GENERAL AGREEMENT

ON TARIFFS AND TRADE

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

Questions and Replies

UNITED STATES

The representative of Chinese Taipei has submitted the additional 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 will be considered at the meeting of the Working Party scheduled to take place on 17-20 May 1994.

FOURTH WORKING PARTY ON THE ACCESSION TO THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU TO THE GENERAL AGREEMENT: PRESENTATIONS ON 13 AND 14 OCTOBER

Chapter II: The Foreign Trade Regime

2. The customs system

(5) Other charges and fees

Question 1

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

The United States delegation expects that Chinese Taipei will report soon on its examination and then begin discussions in this Working Party as to how to bring it into conformity with the provisions of Article VIII.

Answer 1

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

Question 2

(6) Export processing zones (EPZs)

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

In our view, this clearly conflicts with current and prospective GATT provisions that consider such exemptions as countervailable subsidies unless there is some form of physical incorporation of the duty-exempted inputs in a final export product.

Answer 2

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

3. The import licensing system

(2) Non-automatic licensing

My delegation appreciates the responses of Chinese Taipei to the United States' questions and presentation from the last meeting under this section.

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

Question 3

Please elaborate on the limitation measures authorized by the Foreign Trade Act referred to in this response.

Answer 3

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

1. Limitation imposed on imports from countries referred to in Article 5 of the Act;

2. Limitation on imports according to Article 6 of the Act;

3. Limitation on imports imposed according to the proviso of paragraph 1 of Article 11;

4. Limitation on imports in the form of quotas imposed according to Article 16 of the Act; and

5. Limitation imposed under the import relief scheme provided in Article 18 of the Act.

- We applaud Chinese Taipei's response to previous contracting parties' requests with the preparation and submission of the "negative list" of items subject to import licensing after the new system is established.

- It is clearly a good first step towards the creation of a comprehensive list of non-tariff measures, listed by individual line item that has also been requested.

- In addition to the "negative list" of existing non-tariff measures, such a list should also include:

  - Any additional quotas maintained by means other than the "negative list" licensing requirements; and

  - Any other measures that act to prohibit or as discretionary of fixed non-tariff restrictions.

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

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

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

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

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

Question 4

The final, adopted decision by the OECD assigns waste and scrap paper - HS Heading 4707 - to the "green list". Therefore, the imposition of import controls on recovered paper by Chinese Taipei due to "environmental concerns" would clearly be inconsistent with international standards.

Answer 4

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

Concerning the reply follow-up to United States Question 15 at the last meeting, and Reply II-3-(2)-5 of Spec(93)46 (United States' questions) regarding the negative list

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

Question 5

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

Is this a correct interpretation of the reply?

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

In this regard, how should contracting parties view the information in the "negative list" document?

Answer 5

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

Chinese Taipei would like to emphasize that the most important purposes of the negative system are:

(1) to transform the current licensing system which generally requires import permits for most imported items to a system under which only those included in the negative list require import permits; and

(2) to achieve transparency so that traders would be able to know limitation as well as licensing requirements for the importation of particular products. It is an organization step, preparatory for future improvement of the import system. The negative list will provide a clear basis for future consultation with trading partners for further liberalization of trade in those items currently subject to import control.

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

Chinese Taipei wishes to note that the reform of the import licensing system requires an enormous amount of work on the part of Chinese Taipei. It is not simply an exercise of writing new rules and

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

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

Question 6

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

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

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

We urge Chinese Taipei to use the time during this negotiation to bring its licensing system into conformity with the GATT and the Licensing Code, and to adhere to the Code at the time of its accession.

Answer 6

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

(3) Automatic licensing

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

Question 7

Could Chinese Taipei please provide a separate list of the items that have been transferred from automatic to conditional licensing under the new system?

Answer 7

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

5. The labelling system for imported products

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

Question 8

Is this an accurate description of the reply?

Is it required that the importer's address be incorporated in the imported product's label, or can it be stamped or attached to the label separately?

Answer 8

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

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

6. Standards, inspection and quarantine

(2) Quarantine

We appreciate the efforts of the delegation of Chinese Taipei to provide copies of its legislation for the review of the contracting parties participating in this negotiation.

