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PENGHU, KINMEN AND MATSU

Questions and Replies

CANADA

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

WORKING GROUP ON THE ACCESSION OF CHINESE TAIPEI

12-15 October 1993

Questions by Canada

1. Chapter II-1: tariff system

In reply to Question I-2 from Mexico (Spec(93)41/Add.1), Chinese Taipei has indicated that it does not have any tariff quotas. Can Chinese Taipei confirm that it will not use tariff quotas in the future?

Answer 1

The use of tariff quotas are not prohibited by the GATT; Chinese Taipei does not wish to rule out the possibility of using tariff quotas in the future.

2. Chapter II-2(4): customs procedures

What recourse does a firm have if, according to the customs authorities, its goods do not conform to Chinese Taipei's import laws and regulations?

Answer 2

If the documents required for importing the goods concerned are not in order and the goods fall within the category of permitted imports, the goods can be imported when the deficiency in the documentation is remedied. In the case of fraud, forgery or other violation of laws and regulations, the Customs will penalize the violator according to the Customs Anti-Smuggling Law. The Customs' decision can be challenged by initiating an administrative appeal proceeding. Normally, the

administrative appeal proceeding consists of three stages: first, filing a request to the original agency for review of its decision; then, appealing the decision to the higher authority for review; and finally, filing an administrative suit with the administrative court whose proceedings are similar to that of the court of law. The administrative court, being at the highest level of the administrative appeal system, is the equivalent of the Supreme Court in the judicial system.

3. Chapter II-2(5): other charges and fees

Has Chinese Taipei completed the review of the Harbour Construction Dues and is it now in a position to confirm that this tax will be abolished?

Answer 3

Chinese Taipei has preliminarily determined to structure its Harbour Construction Dues as service fees, and is now investigating the extent to which the current system has to be adjusted in order to bring the relevant practice into conformity with the GATT. Chinese Taipei will need a transitional period for making such adjustment and is now assessing the length of time that may be required.

4. Chapter II-2(6): Export Processing Zones

Can Chinese Taipei describe the type of tax breaks and other forms of incentives that are available to enterprises located in Export Processing Zones (EPZs), and not available to enterprises outside of the EPZs?

Answer 4

Special tax incentives accorded to enterprises located in the EPZs are (1) exemption of import duties on machinery, raw materials, fuels, semi-finished products, and other products used in the manufacturing of the final products exported from the EPZs; and (2) exemption of deed tax on first acquisition of plants from the EPZ authorities. It is noteworthy that the deed tax is not exempted in the case of sale of second-hand plants, and there are only two new standard plants left for sale by the EPZ authorities. Other tax treatment accorded to EPZ firms are the same as that for firms outside of the EPZs.

5. Chapter II-3: import licensing

- (a) **In general, what factors are taken into account when consent letters are issued by relevant authorities prior to the issuance of an import licence? In particular, what factors does the Council of Agriculture consider before issuing a consent letter to qualified importers? On what grounds could such letters be refused? What criteria are applied? Are those criteria published?**

Answer 5(a)

Consent letters will be issued in special circumstances. For instance, when domestic production of a commodity is grossly inadequate, and the prices at the place of production are 30 per cent higher than the contract prices negotiated between producers and processors, the Council of Agriculture will allow importation of the commodity. The import quotas will be auctioned to interested parties who then will be granted the necessary consent letters. If there is adequate supply of the commodity concerned, no consent letter will be issued. The special circumstances justifying the issuing of the consent letters and the criteria applied vary from product to product. The criteria are not published, but the Council of Agriculture is making preparation for publication of the criteria in the short future.

- (b) Can Chinese Taipei confirm that import controls on all seafood products, except those applied on mackerel, sardine, carangid and squid, have been removed? Could Chinese Taipei explain the reasons why import controls remain on these products? What are Chinese Taipei's plans with respect to lifting such controls?

