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WORKING PARTY ON THE ACCESSION OF CHINESE TAIPEI

Questions and Replies

AUSTRALIA

The representative of Chinese Taipei has submitted the 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 reproduced in documents L/7189/Rev.1 and L/7097 and Addenda will be considered at the meeting of the Working Party scheduled to take place on 12-15 October 1993.

GOVERNMENT PROCUREMENT

Aspects of government procurement of interest to Australia are reflected in the questions we submitted - namely questions 361, 362 and 364.

Specifically,

361 relating to which countries are restricted from tendering

362 regarding guidelines for defence procurement (We note the comment that there is no English language text available. Is a Chinese text available please?)

364 regarding exceptions from international tendering and supply of imported equipment in domestic tenders.

1. Question 353 and 361: Chinese Taipei advises that in respect of international project and procurement tenders, restrictions may be applied to suppliers from areas subject to Chinese Taipei's area restrictions. It is not clear to us from Chinese Taipei's answers what the basis really is for area restrictions in public tendering, other than that they are based on trade policy, including national security policy considerations. Could Chinese Taipei please give advice concerning these countries/areas?

Reply 1

Countries that are subject to area restriction in public tendering are two neighbouring countries of Chinese Taipei: one is subject to such restriction for its huge surplus in trade with Chinese Taipei and the other for the reason of its breaking diplomatic ties with Chinese Taipei in 1992. Chinese Taipei

is currently reviewing both situations and intends to enter into discussion with the two countries with a view to resolving the issues at the earliest possibility.

2. In response to question 355(2): Chinese Taipei has said "there are no rules of preference levels affecting the selection of bidders or bids, except the bid price." Australia has information, however, that Chinese Taipei public enterprises must procure locally if the local bid is not more than 5 per cent higher than the c.i.f. import price plus tariffs and harbour fees. Could Chinese Taipei please clarify this apparent contradiction?

Reply 2

The rule of preference that public enterprises must procure locally if the local bid is not more than 5 per cent higher than the c.i.f. price plus tariffs and harbour fees was abolished in 1992.

FISCAL POLICY

3. Questions 323, 324: in relation to the "monopoly tax" applied to tobacco products and alcoholic beverages, Chinese Taipei advises that the average monopoly tax rate on domestic products (i.e. tobacco and alcohol) is approximately 185 per cent over their cost. On the other hand, the information on the average monopoly tax rate on imported goods relates only to spirits (120 per cent) and is based on the import price: Could Chinese Taipei please provide information on a basis which would allow a better comparison of the average monopoly tax for (a) imported and domestic tobacco products and (b) imported and domestic alcoholic products? Can such information be provided for wines?

In summary, the information sought by Australia on monopoly tax for tobacco, wine, spirits and beer is:

. What are the details of the criteria for the "cost" basis for the tax applied to domestic products?

  - for imported products it seems more based on "price"

  - what are the details of the formulae/criteria?

. Where examples are given of tax rates for certain alcoholic products, is the rate per unit (bottle, case)?

  - Why is Scotch and Irish whisky subject to higher monopoly tax than other whisky (9/2 323)

. What are the categories for which rates of tax are broken down (wine, spirits and tobacco) as referred to briefly in reply 324?

. Could Chinese Taipei provide some detail on the tariff classification they use? What is the meaning of the reference to "based on US and EC" practice?

. We would like a table which better shows the comparative treatment for imported compared to domestic tobacco and also for alcohol (differentiated for wine and for spirits) to help us understand the differences.

Reply 3

The cost for domestically produced wine and tobacco products is determined on the basis of their production cost plus their operating expenses (for example, marketing, administration, and R & D expenses). The cost for imported wine and tobacco products is determined on the basis of the actual invoice prices on f.o.b., c & f, or c.i.f. terms.