We cannot fully agree, however, with the statement in Reply II-6-1 that Chinese Taipei currently has a transparent rule-making system regarding sanitary and phytosanitary measures.

Over the last years, the United States has viewed with increasing concern efforts by Chinese Taipei to increase its quarantine controls on imported agricultural commodities without adequate notification, consultation or a clear scientific basis for their application.

We think that even under current GATT rules, these regulations fall short of consistency with the General Agreement.

In addition to a lack of transparency, a number of Chinese Taipei's health, sanitation, or quarantine requirements act as de facto bans.

Specifically:

- The Table of Import Control Commodities (BOFT Code No. 111) contains 68 tariff line items controlled for such reasons. Past requests by the United States Government, however, for an explanation of the specific requirements to be met for importation of some of these items have gone unanswered. As a consequence, no trade is possible.

- The health, sanitation, or quarantine requirements for these items may be transparent to the authorities of Chinese Taipei, but they are a total mystery to United States' exporters.

We find it difficult to comprehend the scientific basis for some of Chinese Taipei's quarantine restrictions. Examples include the ban on importation of catfish fillets and edible offals.

- In the case of catfish fillets, these products are farm raised and distributed fully processed and frozen to supermarkets and restaurants for human consumption. Catfish distributed in this fashion do not swim in the waterways of Chinese Taipei.

- Yet the reason given for banning the import of this product is to protect native fish populations in the waterways of Chinese Taipei.

The uncertainty and lack of transparency in the application of Chinese Taipei's quarantine restrictions raises the concern that these regulations will be used to replace other forms of protection that will be eliminated as a result of GATT accession.

For example, we have a substantial interest in the export of edible offals of bovine, swine and poultry to Chinese Taipei. This prospect is effectively banned however by the appellation of BOFT Code No. 111.

The notation for these items states that the reason for the 111 classification is "agricultural restructuring" and "health, sanitation, or quarantine requirements".

Question 9

As has been repeatedly demonstrated by past requests, we remain interested in obtaining the specifics on the quarantine concerns that prohibit these products from sale in Chinese Taipei.

Answer 9

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

Question 10

We would also appreciate Chines Taipei's clarification concerning:

- **How restrictions applied for "agricultural restructuring" will be justified under GATT Articles; and**

- **What the relationship of such restrictions to the "health, sanitation, or quarantine" restrictions that are simultaneously applied.**

In our view, a bias against imported agricultural products has evolved in Chinese Taipei's food safety and commodity quarantine standards and procedures in recent years, and the tightening of such restrictions to replace straightforward protection of domestic interests appears to be a growing phenomenon.

Answer 10

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

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

- Chinese Taipei should work with interested contracting parties during this negotiation to address the concerns noted by this delegation.

- This can be done through specific commitments regarding the application of sanitary or phytosanitary measures within GATT rules, and through the implementation of new procedures and methods to ensure that such restrictions are scientifically based and applied only to the extent necessary to protect human, animal, and plant life or health.

- Chinese Taipei should begin the process now of aligning its laws and regulations to permit adherence to the Standards Code at the time of accession, and should also begin now to address the question of how it intends to approach the new requirements being developed in the Uruguay Round.

Chapter III: Other Policies Affecting Foreign Trade

1. Industrial policy

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

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

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

- The United States views Chinese Taipei as a modern and sophisticated economy and a future major participant in the globalization of the world's aerospace industry. In

the course of multilateralizing the GATT Aircraft Agreement, the United States will find it necessary to discuss the status of non-signatories and whether separate conditions may be necessary.

Question 11

As it is clear that both the United States and the European Community's major aircraft companies view Chinese Taipei as a trade and investment partner for the future, we consider it imperative that Chinese Taipei sign the GATT Aircraft Agreement.

Answer 11

Chinese Taipei appreciates the comments made by the United States delegation, and will investigate the issue further.

Industrial restructuring, the Statute for Upgrading Industries, and ICPs

Concerning the United States' questions and responses from Chinese Taipei concerning public sector involvement in the industrial restructuring of Chinese Taipei and the Statue for Upgrading Industries:

- We appreciate the responses to our questions. We are reviewing this material and will have additional questions for response prior to the next Working Party meeting.