Answer 5(b)

Fishery products, with the exception of mackerel, sardine, carangid and squid, can be freely imported into Chinese Taipei. Those products that are still subject to import controls are coastal line fishing products and are the main sources of income for small-scale local fishermen. It is difficult to lift such import controls; Chinese Taipei wishes to resolve the issue through consultation with interested contracting parties.

- (c) Could Chinese Taipei provide for each tariff line appearing on the Negative List a specific GATT justification for the use of import controls?

Answer 5(c)

Chinese Taipei is preparing a special version of the Negative List which will provide line-by-line justifications for the use of import controls. Chinese Taipei is now discussing with its trading partners on the format of the List.

6. Chapter II-5: labelling system for imported products

In its reply to Question 3/15 from New Zealand (Spec(93)42), regarding Article 4 of the Commodity Inspection Law, Chinese Taipei has indicated that the requirement to indicate the quality on labels in the case of imported goods would be removed from the wording of the legislation the next time the legislation is amended. When will the legislation be amended?

Answer 6

At the end of April, the Bureau of Commodity Inspection and Quarantine will hold a public hearing in order to draft an amendment to the said legislation.

7. Chapter II-6: standards, inspection and quarantine

In reply to Question 203 in document 7189/Rev.1, Chinese Taipei has indicated that the policy of the Bureau of Commodity Inspection is to "promote the quality of commodities, ensure their safety, protect consumers interests and prevent the dissemination of plant and animal disease and insect pests". With respect to quality, we believe that such an issue is a matter to be dealt with between importers and their suppliers. In this context, what steps are being taken to ensure that quality is not used as a criteria for inspection and that no standard will be used in a discretionary manner?

Answer 7

Chinese Taipei agrees that quality is a matter to be dealt with between the importers and their suppliers. For imported and domestically manufactured commodities that are announced to be subject to mandatory inspection, the inspection is to ensure the minimum quality to protect the health and safety of consumers. CNS Standards, drafted or modified by taking JIS, DIN, BS, etc. as references and by taking the ability of the local manufacturing industry into account, are the standards for conducting the above inspection. Therefore, the quality standard is not an arbitrary one and it is not used in a discretionary manner.

8. Chapter III-1: industrial policy:

Could we obtain a list (with HS number) of those products currently subject to price controls and a list of additional products which could be subject to price controls in the future? Could we also obtain a copy of the laws and regulations which apply to price controls?

Answer 8(a)

Products currently subject to price control:

Item	Product	Legal basis	HS No.	Remarks
1	Electricity	Electricity Business Law/Table for dividing the responsibilities of the MOEA ¹ and the EY. ²	Nil	No HS number. As electricity cannot be stored, it is impossible to import.
2	Salt	Salt Administration Statute/Table for dividing the responsibilities of the MOEA and the EY.	2501	
3	Petroleum	Table for dividing the responsibilities of the MOEA and the EY	2710.00.11 2710.00.12 2710.00.23 2710.00.31 2710.00.33	Chinese Taipei is short of energy resources and 99.5% of its needs are met by imports. In order to ensure national security and stabilize price, oil prices are subject to the government's control. However, Chinese Petroleum Corporation is authorized by the government to adjust price on its own initiative to a certain extent. The government is drafting the Oil Business Law with a view to liberalizing the oil market.
4	Natural gas, liquified petroleum gas	Statute Governing Surveillance on Privately-Run Public Utilities	2711.21.00 2711.19.10	
5	Sugar	Table for dividing the responsibilities of the MOEA and the EY.	1701.11	To facilitate the implementation of agricultural policies, particularly in regard to farmers' income, prices are subject to the government's control, but will be liberalized in the long run.
6	Fertilizer		3102.10.10 3102.21.10 3102.30.10 3102.70.10 3103.10.00	

¹MOEA: Ministry of Economic Affairs

²EY: Executive Yuan

Answer 8(b)

The translations for the laws and regulations cited above are not available. The Electricity Business Law and the Salt Administration Law are to be amended soon. The following are the English translations of the provisions in the laws that deal with price controls:

Article 59 of the Electricity Business Law

Electricity business, when making or amending its business operation rules, or fixing or changing electricity price and all kinds of charge rates, shall submit its proposal to the local authority or the authority to which it belongs, which shall in turn submit the proposal to the central competent authority for approval; when the proposal is approved, it shall be published in the relevant localities.

