision-making procedure under the Rules is as follows:

1. The suppliers of the products to be purchased by the Association submit price quotations (market price and preferential price);

2. based on the quotations, the Association will conduct price survey by sending its personnel to department stores, supermarkets, retail stores to collect information on market price and consumption level of the product concerned:

3. based on the result of market survey, market condition, and popularity of the brand, a base price which is 15 per cent to 30 per cent lower than the market price would be determined, and submitted to a special panel for review and approval;

4. after the base price is approved, there would be a negotiation panel established to negotiate with suppliers face-to-face; the negotiated price when are lower or equal to the base price would be accepted; would not be accepted, when higher;

5. the accepted negotiated price would be submitted to the special panel for review and approval; when approved, the price then become the sourcing price for the product concerned; the selling price of the retail stores under the Association is 2 per cent above the sourcing price;

6. the prices determined according to the above would be submitted to the Chairman of the Board of Governors for his approval and then published;

7. after publication of the price, the Association will proceed to sign the contract with the supplier, and obtain the product for sales in the retail stores;

   there are currently fifty five publicly-owned retail stores; among them, there are seventeen (i.e. 31 per cent) which operate on public land leased or loaned to such stores;

8. Chinese Taipei will provide information on the Ministry of Defence (PX) stores at a later stage.

Question III-9-3

It is reported that controls on access to publicly-owned stores is lax and identification cards are readily passed on from members to friends and associates. In fact, such access has resulted in purchases from publicly-owned stores making up between 40-50 per cent of total sales by many firms in Chinese Taipei.

What type of controls are in place to restrict access to these discount outlets?

Are identification cards issued for each store or is a general identity issued for all stores? Do identification cards have pictures? Are there regulations governing the checking of identification of individuals using the stores?

What types of penalties, if any, have been imposed on non-members attempting to utilize publicly-owned stores?

Reply III-9-3

Identification cards are general IDs for all stores under the Association. The identification cards do have pictures. The Regulations Governing the Issuance of Identification Cards require the checking of identification cards before the card holders are permitted to enter the retail stores.

According to the Regulations, if a card holder permits non-members to use his cards, his access to the publicly owned stores would be suspended for one year.

Question III-9-4

Publicly-owned stores typically offer buyers between 20-30 per cent discounts on identical merchandise purchased in the free market. There is no limit on the amount a member can purchase. This frequently leads to products purchased in bulk and then resold, in some cases, directly out in front of the publicly run stores.

What restrictions are there on the re-sale of merchandise purchased in these stores?

Has anyone ever been arrested and/or fined for the resale of merchandise purchased in a publicly-owned store?

Reply III-9-4

The Association has made a rule to prevent re-sale of merchandise purchased in the publicly-owned stores. The Association will refer any case of violation to the relevant government agency (e.g., the tax authority which will penalize the violator according to the Tax Levying Law or Business Tax Law), or suspends the violator's access to the stores.

According to the Association, it has not found any case of resale of merchandised purchased in a publicly-owned store.

10. Fair Trade Law

Question III-10-1

What procedures governing the import of agricultural commodities have been amended or are due for revision since the Fair Trade Law was promulgated?

Reply III-10-1

Wheat imports were investigated by the Fair Trade Commission of Chinese Taipei. Partly because of the Commission's move, the wheat import has been liberalized in terms of the qualification of the importers. The Commission has also approved the joint procurement of agricultural commodities by importers as an exception to the rules on horizontal collaboration. Since the Fair Trade Law was promulgated, no other procedures governing the import of agricultural commodities have been amended or are due to be revised.

Question III-10-2

Are publicly controlled monopolies such as the Taiwan Tobacco and Wine Monopoly Board bound by the same rules contained in the Fair Trade Law? Are they subject to the provisions in Article 46?

Will the new system to replace the TTWMB abide by the rules contained in the Fair Trade Law? Does Article 46 apply?