Concerning projects under the Six-Year Plan will require industrial cooperation programmes (ICPs):

Concerning Reply III-1-6:

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

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

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

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

Question 12-1

Reply III-1-6 lists projects under the Six-Year Plan which require ICPs. Is this a comprehensive list? Could Chinese Taipei confirm that telecommunications projects are not subject to ICPs, since they are not listed here?

Answer 12-1

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

Question 12-2

The Six-Year Plan is due to expire in 1996 - does Chinese Taipei expect to continue imposing ICPs on projects after the Plan's completion? If so, how will Chinese Taipei determine which projects will be subject to ICPs?

Answer 12-2

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

Question 12-3

What role will the newly-formed "Committee for Industrial Cooperation" (CIC) serve in the implementation of ICPs? Will the Committee determine which projects must contain ICPs, the components of a specific ICP, etc.?

Answer 12-3

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

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

(1) review industrial cooperation rules and approve industrial cooperation proposals;

(2) supervise and monitor the implementation of ICPs; and

(3) approve the completion of individual ICPs.

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

Question 12-4

Since ICPs are designed to assist in the development of local industry through foreign technology transfer and/or other assistance programmes, we are confused as to how such requirements could or would be imposed on domestic industry. Could Chinese Taipei cite specific cases in which ICPs were applied to domestic firms? To whom would domestic firms transfer their technology?

Answer 12-4

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

Question 12-5

How will ICPs be factored into a procuring entity's decision for a contract award?

Answer 12-5

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

Question 12-6

Will ICPs be of equal, greater, or less importance than price and technical qualifications? Who will be responsible for rating ICPs?

Answer 12-6

Please refer to Answer 12-5.

Question 12-7

Will ICPs be given a score which could be factored into scores given for price and technology? Will ratings depend on how much technology is transferred?

Answer 12-7

Please refer to Answer 12-5.

2. Agricultural policy

Concerning tariff and non-tariff trade barriers

The United States expects in the Accession Protocol of Chinese Taipei, the elimination of all non-tariff import restrictions and prohibitions not specifically provided for under GATT provisions; a full binding of your tariff schedule at trade enhancing levels; and a commitment to utilize only sound, scientifically-based practices in the application of sanitary and phytosanitary measures affecting agricultural imports.

Import licensing

Import licensing requirements currently constitute the most damaging non-tariff trade barrier agricultural product imports into Chinese Taipei.

Over one third of Chinese Taipei's current custom tariff lines, of 3,135 products, fall under this import licensing system. Of these, 699 items must receive special authorization from the Board of Foreign Trade (BOFT) and the other 2,194 items from licensing units authorized by the BOFT (such as approved banks or other authorized agency).

Import licences are required for most agricultural products, some 120 of which require prior approval for importation from the Council of Agriculture. Since this discretionary approval is rarely, if ever, given by the COA, this practice constitutes a de facto import ban.

Items under this category where the United States has trade interests include swine breeding stock (including hybrid breeds), dairy cattle, chicken meat (fresh and frozen) and of the poultry, certain cuts of pork, fresh potatoes, and garlic.

The BOFT "import controlled" category (Import Regulation Code No. 111) maintains import prohibitions on other products where we have a market interest including edible offals, chicken meat, frozen catfish fillets, peanuts and rice.

The United States has a trade interest in the Chinese Taipei market for many of the products which face quantitative import restrictions as a result of discretionary import licensing.

Concerning the negative list

Follow-up question to annex description on the negative list

We appreciate the numerous explanations which your delegation has given during Working Party proceedings concerning the Negative List System.

We are concerned, however, because in written statements describing the nature of the list, it appear that the negative list will maintain some of the same problems of the current system. These relate to discretionary approval authority of interested agencies before an import licence will be issued by the BOFT.

- We believe that any licensing system adopted by Chinese Taipei must be completely consistent with the General Agreement.

- The discretionary approval authority empowered to certain agencies such as the Council of Agriculture has operated as a de facto import ban.

- The United States will seek a commitment from Chinese Taipei for the elimination of all import licensing requirements which do not allow the smooth flow of trade or cannot be justified under current GATT rules.