In those geographical areas where traffic is not convenient, the proposal can be implemented after the relevant provincial or city government has approved the proposal, provided, however, if the central competent authority requires the reduction in charge rates, the excess shall be refunded.

Electricity fees charged by State enterprises shall be determined according to Article 20 of the Statute Governing State Enterprises.

Article 12 of the Salt Administration Law

Selling prices charged by salt producers shall be the field prices, which shall be determined by the salt administration agencies on the basis of the approved standard costs for different kinds of salt plus reasonable profits.

Article 7 of the Statute Governing Surveillance over Privately-Run Public Utilities

Privately-run public utilities, when making or amending rules relating to charges on the general users and other rules, shall submit its proposal to the local supervising authority, which shall in turn submit the proposal together with its comments to the central competent authority for its approval.

9. Chapter III-2: agricultural policy

- (a) In reply to Question 3/10 from New Zealand (Spec(93)42), Chinese Taipei has indicated that it is considering abolishing the regulation governing "relief and aid for major agricultural products damaged by importation" by the end of 1993. Can Chinese Taipei confirm that such regulation will indeed be abolished before the end of this year?

Answer 9(a)

Article 18 of the Foreign Trade Act of 1993 calls for the establishment of an import relief scheme to provide assistance to the industry which has suffered injury as a result of increase in imports. The scheme is to cover all kinds of products, including agricultural products. Detailed rules for implementing this Article will be incorporated into the Regulation Governing the Handling of Import Relief Cases, which is expected to be approved by the Executive Yuan and to take effect at the end of June 1994. When the Regulation is in place, Chinese Taipei will abolish the Regulation Governing Relief and Aid for Major Agricultural Products Damaged by Importation.

- (b) **As a follow-up to Question 3/12(p) from New Zealand, we would like to know which agricultural products are subject to the approval of the domestic agricultural authority before they can be imported?**

Answer 9(b)

The agricultural products that are subject to the approval of the domestic agricultural authority are set out in the Table of Discretionary Licensing Commodities on Importation, which has been made available at the GATT Secretariat.

10. Chapter III-5: financial policy

- (a) **When does the Ministry of Finance expect to complete its review of quantitative restrictions on the establishment of foreign bank branches?**

Answer 10(a)

The Bureau of the Monetary Affairs has completed most of its work in the review of the Guidelines for Screening Application for Establishing Branches or Representative Offices by Foreign Banks. After the completion of the review, the result will be submitted to the Ministry of Finance and the Executive Yuan for approval.

- (b) **Chinese Taipei indicates that "the economic needs test" does not restrain multiple branching instead it provides an exemption to the multiple branching limitation. However, very few foreign banks have been able to obtain the exemption as a result of meeting the "economic needs test" criteria. Can Chinese Taipei indicate whether it will consider eliminating the economic needs test which would permit multiple branching?**

Answer 10(b)

The economic needs test has been used by the banking authority as a way to provide exception to the limitation on the number of branches a foreign bank may establish in Chinese Taipei. The test has been loosely applied in individual cases. There are currently three foreign banks that have been permitted to establish three or more branches in Chinese Taipei.

- (c) **What are the specific reciprocity provisions that must be met in order for a foreign bank to avoid being subject to the prior-business-activity requirement when applying for establishment of a branch?**

Answer 10(c)

The banking authority does not set specific criteria for the application of the specific reciprocity provision. Foreign banking authorities, if indicating to the banking authority of Chinese Taipei that they have approved or will approve the establishment of branches or other types of presence by Chinese Taipei's banks, may recommend their banks to Chinese Taipei's banking authority which will approve the application without being subject to the prior-business-activity requirement.

