

**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

JAPAN

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

THE FOURTH MEETING OF THE WORKING PARTY ON THE ACCESSION
OF THE SEPARATE CUSTOMS TERRITORY OF TAIWAN,
KINMEN, PENGHU AND MATSU

Japan's Follow-Up Questions

1. Import restriction on tobacco and alcohol products (Reply 12, Spec(93)39)
 - Japanese tobacco and alcohol products, unlike those of other countries, can be imported only in the TTWMB.

What is the domestic legal basis for this treatment?

Answer 1.1

The domestic legal bases are Articles 5 and 6 of the Foreign Trade Act, which reads as follows:

Foreign Trade Act

Article 5

For the purpose of safeguarding national security, the competent authority may, in conjunction with the appropriate government authority or authorities, propose to the Executive Yuan for an approval to ban or control the trading activities with specific countries or territories provided that such prohibition or control shall be submitted to the Legislative Yuan within one (1) month from the date of publication thereof for its ratification.

Article 6

Under any of the following circumstances, the competent authority may temporarily suspend import from or export to specific countries or territories or import/export of specific commodities or take any other necessary measures:

1. When any act of God, incident, or war occurs;
2. When national security is endangered or protection of public safety is hindered;
3. When the domestic or international market suffers a serious shortage of a specific material or the price thereof drastically fluctuates;
4. When the trade with a counterpart trading country results in a long-time and huge trade deficit;
5. When any international treaty, agreement, or international cooperation calls for it;
6. When a foreign country impedes import from or export to this country with measures violating international agreements or principle of fairness and reciprocity or exports goods to this country to the extent causing additional burden and great loss to local industries in direct competition with such imports.

Application of Items 1 through 4 or Item 6 of the preceding paragraph shall be limited only to circumstances when there is an adverse impact or a threat thereof upon the normal development of the economy and trade of this country.

Before suspending export/import or taking any other necessary measures pursuant to Item 4 or 6 of paragraph 1 above, the competent authority shall try to settle trade disputes through consultation or negotiation.

Suspension of export/import enforced or other necessary measures taken by the competent authority shall be lifted when causes therefor cease to exist.

The ratification requirement provided for in the preceding Article shall also be applicable for the purpose of this Article.

In addition, Article 28 of the Provisional Statute for Monopoly of Tobacco and Wine in Taiwan Province provides that import and export of wine and tobacco products have to be approved by the monopoly authority, i.e. TTWMB.

- Currently, tobacco and alcohol products imported from Japan can only be sold at 19 TTWMB outlets and 126 designated distribution centres, according to the explanation given by Chinese Taipei.

What is the share, in terms of their numbers and sales, held by these stores among the overall stores which can sell tobacco and alcohol products?

Answer 1.2

The share in terms of the store number is about 0.24 per cent (TTWMB has about 60,000 stores); in terms of their sales volume, the share is about 0.65 per cent for imported cigarettes, 0.24 per cent for imported whisky, 11.98 per cent for imported wine, and 99.99 per cent for Japanese sake.

- **Japanese tobacco and alcohol products are subject to price control by the TTWMB. Please explain the price-setting mechanism.**

Answer 1.3

Under the Statute granting monopoly rights to TTWMB, Japanese alcohol and tobacco products can be imported and distributed only by TTWMB and therefore the prices are set by TTWMB as a normal trader and distributor. The price-setting in the case of Japanese alcohol and tobacco products is not different from that for alcohol and tobacco products from other countries and imported by TTWMB for local distribution.

- **Chinese Taipei stated that it is assessing the possibility of lifting the ban on the imports of Japanese tobacco and alcohol products. What is the current situation of the assessment? What is the final objective of this assessment?**

Answer 1.4

Chinese Taipei has not finalized its decision yet.

2. Foreign Trade Act (Reply IV-1 to United States questions (Spec(93)45))

2.1 Article 6.4

What is the GATT basis for this provision? We believe that this provision constitutes a basis for taking unilateral actions based on the trade imbalance consideration. This is not justified by the GATT. Chinese Taipei should duly rectify this provision and bring it into conformity with the GATT provisions before its accession.

Answer 2.1 - Article 6.4

The trade imbalance referred to in Article 6.4 of the Foreign Trade Act refers to global imbalance rather than imbalance with a specific trading partner. Chinese Taipei will apply this provision in a manner consistent with Article 15 of the GATT and the special exchange agreement that Chinese Taipei has preliminarily agreed to sign with the contracting parties.

2.2 Article 9

On what specific criteria does the BOFT permit the registration of a corporation which may engage in trade business? If a corporation meets the criteria, is registration automatically granted? Are there any other requirements which the corporation has to meet in order to engage in trade business?

Answer 2.2 - Article 9

Any business entity that has capitalization of NT\$5,000,000 or more and includes import/export in its business scope as specified in its business licence is qualified to apply for registration as a trader. The registration is automatically granted when the above-mentioned criteria are met.