Reply III-10-2

The wine and tobacco monopoly rights are provided in the law and therefore is exempt from the application of the Fair Trade Law according to its Article 46. If under the new system to replace the TTWMB, the monopoly rights are maintained and authorized by specific law, the monopoly rights of the new entity established for production of wine and tobacco products will not be subject to the Fair Trade Law by virtue of its Article 46.

Question III-10-3

Why is a period of five years following promulgation of the Law necessary in order for Governmental enterprises to comply?

Reply III-10-3

A period of five years following the promulgation of the Fair Trade Law is necessary in order for Government enterprises to adjust themselves to comply with the law. This is because such enterprises have been the Government's instruments in the implementation of the relevant policies and therefore their orientations are not entirely geared at private competition; a certain period of time is required for them to make necessary adjustments.

It, however, should be noted that the exemption from the application of the Fair Trade Law under such circumstances applies to only specific practice of the Government enterprises concerned, rather than being a general exception that applies to all practice of a specific enterprise. The rule is formulated to assist the transition and by no means is intended to discriminate against foreign products.

11. Intellectual property rights protection

(1) Copyright protection

(2) Trademark protection

(3) Patent protection

14. Science and technology policy

Question III-14-1

Concerning the Aeronautics and Space Industries Development Programme:

Please provide information on the "Special Technology Research and Development Programme" and the "Operational Plan for Inward Technology Transfer".

Are funds available under these programmes part of the "Development Fund" under the Statute of Upgrading Industries?

Reply III-14-1

(i) In order to meet Chinese Taipei industrial science and technology requirement, the Ministry of Economic Affairs has established funds for the related R and D projects. Non-profit R and D organizations may apply for participation in these projects. Aeronautic and Space Industry Development Programme is one of the projects funded

by the MOEA. Take the fiscal year of 1993 for example, investment in this set programme is about 1 per cent of the total R and D fund from the MOEA.

Limited funds are also allocated for technology import or "Inward Technology Transfer" in other words. Non-profit R & D organizations may apply for funding, if their research projects meet the requirement for promoting industrial technology.

(ii) The funds available under the aforementioned programmes are not part of "Development Fund", but from the budget the Government set annually.

Question III-14-2

We would be interested in obtaining the following documents which are referenced in the "Aeronautics and Space Industries Development Programme":

- "Key Points for Transfer of the Results Achieved Under Special Technology Research and Development Programmes";
- "Regulations for Encouraging Private Enterprise to Develop New Industrial Products";
- "Key Points for Providing 180 day to 360 Export Credit Facilities by the Export/Import Bank of China".

Reply III-14-2

The required documents are provided herewith. (Annex II)

Question III-14-3

It is stated in the "Aeronautics and Space Industries Development Programme" that the Ministry of National Defense will be authorized to "use its operating funds, technical personnel, technology and equipment... to assist Government-owned and private enterprises in the development of research and development of the manufacturing of aeronautics and space products and their associated equipment".

Have private or Government-owned enterprises applied for and received such assistance from MND? Are there other industrial sectors in Chinese Taipei which maintain access to MND funds, technology and/or personnel to assist in their development?

Reply III-14-3

The Aeronautics and Space Development Centre of the Chung Shan Science Research Institute, the Ministry of National Defence, has entered into an agreement with the Taiwan Aerospace Corporation and the Industrial Technology Research Institute, respectively for technology transfer.

Question III-14-4

Please list "Government-owned" enterprises which are engaged in the development of manufacturing aeronautics and space products. Chinese Taipei has stated that the central authorities own 29 per cent equity in Taiwan Aerospace Corporation.

Are there other private enterprises which are involved in the aeronautics and space industries which are partially owned by the Government? Please list.

Reply III-14-4

There are no private enterprises which are involved in the aeronautics and space industries and are partially owned by the Government, with the exception of Taiwan Aerospace Corporation.

17. Telecommunications policy

Question III-17-1

Concerning the response in L/7189 to question No. 425 with regard to the Telecommunications Law and the draft amendment:

What is the status of regulations that will be needed to implement provisions of the new Telecommunications Law?