Question 13

Chinese Taipei will be receiving our request for the elimination of licensing requirements which act as quantitative import restrictions and which cannot be provided for under existing GATT rules, in addition to an overall Protocol commitment.

Answer 13

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

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

3. Monetary policy

4. Foreign exchange policy

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

Question 14

We intend to have concrete proposals in this regard for discussion at the next meeting of the Working Party.

Answer 14

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

5. Financial policy

(1) Money and banking and (2) Securities (3) Insurance

We thank the delegation of Chinese Taipei for its response to our questions contained in Spec(93)45.

We have no additional comments at this time.

6. Fiscal policy

Tobacco and Wine Monopoly Bureau and Monopoly Tax

At the last meeting, we initiated a discussion of the trade practices, taxes, and restrictions embodied in the operations of the "Taiwan Tobacco and Wine Monopoly Bureau" and the consistency of the monopoly tax with GATT.

Our statements and questions in these matters are contained in Spec(93)45. Reply III-6-1 addressed United States' queries concerning the price basis for the application of taxes on domestically produced goods covered by this system.

We appreciate the response, which indicates that domestic prices for locally produced products have been a fixed function of costs in recent years.

Our problem with this response, and with others in this section related to the price of domestic

goods is that we have no data to calculate domestic costs and therefore are without the ability to actually judge whether the incidence of the monopoly tax is equal when applied to imports and to domestic products.

There is an absolute lack of transparency in this regard, as my Government has requested that such information be made available many times over recent years, without success.

- Thus, in general, my Government found Chinese Taipei's explanation of the methodology used to derive the monopoly tax on wine and distilled spirits contained in Spec(93)45 confusing, unsubstantiated, and unverifiable.

- It is impossible to conclude that domestic and imported products are taxed in an equivalent manner under this system, as required by GATT Article III. While Chinese Taipei's intent may not be to discriminate against imports, in practice, wine, spirits and tobacco products manufactured by TTWMB receive more favourable treatment than equivalent imports.

- In consultations with industry experts and other GATT contracting parties my Government has tried - with little success to reconcile the substantial differences in ad valorem equivalent rates which Chinese Taipei States are applied to imported products and figures which were calculated by my authorities.

    - For example, according to our figures, the ad valorem equivalent duty applied to imported United States' wine with a monopoly tax of NT$119/litre is 350 per cent. In Reply III-6-3, however, Chinese Taipei lists the ad valorem equivalent duty at 105 per cent.

    - For "other brandy" which is taxed at NT$500 per litre Chinese Taipei lists the ad valorem equivalent rate for imports at 208 per cent; our figures show 450 per cent.

    - Such large discrepancies in the determination of the levels of taxation for wine and distilled spirits clearly calls into question the transparency of the current system.

The current system of taxation by Chinese Taipei for wine and distilled spirits, we believe, is highly discriminatory and lacks transparency.

It must be reformed prior to accession to ensure that imported products are taxed in a manner equivalent to domestic products. Privatization need not be a precondition for reform of the monopoly taxes.

Uruguay Round zero-for-zero tariff principles have already incorporated zero tariff levels for brown distilled spirits, and will most likely be expanded to include white liquors, such as vodka and rum. Chinese Taipei should be prepared to fully adopt agreed-upon Uruguay Round standards including zero-for-zero upon accession.

Question 15

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

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

- **Replace the monopoly taxes with reasonable ad valorem import duties and reform internal taxes to ensure that they are applied equally to imported and domestic wine and spirits alike.**

  Adopt zero duty levels for products included in the distilled spirits zero-for-zero Uruguay Round Agreement (this would include brandy). Tariff levels for wine should be no higher than 5 per cent ad valorem, the average United States' duty on wine imports.

- **Bind tariff rates on wine and distilled spirits at agreed upon levels.**

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

Answer 15

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

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

Concerning counterfeit distilled spirits: Reply III-6-4 (USA 24)

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

However, some estimates suggest that counterfeit and smuggled goods represent as much as 50 per cent of the total Chinese Taipei market for imported spirits.

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

Question 16

My Government would like to see this requirement strengthened so that only certificates

of origin issued by the producer or by competent authorities in the country of export would be accepted.

