

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

RESTRICTED

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ACCESSION OF THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU
KINMEN AND MATSU

Questions and Replies

AUSTRALIA

The representative of Chinese Taipei has submitted the additional replies reproduced hereunder to the questions submitted by Australia, for circulation to members of the Working Party on the Accession of Chinese Taipei. This text and the earlier documentation will be considered at the meeting of the Working Party scheduled to take place on 17-20 May 1994.

FOLLOW-UP QUESTIONS FROM AUSTRALIA

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

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

Question 1

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

Question 2

2. If the answer is yes, in view of the concerns expressed by a number of delegations on the discriminatory effect of the monopoly tax, has Chinese Taipei sought or does Chinese Taipei intend to seek to be released from such obligation?

Answer 1

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

Answer 2

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

Regarding Reply 3/5 (a) in Spec(93)42

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

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

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

Question 3

1. **Why did imports from some countries, but not all countries, face these measures?**

Answer 3

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

Regarding Reply 3 in Spec(93)40

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

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

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

We note from Reply 3 that as of 1994, Japan will be allowed quota access for passenger cars of greater than 3,000 cc, but that a ban will remain on vehicles of less than 3,000 cc. We also note that the reply also states that imports from other sources will be opened gradually.

Question 4

1. **Can Chinese Taipei explain why access is to be granted to Japan for cars of greater than 3,000 cc, but not for less than 3,000 cc? Can Chinese Taipei explain the meaning of "gradual opening" of access for other sources?**

Answer 4

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

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

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

Question 5

2. Can Chinese Taipei clearly define exactly what industry interests needs to be protected until the Chinese Taipei automotive industry becomes "fully developed"?

Answer 5

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

Question 6

3. Can Chinese Taipei provide measurable indicators which will determine when the automotive industry has reached this level of development?

Answer 6

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

Question 7

4. Can Chinese Taipei assure contracting parties that only those restrictions justifiable by this analysis, and for which GATT consistent mechanisms could be applied (such as tariffs), will continue to apply prior to full liberalization, and that access to the market outside these restrictions will be allowed without preference or prejudice to national origin?

Answer 7

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

Regarding Reply 20 in Spec(93)37

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

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

Australia therefore seeks clarification on this issue.

Question 8

1. **Can Chinese Taipei define specifically in which area do Chinese Taipei's treaty obligations take precedence over domestic laws?**

Answer 8

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

Question 9

2. **In cases where treaty obligations and domestic law have "the same validity", what principles and mechanisms would be employed to resolve any conflict which might arise between the GATT and domestic law after accession?**

Answer 9

2. See *supra*, Answer 8.

Question 10

3. **Does Chinese Taipei intend to introduce implementing legislation to eliminate inconsistencies between the GATT and domestic law? If so, in what area is legislative action necessary?**

Answer 10

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

Question 11

4. Will Chinese Taipei introduce such implementing legislation to eliminate inconsistencies between the GATT and domestic law prior to its formal accession to the GATT in order to ensure it can meet the obligations contained in the GATT immediately on accession to eliminate inconsistencies between the GATT and domestic law?

Answer 11

4. Chinese Taipei will make its best effort to meet its GATT obligations as specified in the Protocol of Accession, even though it cannot have the legislative process completed prior to the accession.

INTERVENTION BY AUSTRALIA

Chinese Taipei's "Negative List" on import regulation

We would like to take the opportunity to raise the issue of the draft Negative List of items which will continue to be subject to import regulation to which the distinguished representative from Chinese Taipei referred in his opening statement and which we understand is being circulated to contracting parties.

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

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

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

Question 12

1. We would be grateful for clarification of the process of bringing the Negative List into effect. What is the timetable for implementation? What legislative procedures will be necessary to bring it into effect? Is there any indication to date of the attitude of the Legislative Yuan to the draft Negative List?

Answer 12

1. According to the Foreign Trade Act and its implementing regulation - the Regulation Governing Imports of Commodities, the implementation of the Negative List does not require legislative action.

Chinese Taipei welcomes comments by Australia and other trading partners on the draft Negative List and will consult with interested parties before finalizing the Negative List. The Negative List is tentatively scheduled for implementation in the first half of 1994. When it is implemented, it may not incorporate all changes that trading partners would like Chinese Taipei to make to the current system. After the completion of Chinese Taipei's accession negotiation, Chinese Taipei will revise the Negative List to incorporate changes agreed upon in the course of the accession negotiation.

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

Question 13

2. Can Chinese Taipei confirm that those regulations appended to the draft Negative List are all regulations which govern import of goods into Chinese Taipei? Have other regulations been repealed or will be repealed when the Negative List takes effect?

Answer 13

2. The regulations appended to the draft Negative List are all regulations which govern imports of goods into Chinese Taipei. Those regulations with headings A, B, or C., which are regulations for products the imports of which are subject to inspection of permits by the Customs which is delegated by the Department of Health, or the Commodity Inspection Bureau to perform such function, when such permits are required for the products to be circulated in Chinese Taipei. These regulations, which also apply to domestic products, are not import licensing regulations, and therefore are not part of the Negative List.