Will the draft Telecommunications Law include provisions for private Taiwan and/or foreign companies competitively offering cellular communication, paging services or voice services (i.e. non-Category II services)?

What is the status of the law defining the new structure of the DGT?

How will the draft Telecommunications Law be passed, what steps will the DGT take to ensure free competition within the Value Added Network and other Category II service markets?

Will the draft Telecommunications Law include provisions for the restructuring of the DGT as China Telecommunications Company (CTC)? If so, will the CTC have majority Government ownership or private ownership? Will foreign firms be allowed to purchase CTC stock?

Reply III-17-1

Chinese Taipei is now preparing draft amendments to the subsidiary regulations for implementation of the proposed amendments to the Telecommunications Law.

According to the draft amendment to the Telecommunication Law, Category-I service will be exclusively provided by China Telecommunications Company, a government-owned enterprise. No other domestic companies nor foreign companies can provide services of this type. The scope and operation items of Category II service will be proposed by the Directorate General of Telecommunications to the Ministry of Communications for its approval. The authority will have to review the situation every six months, and when the market requires, amend the scope and operation items of Category II service.

The new structure of the DGT will be defined in the new Organization Statute of the DGT, the draft amendment to which is now under review by the Legislative Yuan.

The steps that will be taken to ensure free competition within the Category II service market are as follows:

(1) Appropriate and reasonable regulation of the business activity of the providers of Category I services;

(2) identifying the business activities of Category II service providers, which are encouraged by the authority;

(3) segregating Category I from Category II service by establishing appropriate safeguard measures, and to ensure equal access to the telecommunications network;

(4) preventing cross-subsidy within a particular service provider;

(5) publicizing technical information on network connecting to facilitate the business operation of various service-provider;

(6) preventing cut-throat competition among service providers;

(7) establishment of a review committee consisting of scholars and specialists to review and handle various telecommunications matters or disputes.

The draft amendment to the Telecommunications Law provides that the DGT is responsible for assisting and supervising telecommunications enterprises, and supervising telecommunications activities. As mentioned previously, the CTC is to be exclusively owned by the Government; foreign companies or nationals may not purchase shares of the company.

Question III-17-2

Concerning the response to question No. 430:

Does the DGT accept foreign type approval certificates or test results from foreign laboratories for DGT type approvals process and applicable standards for customer premises equipment? If not, does Chinese Taipei intend to prepare such a publication for the benefit of foreign equipment suppliers?

Is there a description in English of the type approvals process and applicable standards for customer premises equipment? If not, does Chinese Taipei intend to prepare such a publication for the benefit of foreign equipment suppliers?

Can all types of customer premises equipment be tested and receive approval in Chinese Taipei?

Are test results accepted for any type of customer premises equipment?

Reply III-17-2

DGT's type approvals are based on the test results of DGT or its affiliated institutions; foreign type approval certificates or test results may service as reference only.

The application for customer premises equipment has to be filed by domestic manufacturers as local agents of foreign manufacturers. The Key Points for Testing Process has not been translated into English; Chinese Taipei will prepare the English version in case of need.

All types of customers' premises equipment can be tested and receive approval in Chinese Taipei.

Test results are accepted for different types of customers' premises equipment, according to the items and scope of the test. Chinese Taipei would appreciate United States delegation's further clarification of the question.

IV. TRADE LAWS AND REGULATIONS, ORGANIZATIONS, AND PUBLICATIONS

Question IV-1

The following questions relate to the provisions of the Foreign Trade Law:

. Article 13 of the Foreign Trade Law states that the Ministry of Economic Affairs shall "prescribe regulations governing export/import of high-tech commodities." Have such regulations been implemented? If so, please provide.

. Article 14 states that BOFT may entrust the issuance of import/export permits, administration of export/import quotas, and other matters relating to export/import of commodities to financial institutions, business associations or juristic persons. Please provide a list of business associations which have been tasked to issue import licences.