Answer 16

Chinese Taipei requests the United States provide it with the basis of its estimate that counterfeit and smuggled goods represent as much as 50 per cent of the total Chinese Taipei's market for imported spirits. The following are statistics of smuggled spirits seized by the authority in Chinese Taipei, and the estimated value thereof.

Brand name	From	Volume (# of bottles)	Estimated value (NT$10,000)*
1991 total		137,165	20,575
Hennessy	France	71,394	10,709
Martell	France	18,657	2,799
Remy Martin	France	14,384	2,158
Otard	France	3,905	586
Chivas	UK	1,776	266
Gekkeikan	Japan	889	133
Camus	France	837	126
Johnnie Walker	UK	810	122
Royal 21	UK	578	87
Ozeki	Japan	133	20
Others	-	23,802	3,570
1992 total		156,972	23,546
Hennessy	France	66,019	9,903
Martell	France	47,341	7,115
Remy Martin	France	13,896	2,084
Otard	France	3,536	530
Napoleon	France	3,321	498
Courvoisier	France	2,887	433
Camus	France	1,821	273
Johnnie Walker	UK	879	132
Chivas	UK	839	126
Royal 21	UK	749	112
Others	-	15,594	2,339
1993 total		52,290	7,844
Hennessy	France	20,157	3,024
Martell	France	18,194	2,729
Remy Martin	France	6,761	1,014
Otard	France	2,321	348
Camus	UK	1,546	232
Chivas	Japan	596	89
Courvoisier	France	258	39
Johnnie Walker	UK	240	36
Royal 21	UK	169	25
Others	-	2,048	307

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

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

Question 17

Concerning application of the commodity tax

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

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

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

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

(Marker) 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.

Answer 17

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

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

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

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

Foreign investment policy

8. Government procurement

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

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

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

Question 18

These requested measures included:

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

- **Understanding that contracts valued above agreed (reasonable) amount will be awarded through open tender (i.e., allowing for foreign participation), unless compelling need or necessity requires another method.**

- **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 working "or equivalent" when standards are based on other criteria.**

- **Agreement for the creation of a centralized bid protest system to be used by bidders as a forum for addressing problems related to the procurement/selection process.**

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

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

To prepare for Chinese Taipei's membership in the Code at the time of accession, Chinese Taipei should initiate negotiations immediately. My Government stands ready to begin such negotiations at the soonest possible date.

Answer 18

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

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

1. Chinese Taipei considers it acceptable to announce tenders in a designated journal and/or newspaper with the provision of a reasonable time for interested parties to submit bids. However, this would apply only to projects above a certain threshold for which Chinese Taipei's commissioning entities decide to award the relevant contracts through open tender or selective tendering. If this is included in the Chinese Taipei's Protocol of Accession, Chinese Taipei will need time to make the necessary preparations for implementation of the scheme;

2. Chinese Taipei considers it more appropriate to deal with the second request in conjunction with Chinese Taipei's negotiation for accession to the Government Procurement Code so that an overall balance can be achieved in respect of Chinese Taipei's position vis-à-vis other signatories to the Code;

3. Chinese Taipei is carefully assessing the feasibility of announcing contracts above a certain threshold and awarded on the basis of a non-competitive tender in the same journal/newspaper that is used to announce competitive tenders. If this is included in Chinese Taipei's Protocol of Accession, Chinese Taipei will need time to make the necessary preparation and to go through the necessary legal procedure for implementation of the scheme;

4. Chinese Taipei is now investigating whether its procuring entities will have difficulties in observing Article VI, paragraphs 2 and 3, which Chinese Taipei believes is the basis of the fourth request. If such request is included in Chinese Taipei's Protocol of Accession, Chinese Taipei will need time to make the necessary preparations and to go through the necessary legal procedures for implementation of the scheme;

5. The current law of Chinese Taipei does not provide a general legal basis for establishing a bid protest system to provide bidders with administrative or judicial remedies, when they feel they are not equitably treated. While the party who is awarded the contract may seek remedy on the basis of the contract signed with the procuring entity, other bidders do not have a legal basis to challenge the decision made by the procuring entity unless the government official in charge of the procurement is found to breach his/her duty and such breach results in criminal liability according to the Criminal Law. Therefore, there is a need for Chinese Taipei to make a new law to provide a general legal basis for establishing a legally effective challenge procedure. The making of the law cannot be completed in a short time; Chinese Taipei has started the process by designated the Council for Economic Development and Planning as the agency responsible for the drafting of the law dealing with government procurement in general and the challenge procedure in particular;

6. Chinese Taipei wishes to clarify that there is no government regulation or policy requiring the incorporation of unlimited liability clause. The extent to which a contractual party should be liable for damages is a contractual matter.