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

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

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

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

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

The reduced amounts, when converted back to ad valorem rate is over 120 per cent. As import prices have been slightly increased, the average monopoly tax rate may have been lowered accordingly. As to the precise current ad valorem levels of monopoly tax on foreign imports, the time from the first free importation of foreign spirits is not long enough to make the statistics meaningful for an accurate assessment. The issue is further complicated by the change in exchange rates, sales policies and price quotations since the first announcement of free import.

The rate is per litre for wine and spirits and per 1000 sticks for cigarettes. On the issue of Scotch and Irish Whisky subject to higher monopoly tax, as opposed to other whiskies, Chinese Taipei wishes to note that the monopoly tax in our domestic practice is a sales tax and therefore Chinese Taipei levies on an ad valorem basis. It is in response to our trading partners' request that we levy specific monopoly tax on imported products. The tax amount is actually determined on an ad valorem basis but levied on a specific tax basis. Scotch and Irish whisky are high quality and high price products, and therefore their monopoly tax is bound to be higher than other whiskies. Chinese Taipei classifies whisky into Scotch and Irish whisky as one category, and the other whiskies as the other category, taking into account the customs classification practice of the United States and the European Community. The tax amounts for the five categories of imported spirits are shown in the table set out below.

The categories for which rates of tax are broken down and shown in the table set out below. Because of the great variety of western spirits and great difference in their qualities, Chinese Taipei follows US and EC practices in classifying whiskies into Scotch and Irish whisky as one class and other whiskies as the other class, and applies different rates for these two classes.

Attached below is a table comparing the monopoly tax burden on domestic and imported products. In making the comparison of ad valorem rates monopoly tax, the import prices are treated as the costs of imported products.

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

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

FOREIGN INVESTMENT POLICY

4. Question 333 and 339: Australia appreciates the advice in Mr. Sheu's statement to the morning session of 29 June that the industries which are currently excluded from investment by foreign investors because they have monopoly privileges granted or are banned from private investment by law are, among others, electricity supply, railway transportation, telecommunications and postal services - and that those industries banned investment by law include, among others, road transport and taxi services. Are complete lists available?

Australia welcomes the clarification given by Chinese Taipei in the Working Party on 28 June that passenger motor vehicles are not included in this category and that there is therefore no limit on investment by foreigners in that industry.

Reply 4

The Foreign Investment Negative List which is a part of the Statute for the Investment by Foreign Nationals provides a complete listing of industries which are currently excluded from investments by foreign investors for the reason that they involve monopoly privileges granted or are banned from private investments by laws. The aforementioned Negative List and Statute are provided in the Annex to the document L/7189/Rev.1.

STATE ENTERPRISES

Many of Chinese Taipei's State enterprise monopolies import materials or products of considerable commercial interest to Australia (steel, coal, petroleum, vessels, sugar, alcohol).

5. Australia is interested to learn more about the purchasing policies of these monopolies, in particular whether they purchase by tender, whether they apply any discriminatory criteria (such as area restrictions), what the spread of suppliers is in the case of each State enterprise, whether any other non-commercial criteria are applied, whether they are subject to government direction or have to meet criteria established by the government (see Question 374).

We would particularly appreciate information on CT's intentions for moving to commercial bases for purchases of coal by Taipower and China Steel (currently factors such as purchasing from countries whose trade imbalances with CT are in effect).

Reply 5

Purchases by public enterprises in principle are made by public tender and the purchase decisions are based upon such relevant factors as qualities, specifications, deliveries, and prices. In addition, since the government is the largest shareholder of the public enterprises, some of the purchase decisions are to certain extent affected by the government's economic and trade policies. Despite this, non-commercial factors rarely come into play. Currently, area restriction applies only to two neighbouring countries. These are the only instances where purchase decisions may deviate from commercial consideration.

Neither Taipower nor China Steel enjoys import monopoly of coal. Furthermore, their purchases are based upon commercial considerations, and mainly by long-term contracts in order to secure stable supplies. As a common industry practice, the long-term purchase contracts are so arranged as to diversify the sources of supply: Taipower imports approximately 30 per cent of its coal requirement from Australia, 30 per cent from South Africa, 20 per cent from the US, and 20 per cent from Indonesia and other areas; China Steel imports 2/3 of its coal requirement from Australia and 1/3 from North America. From time to time, Taipower purchases by public tender in the spot market part of its coal requirement.