. Article 21 mentions a "trade promotion fund" which may be established by collecting uniformly, through customs, a "trade promotion service fee against the commodities imported and exported."

- Has this fund been established? If so, when?

- Please describe how the fee to support this fund is assessed to both imports and exports.

- What are the rates charged? How are the funds utilized?

. For Article 23, please provide a detailed description of the types of export insurance, export/import financing, and other "facilitating measures" which are available to domestic firms in order to "cope with special situations of foreign trade." In addition, please define the meaning of "special situations of foreign trade."

. Has Article 23 ever been invoked? If so, please describe the circumstances and the outcome of its use.

. For Article 24, under what circumstances would documents or information relating to business operations be requested by BOFT? What type of documentation would normally need to be submitted?

Reply IV-1

The Regulations governing export/import of high-tech commodities are now being drafted by the relevant trade authority; it has not been implemented.

The Board of Foreign Trade currently does not entrust any business association to issue import licences.

The Trade Promotion Fund has existed since July 1993 and has been in operation since then. The fee to support the fund is assessed at the rate of 0.05 per cent of the import/export prices. The Fund is used to promote import/export trade.

There has been no export insurance programme, export/import financing, and other "facilitating measures" introduced after the promulgation of the Foreign Trade Act.

[....]

Article 23 has never been invoked.

In handling trade disputes, the BOFT will need relevant documents from the traders. The documents required vary, depending on the nature of the dispute at issue. Generally, those that may be required are sales contracts, correspondences between the parties and import/export certification.

Question IV-2

Concerning the "Regulation Governing Examination and Administration of Classification of Import/Export Commodities":

Article 7 appears to give the Government of Chinese Taipei the authority to impose import controls (of an unspecified nature) on any product for which Chinese Taipei has reached a level of self-sufficiency.

Does Chinese Taipei intend to retain this provision after accession to the GATT? If so, how can the provision be reconciled with the rules of the GATT?

Reply IV-2

The Regulation Governing Examination and Administration of Classification of Import/Export Commodities has been abolished on 19 July 1993 by an administrative order with reference number Chin(82)-Mau-087102. The regulation of import/export is now based on Articles 6 and 11 of the Foreign Trade Law.

ANNEX I

(Translation)

Regulations for Providing Technical Assistance to Industries

Article 1

These Regulations are stipulated pursuant to the provisions of Paragraph II, Article 22 of the Statute for Upgrading Industries (hereinafter referred to as the "Statute").

Article 2

The term "technical assistance organizations formed with the funds contributed by the Government" as set forth in Paragraph I, Article 22 of the Statute shall refer to the juristic persons in the form of foundations which are set up respectively with the funds contributed by the Government, and are commissioned by the Government to carry out the plans pertaining to technology research and development and/or providing technical assistance to industries.

Article 3

Government authorities in charge of relevant end enterprises shall, for supporting the technical assistance efforts, each establish a technical assistance service centre respectively to provide consulting services in connection with technical assistance.

Article 4

The objects eligible to receive technical assistance under these regulations shall be limited to those domestic manufacturers and firms which have duly registered as and obtained the registration certificate for profit-seeking enterprises (hereinafter referred to as the "manufacturers"). Manufacturers having manufacturing plants shall complete the procedures for factory establishment permit or registration.

Article 5

A technical assistance organization shall, at the request of a manufacturer, provide the following assistance:

1. to provide domestic and foreign technical information;

2. to assist the manufacturer in acquiring necessary technology from abroad;

3. to assist in transferring technology;

4. to provide technical consultation;

5. to provide other relevant technical assistance.

For providing the technical assistance set forth in the preceding paragraph, a technical assistance organization shall prescribe implementation guidelines and assistance application procedures, and may charge appropriate service fees for rendering technical assistance.

The implementation guidelines, the technical assistance application procedures and the rules for charging service fees to be prescribed under the preceding paragraph shall be filed with the appropriate authority in charge for approval and recordation.