- (d) While Canada welcomes the recent adjustment Chinese Taipei has made to the foreign liability limits as they apply to the foreign banks, limits on their overbought positions are much less favourable than is the case for the local banks. Will Chinese Taipei consider adopting national treatment in the determination of such overbought position limits?

Answer 10(d)

Chinese Taipei considers its current practice consistent with the principle of national treatment. The foreign liability limit is intended to ensure that foreign exchange risks assumed by banks are maintained at a reasonable level. In the case of overbought position, there are only two limits, i.e. US\$50,000,000 and 20,000,000 respectively, depending on the foreign exchange business volume of each of the banks. Currently, the five banks with the largest business volumes, i.e. Bank of Taiwan, the International Commercial Bank of China, Hua Nan Commercial Bank, First Commercial Bank and Chang Hua Commercial Bank, are subject to the higher limit, i.e. US\$50,000,000. The rest of the domestic banks (23 banks) and 37 foreign banks are all subject to the lower limit.

The average overbought position of the three Canadian banks having branch operation in Chinese Taipei accounts for 3.02 per cent of their average business volume; whereas in the case of the five large domestic banks, the ratio is only 0.18 per cent. The following is a table showing the business volume of the three Canadian banks and the five largest domestic banks.

FX Business Volume and Overbought Position

January-December 1993

US\$'000,000

Bank	FX business volume (1)	Overbought position (2)	Ratio (2)/(1)
Bank of Taiwan	24,440	50	0.20
The International Commercial Bank of China	26,850	50	0.19
Chang Hua Commercial Bank	26,176	50	0.19
First Commercial Bank	28,758	50	0.17
Hua Nan Commercial Bank	33,457	50	0.15
<i>Average of the above five domestic banks</i>	27,936	50	0.18
Toronto-Dominion Bank	601	20	3.33
Royal Bank of Canada	1,203	20	1.66
Bank of Nova Scotia	183	20	10.93
<i>Average of the above three Canadian banks</i>	662	20	3.02

- (e) **If the revised guidelines for the screening and approval of the establishment of branch offices and representative offices by foreign banks retain restrictions on geographic location, would Chinese Taipei consider making the restrictions more flexible than is presently the case?**

Answer 10(e)

The banking authority has been employing the economic needs test to exercise flexibility in relaxing the restriction on geographic location.

- (f) **The ability of Canadian banks to effectively grow and compete in Chinese Taipei is hampered by current restrictions on private banking which prevent foreign banks from opening overseas accounts for Taiwanese customers in their branches outside Chinese Taipei. When does Chinese Taipei intend to modify or remove such restrictions?**

Answer 10(f)

Chinese Taipei does not prohibit its residents from opening accounts abroad in person. The banking licences granted to foreign banks are to permit the banks' local branches operating business in Chinese Taipei, and do not extend to the banks' branches outside the territory of Chinese Taipei. Moreover, in order to protect the depositors and for tax consideration, local establishments of foreign banks may not assist offshore institutions in the raising of funds and/or other related activities, e.g. facilitate the opening of offshore accounts. This restriction will be maintained.

- (g) **The current deposit ceiling of 15 times branch capital for foreign bank branches established in Chinese Taipei is in our view discriminatory as it does not apply to the local banks. Will Chinese Taipei eliminate this restriction which impedes the competitive position of the foreign banks?**

Answer 10(g)

The statistics for the most recent four quarters (from the first quarter of 1993 to the fourth quarter of 1993) show that the highest ratio of NT\$ deposits to branch capital among the four Canadian banks operating in Chinese Taipei is only 2.2. The average ratio for all foreign banks in Chinese Taipei is less than 7.5. Therefore, the ceiling of 15 times should not adversely affect the competitiveness of Canadian banks doing business in Chinese Taipei. In order to ensure stable operation and protect depositors, this ceiling restriction will be maintained.

