

# WORLD TRADE ORGANIZATION

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## Working Party on the Accession of Chinese Taipei

Draft report of the working party on the accession of the separate customs territory of Taiwan,  
Penghu, Kinmen and Matsu

### Revision

#### I. INTRODUCTION

1. At its meeting on 29 September-1 October 1992, the GATT 1947 Council of Representatives established a Working Party to examine the application of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (hereinafter referred to as "Chinese Taipei") to accede to the General Agreement 1947 under Article XXXIII, and to submit to the Council recommendations which may include a Draft Protocol of Accession, [on the basis of the terms set out in an understanding] [as reflected in the respective Minutes (document C/M/259)]. Membership of the Working Party was open to all contracting parties wishing to serve on it. Following the request of Chinese Taipei, circulated in document WT/ACC/TPKM/1, and pursuant to the decision of the General Council of 31 January 1995, the Working Party was transformed into a World Trade Organization (WTO) Working Party to negotiate the terms of accession of Chinese Taipei to the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as the "WTO Agreement") under Article XII of that Agreement.

2. The Working Party met on 6 November 1992, ~~21 December 1992~~ **15 April 1993**, 28 June 1993, 12 October 1993, 17 May 1994, 26 July 1994, 21 December 1994, 28 February 1997, 8 May 1998 and [.....] under the Chairmanship of H.E. Mr. M. Morland (United Kingdom). The terms of reference and the membership of the Working Party are set out in document WT/ACC/TPKM/6.

## II. INFORMATION PROVIDED

3. The Working Party had before it, to serve as a basis for its discussion, the Memorandum on Chinese Taipei's Foreign Trade Regime (L/7097 and Addenda 1 - 11) and the questions submitted by Members on the foreign trade regime of Chinese Taipei together with the replies of the Chinese Taipei authorities thereto (L/7089/Rev.1, L/7429 and Add.1), and documents Spec(94)28 (Newly Promulgated or Revised Laws and Regulations), Spec(94)30 (Description of Service Sectors), Spec(94)31 and Add.1 (Special Exchange Agreement), Spec(94)41 (Status Report of the Bilateral Negotiations), Spec(95)1 and Corr.1 (Checklist of Accession Issues - Preliminary Responses Provided by Chinese Taipei), Spec(95)8 (Laws and regulations regarding agricultural products), WT/ACC/TPKM/2 (Tariff reductions for 758 tariff lines effected as from ~~12~~ 14 July 1995), WT/ACC/TPKM/3 (Newly Promulgated or Revised Laws and Regulations), and WT/ACC/TPKM/4 (The Customs Import Tariff and Classification of Import and Export Commodities: revised edition of August 1995). In addition, the representative of Chinese Taipei made available to the Working Party the following material:

1. Customs Regime:

- Customs Law;
- Rules Governing the Implementation of the Customs Law;
- Implementing Regulation on the Imposition of Countervailing Duty and Anti-Dumping Duty;
- Rules for the Collection of Customs Fees.

2. Trade Regime:

(a) General:

- Foreign Trade Act;
- Enforcement Rules of the Foreign Trade Act;
- Regulations Governing the Process of Objections Against Punishment on Violation of Foreign Trade Act;
- Customs Import Tariff and Classification of Import & Export Commodities (Supplement, August 1995);
- Consolidated List of Commodities Subject to Import Restriction and Commodities Entrusted to Customs for Import Examination (June 1997 Edition);
- Regulations Governing Import of Commodities by Business Firms;
- Regulations Governing Registration and Administration of Exporters and Importers;
- Regulations Governing Revenue, Expenditure, Custody, and Use of Trade Promotion Fund;
- Rules for Handling Import Relief Cases;
- Import Regulations Codes.

(b) Industrial Goods:

- Regulations Governing Export and Import of High-Tech Commodities;
- Operating Rules for Screening Applications to Import Fishing Vessels Using New Fishing Methods;
- Requirements for Imported Drug Registration;
- Veterinary Drugs Control Act;
- Agro-Pesticide Act;
- Guidelines Governing the Application for and Issuance of Fertilizer Registration Certificate;
- Operating Regulations Governing the Control of Restricted Methyl Bromide;
- Regulations of the Industrial Development Bureau of the Ministry of Economic Affairs for Controlled Substances Pursuant to the Montreal Protocol.