Article 6

The appropriate authority in charge shall assess and evaluate the performance of various assistance organizations in carrying out their technical assistance work as an important reference for examining the research and development plan budget of the respective assisting organizations.

Article 7

These Regulations shall come into force from the date of promulgation.

ANNEX II

(TRANSLATION)

Key Points for Transfer of the Research Results Achieved Under Special Technology Research and Development Projects

1. In order to provide a legitimate reference for transfer of the research results achieved by contracted research institutions under the "Technology Research and Development Projects" (hereinafter referred to as the "R and D Projects") by the Ministry of Economic Affairs (hereinafter referred to as "MOEA"), these Key Points are hereby stipulated in accordance with Article 7 of the "Key Points for Receiving and Disbursing Transactions Under Special Projects of Ministry of Economic Affairs Executed by Authorized Research Institutions". Matters not provide for in these Key Points shall be governed by other relevant rules and regulations.

2. The term "research results" as used in these Key Points shall refer to the technical know-how and technology which are created from execution of "R and D Projects" and useful in industries, and the intellectual property rights obtained therefrom.

3. The research results achieved shall be owned by the Government, if the "R and D Project" is financed solely by MOEA, and shall be shared by Government and the private sector concerned pro rata, if the "R and D Projects" is financed jointly by MOEA and such private sector. With regard to research results owned by the Government, MOEA shall have the right to appoint the research institution concerned to apply for intellectual property rights therefor, provided that the profit, if any, derived from transfer or disposition of such intellectual property rights by the appointee shall belong to the Government. If any of such intellectual property rights is infringed upon, the appointee concerned shall be responsible for taking necessary action against the infringer on behalf of the Government.

4. An "R and D Project" and the research results achieved thereunder shall be published in accordance with the following provisions:

(1) The contents of the "R and D Project" shall be published by MOEA after statutory budget has been finalized.

(2) After completion of research, MOEA shall authorize the research institution concerned to publish the results thereof and disclosed to the public the contents of the research results.

(3) While publishing the research results in accordance with the provisions of the preceding sub-paragraph, the research institution shall apply for intellectual property rights therein within the statutory time-limit.

5. The transferees of research results shall be limited to domestic firms and agencies (institutions) duly registered under the law. Prior approval of the MOEA shall be obtained for any transfer outside Taiwan area.

6. Unless otherwise specifically approved by MOEA, the transfer of research results shall be non-exclusive licensing in nature. The terms and conditions of the transfer agreement, contracting procedures and principles for calculating income from transfer arrangements shall be formulated and submitted by the research institution concerned to MOEA for approval before implementation.

7. Procedures for transfer of research results:

(1) A research institution concerned shall start to accept application(s) for transfer or research results commencing from the date of publishing of the research results;

(2) the research institution shall enter into a transfer agreement with the applicant(s) in accordance with the provisions of these Key Points;

(3) after execution of the transfer agreement(s), the research institution shall file a report on the transfer arrangement(s) to MOEA for recordation. The research institution shall draft the measures for dealing with violations of the transfer agreement(s) and submit the same to MOEA for approval of enforcement thereof.

8. Transfer income shall be derived from transfer of research results in any of the following manners to be indicated in the transfer agreement:

(1) to provide the research results as equity investment in a mutually agreed value in exchange for shareholdings of the invested enterprise;

(2) to sell the research results for proceeds; or

(3) to obtain transfer income through other arrangement.

9. Where the research institution concerned is a non-profit seeking foundation, the transfer income to be derived from transfer or research results shall be included into its annual budget and final statement and shall be reported.

10. In order to encourage the acceleration of the transfer of research results, the research institution concerned may be granted the following incentives so that its research and development functions can be strengthened, its level of research and development can be upgraded and the morale of personnel can be boosted:

(1) The MOEA sets an amount of incentive payment through budgeting procedures, with reference to the annual transfer income amount estimated by each research institution.

(2) The MOEA effectuates the incentive payment on 1 June of each year according to the execution performance of transfer of research results in the previous twelve months.