Concerning the Reply III-8-1-(v) and Question USA 27

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

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

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

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

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

Question 19

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

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

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

- **Is there any specific NT$ amount which would be considered in determining if a bid will be open to foreign participation?**

Answer 19

Chinese Taipei's current procurement policy is that for public construction cases, open tender (which allows foreign participation) is used only when the local contractors do not have the capability to undertake the work. Foreign firms may undertake work reserved for local companies, if they establish local subsidiaries and obtain the necessary construction business licences. For acquisition of goods, the industrial authority may require that the bids be not open for foreign participation in such sectors as machinery and electronic and electric equipment, when the contract amount exceeds US$600,000. Except for the dollar amount threshold, there is no other threshold in dollar terms used for determining whether a bid will be open for foreign participation.

Concerning Reply III-8-1-(vi)

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

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

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

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

Question 20

"My Government requests that Chinese Taipei either eliminate the requirement that vendors sign a letter containing this contract clause, or modify the language to limit the scope of this provision to the stated purpose of ensuring that "bidders state explicitly and collectively in their bids all the exceptions to or deviations from the tender requirements."

Answer 20

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

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

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

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

Concerning Reply III-8-3-(i), USA 30

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

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

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

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

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

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

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

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

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

Question 21

Therefore, the United States requests that Chinese Taipei - which had maintained internationally-consistent practices with respect to liability for major projects until last year - return to its pre-1992 standards, i.e., that caps be placed on a contractors's overall liability, and that owners exempt contractors from liability for consequential loss or damage.

Answer 21

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

That consequential damage in practice has limits does not mean that it need be capped. The information available to Chinese Taipei does not show that imposition of consequential damage on contractors is inconsistent with international standards. For instance, the Federal Acquisition Regulations of the United States (FAR paragraph 49.402-2, paragraph 49.402-7, paragraph 52.246-24, and paragraph 52.247-21) does not impose a cap on the damage for which a contractor shall be liable to the government. In the case of the United States v. Franklin Steel Products, 482 F.2d. 400 (9th Cir., 1973), the court held that the contractor should be liable for the price paid for discrepant bearings and

also the cost of all consequential damages which were the direct and proximate result of the breach of warranty. Furthermore, if the premium and insurance condition are attractive enough for an insurer, there is no reason for an insurer not to provide insurance for consequential damage.

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

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

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

Question 22

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

Please explain

Answer 22

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

Question 23

Concerning tendering - follow-up to Reply 2, USA 4

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

Please provide the same information for projects by single and selective tenders.

Answer 23

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

Concerning licensing requirements for foreign firms applying for construction - follow-up Reply 31, USA 17

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

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

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

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

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

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

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

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

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

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

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

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

Question 24

Has MOI received the report from the China Productivity Centre? If so, what were the recommendations of the report? Will MOI be submitting legislation during this session of the LY concerning this matter?

Answer 24

The construction and Planning Administration, the Ministry of Interior, has received the report from the China Productivity Centre. Following the recommendation of the report, the CPA has held

three meetings to discuss the general framework of the draft Construction Business Law, which has taken into account the principle of national treatment. The draft law will be submitted to the LY as soon as possible.

Pre-qualification requirements

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

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

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

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

Question 25

My Government requests that Chinese Taipei eliminate all discriminatory elements of current pre-qualification procedures, and asks that Chinese Taipei account for overseas experience in evaluating pre-qualification criteria.

Answer 25

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

9. State enterprises

Commissary stores

Concerning Reply III-9-2

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

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

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

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

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

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

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

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

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

Question 26

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

Does this ruling apply to Military PX's as well?