- (h) **There is little incentive for Canadian insurers to enter Chinese Taipei's insurance market because of current limitations on foreign equity in joint ventures, and because of the necessity to use a United States subsidiary as a means of entry. When will these restrictions be completely eliminated?**

Answer 10(h)

Liberalization and internationalization of the insurance market has been the firm policy of Chinese Taipei. The Ministry of Finance has prepared a draft regulation which will set criteria for establishment of local presence by foreign insurers and make rules governing the operation of foreign insurers in Chinese Taipei. Once the regulation is finalized and promulgated, foreign insurers, not limited to United States insurers, will be permitted to set up branches in Chinese Taipei. Chinese Taipei is assessing whether to reduce or remove the current limitation on foreign equity in joint ventures.

11. Chapter III-7: foreign investment policy

- (a) In reply to Japan's question (Spec(93)39) Chinese Taipei has indicated that the Investment Commission is now reviewing the relevant laws and regulations in the light of the investment laws of advanced countries and international bodies such as the GATT and the OECD. Could Chinese Taipei indicate what changes will be made to conform to TRIMs?

Answer 11(a)

The main directions for future changes as a result of the review are as follows:

1. Revising Article 5 of the Statute for Investment by Foreign Nationals (the "SIFN") regarding the Negative List of businesses in which foreign investment is restricted in order to conform to the rules of the GATT/WTO and OECD;
2. Revising Article 8 of the SIFN regarding investment approval procedure in order to fulfil the requirement of transparency; and
3. Deleting Article 13 of the SIFN which limits the repatriation rights of foreign investors.

Chinese Taipei's foreign investment laws and regulations generally conform to the requirement of the Agreement on TRIMs with the only exception of the local content requirement for car and motorcycle manufacturers. Chinese Taipei plans to remove such inconsistency within a time-frame allowed for developing countries under the Agreement on TRIMs.

- (b) In reply to Japan (Spec(93)39) Chinese Taipei has indicated that local content requirements would be removed five years after Chinese Taipei's accession. How will Chinese Taipei be in a position to adhere to TRIMs if local content requirements remain for five years after Chinese Taipei's accession?

Answer 11(b)

Chinese Taipei would appreciate the contracting parties' consideration of allowing Chinese Taipei to invoke the provisions of the TRIMs which gives developing countries a phase-out period of five years.

12. Chapter III-8: government procurement

- (a) By what standards does Chinese Taipei judge the "need for development of the industry concerned" when awarding procurement contracts?

Answer 12(a)

The standard is whether the particular government procurement project has such linkage effects and/or scale that can significantly contribute to the establishment of a new and promising industry.

- (b) We note that in its reply to Japan (Spec(93)39), Chinese Taipei has indicated that under the Six-Year National Development Plan it is anticipated that more foreign firms will be invited to bid in the various projects underway or being planned. Does this mean that Chinese Taipei would continue to exclude some countries from bidding on projects if they had a large trade surplus with Chinese Taipei?

Answer 12(b)

The issue is currently under review by the relevant authorities of Chinese Taipei.

- (c) The Government of Chinese Taipei has indicated that 94 per cent of Central Trust of China (CTC) above-threshold procurement was awarded to foreign suppliers (reply to Canada Question 17-A, Spec(93)37). It also indicated that 25 per cent of the above-threshold procurement for CTC was restricted or negotiated tenders. Could Chinese Taipei confirm the percentage of restricted or negotiated tenders that was awarded to foreign suppliers by the CTC as well as the other State enterprises?

Answer 12(c)

In the case of CTC, 98 per cent of its restricted or negotiated tenders which are above threshold were awarded to foreign suppliers. In the case of the 10 State enterprises, the percentage is approximately 63 per cent. The percentage in the case of CTC is higher, because the primary procurement function of CTC is to procure goods for State enterprises and government entities from foreign sources.

- (d) Chinese Taipei has indicated, in response to the United States (Reply III-8-4(vi), Spec(93)45), that its procurement procedures in the area of "technical specifications" are generally consistent with Article VII of the GATT Procurement Code, except for a few tenders where the technical specifications are set out by designs or brand names, without specifying allowances for equivalents. In its reply to our question (Reply 17-D, Spec(93)37), Chinese Taipei indicated that if referenced brands are used in the specifications, equivalents will be considered. Will Chinese Taipei be changing its procurement procedures to reflect this new requirement?