(3) The principles for effectuating the incentive payment are as follows:

(a) with respect to income under sub-paragraph 8(1), the incentive payment shall not exceed 15 per cent (the incentive payment shall be calculated based on the par value of the equity stock).

(b) with respect to income under sub-paragraph 8(2) and 8(3), the incentive payment shall not exceed 50 per cent.

11. The performance of a research institution in the execution of transfer of the research results achieved by it under "R and D Projects" shall be used as a reference for MOEA in evaluating its ability of execution of future "R and D Projects."

12. In case the national interests suffer any damage as a result of violation of any provisions of these Key Points on the part of an authorized research institution, MOEA shall have the right to claim against said research institution for recovery of such damage.

(TRANSLATION)

Measures for Encouraging Private Enterprises to Develop New Industrial Products:

Article 1

For the encouragement of researching and developing new industrial products by private enterprises, improving the structures of industrial products, raising the international competitiveness and promoting the economic development, these Measures are hereby enacted.

Article 2

The required funds under these Measures shall be provided in the following manners:

(1) A special account for "research/development programme for new industrial products" (the "Account") shall be opened under the development funds of the Executive Yuan, and development funds shall be appropriated into the Account according to the annual budget.

(2) Donation by individuals and the authorities concerned.

(3) The repaid matching funds and fees as stipulated in Article 12.

Article 3

A private enterprise which develops a new industrial product that falls within the scope of important industry development items and where the research and development is performed by a private enterprise or a research institution shall be eligible to apply for the appropriation of matching funds.

The important industry development items mentioned above shall be published by the Government every year.

Article 4

A private enterprise or research institution which applies for the appropriation of matching funds shall have a research and development department with sufficient number of technical professionals.

Article 5

Two kinds of matching funds, the development matching funds and the financing interest expense matching funds, may be applied for by private enterprises.

The development matching fund may cover the expenses required for the improvement of production and management skills, the procurement of new foreign technology (excluding the payment of royalty), samples, market survey for new products, and overseas training of technical professionals for introduction of special knowledge.

Article 6

A private enterprise meeting the requirement under Article 4 which applies for the appropriation of matching funds shall submit an application together with a research and development plan and the relevant data, specifying the kind, item and amount of the matching funds applied for. The application

shall be submitted to the Industrial Development Bureau (hereinafter as the "IDB") for transfer to the Ministry of Economic Affairs (hereinafter as the "MOEA") for approval.

Article 7

The application for the appropriation of matching funds shall be reviewed by the New Product Development Review Team of the MOEA (hereinafter as the "Review Team"). The decision of the Review Team shall be executed by the IDB:

The Review Team shall consist of representatives of the Science and Technology Advisory Group of the Executive Yuan, the Council for Economic Planning and Development, the MOEA, the National Bureau of Standards, the IDB, the Industrial Technology Research Institute, the Institute for Information Industry and the relevant specialists to be retained.

Article 8

The IDB may, upon receipt of an application for the appropriation of matching funds, request the relevant technology institutions or specialists to review and analyse the application prior to the transfer thereof to the Review Team.

Article 9

The approval of the Review Team shall stipulate the amount of the matching funds and the conditions therefor. Where two or more private enterprises or research institutions simultaneously apply for the appropriation of matching funds for the development of like products, in addition to taking into account the respective development capability of the applicants, the applicant which assumes, in its own cost the highest percentage of development expenses shall, in principle, be granted a priority.

Article 10

For the financing interest expense matching funds approved by the Review Team, after the private enterprise obtains a new industrial product development project loan from the bank designated by the MOEA, the interest rate during the development period shall be 3 per cent lower than the average of ceiling and floor interest rates announced by the Association of Banks. The 3 per cent difference shall be paid by the Account to the bank for a period of up to five years.

Article 11

The IDB may from time to time despatch personnel to understand the status of the research and development project granted with the matching funds. The private enterprise or research institution receiving the matching funds shall respond to the inquiry of the IDB personnel and submit periodic research report for the approval of the Review Team so that the subsequent payment of the matching funds can be effectuated.