2.3 Article 13

What are the objectives of this Article? Please specify the scope of the term "hi-tech commodities". What is the GATT basis for this Article? What is the relationship between this Article and Article 6.2?

Answer 2.3 - Article 13

The purpose of Article 13 is to control the export of hi-tech commodities so as to ensure that hi-tech products imported or technologies transferred from other countries will not be re-exported or re-transferred to other countries that the original exporting or technology-transferring country finds objectionable. The Article also provides a basis for controlling export of Chinese Taipei's own high-tech products.

The hi-tech products that fall within the application of Article 13 are:

- (i) Those that are declared by the Ministry of Economic Affairs to be subject to hi-tech export control; and
- (ii) those for which the original exporting countries require the issuance by Chinese Taipei of an international import certificate or other related documents ensuring control on re-export.

In Chinese Taipei's view, the export control on high-tech commodities as contemplated in Article 13 can be justified under the national security exception of the General Agreement.

2.4 Article 16

What are the objectives of this Article? What is the GATT basis for this Article?

Answer 2.4 - Article 16

It is common for two trading partners to resolve their differences through consultations. If both parties agree to control import or export of a specific product as a way to resolve trade disputes, there should be domestic legal basis for the countries concerned to implement the agreement. The purpose of Article 16 is to provide for such domestic legal basis.

Despite Article XI of the General Agreement imposes limitation on the use of quantitative restrictions, this is not a rule without exception. For instance, the Multifibre Arrangement allows countries to impose quotas on imports of textile products. The exporting countries concerned would have to take corresponding measures to allocate quotas among their exporters. Moreover, it is also possible for a contracting party to be allowed a transitional period to bring a specific practice in line with the requirements of the GATT. During the transition, there may be a need to impose quantitative restrictions in order to give the domestic industry concerned an opportunity to make adjustments. The purpose of Article 16 is to provide a domestic legal basis for exercising the necessary control over import or export.

2.5 Article 21

On which items is the trade promotion service fee imposed? Please provide specific examples. On what criteria do the Chinese Taipei authorities determine on which items are to be imposed a trade promotion service fee? Is this fee imposed on all imports and exports without exception? Are there any items on which this fee is imposed at more than 0.05 per cent of the price? What is the GATT basis for the imposition of this fee?

Answer 2.5 - Article 21

The trade promotion fee is imposed on all imports and exports and is levied by the Customs. The fee is not to exceed 0.05 per cent of the value of the imported or exported products. Imports or exports not for commercial purposes are not subject to the levy of such fee. Currently, the fee is levied at a level much lower than 0.05 per cent. There is not instance in which the fee levied exceeds 0.05 per cent. The proceeds of the fee are used to promote international trade, in both the directions of import and export. The fee is a service fee that falls within Article VIII of the General Agreement. Chinese Taipei would ensure that the cost of providing promotion services to importers and exporters in general approximate the amount of the fee levied.

2.6 Article 22

What are the objectives of this Article? Please specify the scope of the "unfair trade barriers" and of "the competent authority"? On what criteria does "the competent authority" choose which exporters and/or importers are to be assisted in this Article? Is this Article applied to those foreign exporters who find "unfair trade barriers" in Chinese Taipei? Specifically, what measures are to be taken to assist exporters/importers in this Article and under what procedures? What is the GATT basis for this Article?

Answer 2.6 - Article 22

The competent authority for purposes of Article 22 is the Ministry of Economic Affairs. The unfair trade barriers are to be interpreted as any practices of foreign countries that are not justified under the GATT or other relevant international rules. The article does not apply to foreign exporters who find unfair trade barriers in Chinese Taipei, as such issue should primarily be dealt with between the governments concerned.

The measures to be taken by Chinese Taipei to assist its traders are: to hold consultation with the foreign country concerned to find a mutually acceptable solution and, when justified by the GATT rules, to take retaliatory action.

The specific GATT basis for Article 22 is Articles XXII and XXIII of the GATT. Also, the GATT sets only minimum standards for trade practices; it does not prevent contracting parties from entering into bilateral consultations to further liberalize the world trade by removing unfair trade practices that are not specifically provided in the GATT.

2.7 Article 35

What are the objectives of this Article? Can Chinese Taipei provide a complete list of the business associations and the legal persons whose annual operating expenses are subsidized by more than half by the trade promotion fund? Could Chinese Taipei specify how many entities fall into these categories?

Answer 2.7 - Article 35

The purpose of Article 35 is to make trade associations subject to the surveillance of the Ministry of Economic Affairs when they receive subsidies from the trade promotion fund to an extent that exceeds half of their operating expenses. The intention is to ensure that the money is well spent and not wasted in the inefficient operation of the trade associations.

There has been no trade association which receives subsidies from the trade promotion fund to an extent exceeding the threshold.