Answer 12(d)

Before Chinese Taipei is legally subject to the discipline of the Government Procurement Code, Chinese Taipei would advise the procuring entities that are likely to be subject to the Government Procurement Code to make their best efforts to reflect this new requirement in their procurement procedures, i.e. to specify allowances for equivalents where the technical specifications are set out by designs or brand names. In the meantime, Chinese Taipei will conduct a survey on whether the requirement will pose any special difficulties to its procuring entities and will assess the time-frame within which such difficulties can be removed.

- (e) Does Chinese Taipei seek or accept advice which may be used in the preparation of specifications from firms that have a commercial interest in the procurement?

Answer 12(e)

Chinese Taipei seeks the advice of firms that have a commercial interest in the procurement only in a very limited number of cases, as the procuring officers may not be experienced enough or equipped with the necessary technical knowledge.

- (f) **Chinese Taipei has indicated that in the consideration of resolving a bid contract award, the higher authority or audit authority would request the procurement entity to "resolve the issue and report accordingly". How frequently have such events occurred and how have such matters been resolved?**

Answer 12(f)

The occurrence of such events is not frequent. If a complaint is found to be valid, appropriate measures will be taken, e.g., the contract may be awarded to another party.

- (g) **In reference to Question 6 from Japan (Spec(93)39), can Chinese Taipei elaborate on the conditions to be met in order for a foreign company to have a local agent with a business licence or are there other requirements?**

Answer 12(g)

Chinese Taipei does not impose requirements on the establishment of local agency relationship. It is more of a contractual arrangement between a foreign firm and its local agent.

- (h) **What percentage of tenders are considered to be "restricted tenders"?**

Answer 12(h)

In terms of contract value, the percentage of tenders that are handled by the Central Trust and considered as restricted tenders in the fiscal year of 1992 is approximately 4 per cent, and that of tenders handled by the 10 State enterprises and considered to be restrictive tenders in the calendar year of 1992 is approximately 17 per cent.

Chapter III-9: State enterprises

- (a) **Does the central government have the power to ensure that provincial enterprises comply with all aspects of the GATT, not just government procurement provisions? Can Chinese Taipei provide examples of matters that are considered to be "national in nature" and those that are "provincial in nature"?**

Answer to Chapter III-9(a)

In the case where the specific GATT issue involved is national in nature, the central government has the power to ensure compliance with the GATT by provincial enterprises.

Article 107 of the Constitution sets out the matters that fall within the legislative and executive powers of the central government which include, among others, foreign relations, national defence, the judicial system, aviation, navigation administration, national roadway and railway, postal and electricity administration, national finance and tax, State enterprises, international trade and economic and financial matters involving foreign elements.

Article 108 of the Constitution sets out the matters that fall within the legislative power of the central government, but can be executed by the central government or delegated to the provincial or county governments for execution, which include, among others, forestry, industry and mining, commerce, banking and clearing systems, navigation and ocean fishing, public utilities, cooperatives, and sea or road transport between more than two provinces.

Article 109 of the Constitution sets out the matters that fall within the legislative power of provincial governments, and can be executed by provincial governments or delegated to county governments for execution, which include, among others, provincial transportation, provincial enterprises, provincial cooperatives, provincial financial administration and tax, and provincial banks.

Additional questions

Foreign Trade Act

In its reply to Question 3/13, paragraph (c), from New Zealand (Spec(93)42), Chinese Taipei has indicated that the draft implementing regulations related to the Foreign Trade Act are in force in September. Are these new regulations now in force, and if so, could copies of these regulations be made available to the Secretariat?

Answer to additional questions

The implementing regulation of the Foreign Trade Act has been in force since 8 November 1993, and is now being translated into English. As soon as the English translation is ready, it will be made available to the Secretariat.