In the event the matching funds have been used for other purposes or the research and development have been suspended without due cause such that the progress of the research and development project is substantially behind schedule, the Review Team shall withhold the subsequent payments and recall previously paid matching funds or any equipment, material or instruments purchased by use of the matching funds.

Article 12

The following provisions shall apply to private enterprises which have received the matching funds and developed new products:

1. Patents

In the event a private enterprise has developed a new product and applies for the relevant patent, and where the research and development expenses have all been paid by the matching funds, the IDB shall have the exclusive right to apply for the relevant patent. Where part of the research and development expenses have been paid by the matching funds, the right to apply for the relevant patent shall be jointly held by the IDB and the private enterprise and that the relevant patent shall also be jointly held in proportion to their respective sharing of the research and development expenses pursuant to the agreement of the parties, provided that the private enterprise shall be entitled to exclusively utilize the relevant patent for a period of three years. Afterwards during the period of joint utilization of the relevant patent, the private enterprise shall consent to transfer the relevant technology to any other enterprises designated by the IDB for production of the product and other rights, obligations and associated matters and shall file such transfer with the authorities concerned.

2. Repayment of the matching funds

A private enterprise which has received the matching funds and developed and commenced production of the new product shall, starting from one year after the date of sale, repay the matching funds in instalments. The period of repayment shall be not less than two years and not more than five years.

3. Royalties

A private enterprise which has received the matching funds and developed and commenced production of the new product shall, starting from the date of sale, pay to the Account royalties calculated at one to four per cent (depending on the amount of the matching funds and the characteristics of the new product, and to be determined by the Review Team) of the sales amount for a period limited to three years.

Article 13

The deposit, withdrawal and use of fund in the Account shall be handled pursuant to the accounting procedures and shall be reported to the Development Fund Management Committee of the Executive Yuan.

Article 14

These Measures shall be implemented from the date of promulgation.

181 to 360 Days

Short-Term Export Credit

1. Purpose:

To facilitate the export of machinery, equipment, capital goods, and other important industrial products, the Export-Import Bank (the Eximbank) hereby provides the Short-Term Export Credit to exporters with the tenor from 181 days and up to 360 days. The loan will be disbursed and repaid in NT$ or US$

II. ELIGIBILITY REQUIREMENTS:

1. Eligible applicants:

(i) Duly registered manufacturers who have technical capability to produce the eligible products.

(ii) Official trading enterprises or duly registered trading companies who have exported the eligible products on behalf of manufacturers mentioned in the preceding paragraph and have met all of the following conditions:

(a) having a paid-in capital of above NT$2 million;

(b) having a three-year export and/or import record of above US$3 million;

(c) having a good credit standing on the company and its responsible officials.

2. Eligible products:

(i) Industrial machines and machinery parts.

(ii) The ten newly emerging industries (approved by Government) comprising of telecommunications, information, consumer electronics, semi-conductors, precision machinery and automation industry, aerospace, advanced material, special chemicals and pharmaceuticals, medical and health care, and pollution control.

(iii) Strategical industrial products approved by Government.

(iv) Automobile, motorcycle and their spare parts.

(v) Hand tools, structures of iron and steel, electric wires and cables, and computer system products.

(vi) Other capital goods (subject to Eximbank's approval).

III. GENERAL TERMS AND CONDITIONS OF THE 181 TO 360 DAYS SHORT-TERM EXPORT CREDIT:

1. Percentage of financing:

The financing shall not exceed 85 per cent of the amount of the Letter of Credit (L/C) or of the amount of the export contract. However, when the Usance L/C is applied, the financing shall not exceed 95 per cent of the amount of the draft with Banker's acceptance.

2. Currency:

In NT$ or US$

3. Tenor:

From 181 days to 360 days as determined by the following conditions:

(i) The expiration date of the Sight L/C, or