Answer 26

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

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

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

Question 27

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

- **We would appreciate a respons[illegible]o the questions we raised concerning the 28 Military PX's currently operati[illegible]n Chinese Taipei.**

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

- **Are random spot checks of ID's made?**

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

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

(Marker)

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

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

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

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

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

- **Establish a fairer price setting procedure.**

Finally, my Government would be interested in obtaining information on government subsidies (e.g., land, personnel) provided to PX's/Commissaries to support their operations.

Answer 27

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

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

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

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

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

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

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

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

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

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

(1) It takes effective measures to limit the access to the stores and the quantity each person may purchase;

(2) It publishes its procurement rules and policies, and new product catalogues to reflect market changes; and

(3) It improves its price determination procedure.

10. Fair Trade Law

11. Intellectual property rights protection

(1) Copyright protection

(2) Trademark protection

(3) Patent protection

14. Science and technology policy

15. The International Economic Cooperation and Development Fund

16. Transport policy

17. Telecommunication policy

Question 28-1

Concerning Reply III-17-1

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

Does the DGT define "Category II" services as value-added network services?

Answer 28-1

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

Question 28-2

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

- **Cellular and paging services;**
- **Protocol conversion services;**
- **E-mail;**
- **Voice mail, voice store-and-forward;**
- **Store-and-forward facsimile;**
- **Point-of-sale transactions;**
- **Credit card verification;**
- **Electronic data interchange (EDI);**
  Data base access;
- **Home shopping and banking.**

Answer 28-2

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

(1) Information storage and retrieval service;
(2) Information processing service;
(3) Word processing and editing service;
(4) Remote transaction service;

(5) Voice storage and transmission service;
(6) Electronic mail;
(7) Electronic data interchange; and
(8) Bulletin board service.

Question 28-3

What mechanisms will the DGT use to review the Category II service market to define new services as Category II services?

Answer 28-3

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

Question 28-4

Will the Directorate-General of Telecommunications (DGT) accept request from Category II service providers to define new services as Category II services?

Answer 28-4

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

Question 28-5

Does the draft Telecommunications Law stipulate that foreign ownership of Category II service providers be limited to one third?

Answer 28-5

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

Question 28-6

How quickly does the DGT intend to implement the new foreign ownership regulations after the Legislative Yuan passes the draft Telecommunications Law?

Answer 28-6

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

Question 28-7

What information will Category II service providers have to submit to obtain a Category II service licence?

Answer 28-7

To apply for a licence, the applicant has to submit an application together with a business plan and supporting documents required. In the application, the following information shall be provided:

(1) The applicant's name and address (in the case where the applicant is a company, the name of its representative and principal place of business shall be provided);

(2) Business items;

(3) The geographical area where the applicant intends to operate business;

(4) Type of communications; and

(5) General description of its telecommunications equipment.

Foreign service providers intending to operate Category II business in Chinese Taipei are further subject to the following requirements:

(1) Its providing services will transfer software/hardware hi-tech into Chinese Taipei; and

(2) The foreign providers' home countries also provide the same right to nationals of Chinese Taipei.

Question 28-8

What types of regulations will ensure that the China Telecommunications Company (CTC) will not be able to leverage its monopoly position in the Category I service market to put its competitors in the Category II service market at an unfair advantage?

Answer 28-8

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

Question 28-9

What measures will ensure that Category II service providers have equal access to the CTC's public network and to information the CTC transfers between its Category I service operation and its Category II service operations?

Answer 28-9

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

Question 28-10

What accounting safeguards will the DGT require of the CTC to ensure that the CTC does not cross-subsidize its Category II service operations with the monopoly revenues from its Category I service operations?

Answer 28-10

Please refer to Answer 28-8

Question 28-11

How does Chinese Taipei distinguish between healthy and desirable competition and so-called "cut throat" competition?

Answer 28-11

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

Concerning Reply III-17-2

Please provide English translations of the DGT's key points for its type approval testing of customer premises equipment. (This document is referred to as the "Key Points for Testing Process" in Reply III-17-2.

Answer 29-1

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

Question 29-2

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

Answer 29-2

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

IV. Trade laws and regulations, organizations, and publications