In the case of crude oil, China Petroleum imports approximately 66 per cent from Middle East, 15 per cent from South East Asia, 10 per cent from Africa, 4 per cent from Australia, and 5 per cent from other areas.

In the case of sugar, Taiwan Sugar Company imported sugar only in the recent past three years: in 1991, it imported 50,000 tons from Korea and Thailand; in 1992, it imported 50,000 tons from Australia and Thailand; 47,500 tons imported in 1993 from Australia.

In the case of alcohol, the Taiwan Tobacco and Wine Monopoly Bureau (TTWMB) does not have any import; it purchases its alcohol requirements from the Taiwan Sugar Company.

There is no public enterprise that enjoys import monopoly of steel and vessels.

6. Question 379: We notice that the answer has not addressed all sub-questions.

Reply 6

With respect to the sub-question (iv) which Chinese Taipei did not reply to in document L/7189/Rev.1, Chinese Taipei would like to confirm that suppliers of domestic and foreign products have equal access to this market and they have to compete on the same footing. Currently, foreign products account for one third of the market and enjoy a favourable market position.

7. Question 384: Very discriminatory practices are involved, about which we share the concerns of several other Working Party participants.

Reply 7

There is no discriminatory practice in this area, with only one exception, i.e., area restriction against imports from a particular country. Chinese Taipei is reviewing its relevant trade policies in order to find a solution to the problem of the area restriction.

SCIENCE AND TECHNOLOGY

8. Reply 422 refers to tax incentives for "promising" industries, and to Article 8 of the Statute for Upgrading Industries (which we have not seen). Can Chinese Taipei indicate in writing what conditions industries must meet to secure such tax concessions, and indicate whether export performance is such a condition?

Reply 8

The Statute for Upgrading Industries has been made available at the Secretariat (Please see item 44 of the Annex to document L/7189/Rev.1). The "promising industries" as referred to in Reply 422 are actually the Important Technology-Based Enterprises referred to in Article 8 of the Statute for Upgrading Industries, which are listed in the Section on science and technology policy of document L/7097, p.33. Tax incentives are provided to enterprises when they fulfil the requirements set out in the enclosed "Scope of the Application of Important Invested Enterprises Engaged in Manufacturing Business" and "Scope of Application of Important Technology-Based Enterprises Engaged in Manufacturing Business" both promulgated by the Executive Yuan pursuant of the Statute for Upgrading Industries.

TELECOMMUNICATIONS

9. Question 425: Australia shares the interest of other delegations (United States, EC, Nordics, Hong Kong) on the detail of the process of implementation of the draft amendment to the Telecommunications Act, its likely timing, and on the conditions required for granting of licences for foreign investment in and operation of the VANs.

- Can CT provide information on how automatic the licence-granting would be?

- Will there be any specific additional criteria for the licences (including any area restrictions, tendering or fees)?

Reply 9

The draft amendment to the Telecommunications Act has been forwarded by the Executive Yuan to the Legislative Yuan in April 1992. The draft is now pending at the Legislative Yuan. It is difficult to predict when the Legislative Yuan will complete its review.

According to the draft amendment, foreign investment in Category II telecommunications services will have to be approved by the Ministry of Communications, if the proposed investment meets the conditions set out in Reply 426. It is not finally determined whether area restriction, tendering or fees will be imposed or required.

SERVICES

10. Does Chinese Taipei allow foreign providers to offer the ancillary aviation services of aircraft repair and maintenance, computer reservation services, aircraft rental, terminal services, and baggage handling? Please provide details of all applicable conditions and policy.

Reply 10

Aircraft repair and maintenance, terminal services and baggage handling are on the Negative List for foreign investment in Chinese Taipei; foreign investment is limited to those by nationals whose home countries have signed bilateral civil aviation agreements with Chinese Taipei.