Question 14

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

Answer 14

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

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

- Commodities Entrusted to Customs for Import Examination (808 items);
- Commodities Subject to Import Restriction (449 items); and
- Commodities Subject to Import Restriction (Regulation Code 111 only) (230 items).

Imports subject to customs controls

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

Question 15

4. Can Chinese Taipei confirm that the items on the first part of this list are not subject to any quantitative restrictions or area restrictions?

Answer 15

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

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

Imports subject to restrictions

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

While not strictly a GATT matter, Australia has no problem with regulations restricting imports of protected wildlife and wildlife products (covering 128 items) designed to meet international standards on wildlife conservation, nor restrictions on the import of ozone-depleting substances (23 items) which enable Chinese Taipei to comply with controls contained in the Montreal Protocol. Our only interest would be in the effectiveness of the measures to achieve the objectives of the relevant international instruments.

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

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

Question 16

5. Can Chinese Taipei assure contracting parties that these regulations will be brought into consistency with the requirements of Article 1 of the GATT on or before accession?

Answer 16

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

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

Question 17

6. Can Chinese Taipei provide a list of which items on Part 2 of the draft Negative List are subject to quantitative restrictions and in each case detail the method of determining the size of the restriction and the basis for applying a restriction allowable under GATT?

Answer 17

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

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

Question 18

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

Answer 18

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

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

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

Imports restricted under Regulation 111

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

While Australia accepts that some items should properly be subject to import bans [such as opiates, amphetamines and narcotics], Regulation 111 appears to be used primarily as a barrier to trade in order to protect some "sensitive" industries in Chinese Taipei. Of the 230 items covered by Regulation 111 in the Negative List, 180 are agricultural products, including animal offal, meat of fowl and ducks, a variety of fish (catfish, yellowfin tuna, herring, sardine, anchovies, mackerel, caranaid fish, puffer fish, and squid), liquid milk, potatoes, a range of fruits (bananas, lychees, papaya, pineapple, guavas, mangoes, shaddocks, other citrus, longans and pears (excluding European pear)), wheat flour, rice and pork meat.

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

Question 19

8. Can Chinese Taipei undertake to remove these import bans, or provide an explanation (on an item by item basis) as to the justification in the GATT for maintaining these restrictions?

Answer 19

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

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

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

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

Question 1

Chinese Taipei indicates that the reason for the ban on liquid milk is to protect unwitting domestic consumers who could not tell the difference between fresh and reconstituted milk and to protect them from dumped products. This is a questionable justification particularly as the ban on fresh milk consequently penalizes the less unwitting. Has Taiwan considered labelling requirements as a better way of protecting all consumers?

Answer 1

Chinese Taipei has implemented a scheme to enable consumers to distinguish reconstituted milk from fresh milk. For domestic liquid milk, based on the volume of fresh milk a milk factory collects, the Council of Agriculture grants to the milk factory a certain number of labels through the Department of Agriculture and Forestry, Taiwan Provincial Government to be placed on the fresh milk containers for consumers to recognize. For imported liquid milk, Chinese Taipei intends to open the

market by way of quotas as a part of its plan to reduce production surplus in fresh milk, especially in the winter.

The following questions have been submitted based on recent policy statements made by officials in Taipei. The questions are listed according to the themes list in GATT/AIR/3537.

Tariff system

Question 2

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

Answer 2

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

Question 3

It was also reported that Chinese Taipei would make one round of tariff reductions prior to accession and a further round on accession. When does Chinese Taipei propose to make the first round of reductions? At what time would reductions be made?

Answer 3

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

Non-tariff measures, including quantitative restrictions, area restrictions and the Negative List

Question 4

It has been indicated that Chinese Taipei has decided that discriminatory trading practices need to be abolished for GATT accession. Could Chinese Taipei please confirm which discriminatory trading practices it acknowledges will need to be removed?

Answer 4

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

Question 5

Reports also suggest that Chinese Taipei proposes to follow that Japan and Korea formulae to open its rice market. Is this what Chinese Taipei proposes? What would Chinese Taipei propose to do regarding the guaranteed purchasing price for rice?

Answer 5

Chinese Taipei is planning to follow the Korea formula to open its rice market with a 10-year transitional period, which is very important for the success of the agricultural adjustment. The guaranteed purchase price will be included in the calculation of AMS and gradually reduced according to the Agreement on Agriculture of the Uruguay Round.

Question 6

The same reports also indicate that Chinese Taipei also proposes a package of aid and measures to assist rice farmers affected by the opening of the rice market. What measures are proposed? Are they all reconcilable with GATT rules?

Answer 6

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

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

Question 7

Can Chinese Taipei assure contracting parties that it will not introduce new quarantine requirements on agricultural products which would result in an effective prohibition on imports once quantitative restrictions are lifted on its GATT accession?

Answer 7

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