Computer reservation services are considered as one type of telecommunications business, specifically the VAN business, and therefore are subject to the relevant telecommunications laws and regulations. According to the current Telecommunications Regulations, international VAN business can only be operated by nationals of Chinese Taipei when the authority of Chinese Taipei has entered into bilateral agreements with the relevant countries. However, to meet the social needs, Chinese Taipei's business operators may co-operate with foreign operators, and when the agreements are approved by the Ministry of Communication, the relevant service can be provided by Chinese Taipei's operators.

Under the draft amendment contemplates, foreign nationals or entities may operate VAN business in Chinese Taipei, when they meet the conditions set forth in Reply 426 and approved by the Ministry of Communications.

11. What application processes do foreign legal consultants have to fulfil to be able to practice foreign legal consultancy in Chinese Taipei? (Q449: Does this mean there will be no possibility of foreign legal consultancy involvement in Chinese Taipei before there is an outcome of the Uruguay Round.)

Reply 11

Foreign lawyers may practice law in Chinese Taipei if they pass the local bar exams and obtain permission from the Ministry of Justice. This is further conditioned by the requirement of reciprocity.

Foreign lawyers who are not qualified to practice law in Chinese Taipei, but fulfil the requirements set out in the Rules for Regulating and Granting Permission for Employment for Foreigners by Local Lawyers may be hired by lawyers of Chinese Taipei as their consultants and assistants. Law firms in Chinese Taipei may not operate under the name of such foreign lawyers. Local lawyers that wish to hire foreign lawyers shall apply to the Ministry of Justice for permission.

According to the aforementioned Rules, local lawyers may hire foreign lawyers who meet the following requirements:

1. they must be graduated from the relevant departments of local or foreign university or relevant graduate schools and have working experience in the relevant fields for more than two years; or

2. they pass foreign bar exams and have relevant working experience for more than two years.

12. To what extent are foreign legal consultants allowed to enter into fee-sharing arrangements, or partnership with local law firms in Chinese Taipei? What is Chinese Taipei's policy on the use of foreign names in legal consultancy?

Reply 12

Foreign consultants may not form partnership or have any fee sharing arrangements with local law firms in Chinese Taipei. Besides, using foreign names in legal consultancy is not permitted.

13. To what extent is the Chinese Taipei stock exchange self-regulatory? What provisions are regulated by the Government?

Reply 13

The Taiwan Stock Exchange is organized according to the Securities and Exchange Law as a corporate form stock exchange. Under direct authorization of the Securities and Exchange Law, the Taiwan Stock Exchange may impose sanction upon its contractual securities firms. To undertake such a self-regulatory responsibility, all related by-laws and business rules of the Taiwan Stock Exchange must be approved by the Securities and Exchange Commission. The Taiwan Stock Exchange has been over the years performing such self-regulatory responsibilities with great satisfaction.

14. To what extent are Chinese Taipei professional bodies regulated by the Government?

Reply 14

Generally, professional bodies such as associations of lawyers, accountants, or architects are under the supervision of the Ministry of Interior for their organization matters, such as establishment or registration of the associations. If an association files its own articles of association or any relevant law, the MOI may depending on the cases, issue a warning, revoke the violating resolution made by the association, or reorganize the association.

Professional bodies are also subject to the supervision of the authority which has jurisdiction over the business of the professionals involved, e.g., the Ministry of Justice in the case of lawyers, the Ministry of Finance (in particular, the Securities and Exchange Commission) in the case of accountants, and the Ministry of Interior (in particular, the Construction Administration) in the case of architects. Such authorities also have the power to issue warnings and revoke resolutions. The laws (the Lawyers Law, the Accountants Law, and the Architects Law) provide for codes of conduct, and the associations also have rules to discipline their members. Violation of such codes of conduct or rules would result in such disciplinary action as warning, suspension of practice, or disqualification.