(c) Agricultural Goods:

- Statute for Agricultural Development;
- Regulations Governing Relief and Aid for Major Agricultural Products Damages by Importation;
- Guidelines for Screening Applications for Letter of Approval for the Importation of Livestock and Poultry;
- Guidelines for the Issuance of Written Approval Regarding the Importation of Aquatic Animals;
- Guidelines Governing Food Companies Applying to Import Raw Glutinous Rice/Powder for Processing for Export;
- Operating Procedures Governing Applications to Import Wheat and Operation of the Stabilization Fund;
- Operating Procedures Governing Applications to Import Wheat Flour and Operation of the Stabilization Fund;
- Feeds Control Act;

- Guidelines Governing Applications to Import Aduki Beans;
- Screening Procedures and Criteria Governing the Issuance of Written Approval for the Importation of Dried Betel Nuts (Ta-Fu-Tzu).

3. Investment Regime:

- Statute for Investment by Foreign Nationals;
- Negative List for Investment by Overseas Chinese and Foreign Nationals;
- Statute for Upgrading Industries;
- Enforcement Rules of the Statute for Upgrading Industries;
- Statute for Technical Cooperation;
- Statute for Development of Medium and Small Businesses;
- Statute for Establishment and Management of Export Processing Zones;
- Aeronautics and Space Industries Development Programme;
- Automotive Industry Development Policy.

4. Other Texts Affecting Trade:

(a) General:

- Income Tax Law;
- Business Tax Law;
- Statute for Commodity Tax;
- Statute for Foreign Exchange Regulation;
- Fair Trade Law.

5. Intellectual Property Rights:

(a) Copyright:

- Copyright Law;
- Implementation Rules of the Copyright Law;
- Illustrated Contents of 'Each Kinds of Works' in Paragraph One, Article 5 of Copyright Law;
- Certain amounts of Items 2 and 3 of Paragraph One of Article 87 *bis* of the Copyright Law;
- Regulations of Application for Approval of Compulsory License of Translation Rights;
- Regulations of Application for Approval of Compulsory License of Musical Works;
- Organic Charter of the Copyright Examination and Mediation Committee of the Ministry of Interior;
- Agreement for the Protection of Copyright between the Coordination Council for North American Affairs and the American Institute in Taiwan;
- Agreement Concerning the Protection and Enforcement of Rights in Audiovisual Works between the Coordination Council for North American Affairs and the American Institute in Taiwan;
- Publication Law.

(i) Trademark:

- Trademark Law.

(ii) Patent:

- Patent Law.

(b) Standards, Quarantine, Inspection:

(i) Standards:

- Provisional Standard for Hi-Fi and Stereo Equipment.

(ii) Quarantine:

- Quarantine Requirements for the Importation of Animal and Animal Products;
- Quarantine Regulations on Imported Fishery Products;
- Quarantine Restrictions on the Importation of Plants and Plant Products;
- Statute for Prevention and Control of Infectious Animals Diseases;
- Implementation Rules of the Statute for Prevention and Control of Infectious Animals Diseases;
- Regulations Governing the Quarantine at International Ports.

(iii) Inspection:

- Commodity Inspection Law;
- Enforcement Rules for the Commodity Inspection Law (Implementation Rules of the Commodity Inspection Act).

(iv) Others:

- Commodity Labelling Law;
- Law Governing Food Sanitation;
- Enforcement Rules of the Law Governing Food Sanitation;
- Law for the Control of Cosmetic Hygiene.

(c) Government Procurement:

- Law of Audit;
- Rules Governing Procuring Goods of Foreign Origin;
- Ordinance Concerning Inspection Procedure Governing Construction Work, Procurement and Disposal of Properties by Government Agencies.

(d) Others:

- Guidelines for Screening Applications for Written Import/Export Approval Regarding Wild Fauna and Flora Deserving Conservation;
- Wildlife Conservation Law;
- Implementing Regulations of the Wildlife Conservation Law;
- Rules of Royalty Rate for Public Interest Activities.

6. Trade in services:

(a) Schedule of Commitments:

- Draft Schedule of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu Concerning Initial Commitments on Trade in Services.

(b) Banking:

- Banking Law;
- Guidelines for the Screening and Approval of the Establishment of Branches and Representative Offices by Foreign Banks.

(c) Insurance:

- Insurance Law;
- Insurance Company Establishment Criteria;
- Criteria for Approving Foreign Insurance Enterprises and the Governing Regulation;
- Central Reinsurance Corporation Act.

(d) Securities:

- Securities and Exchange Law;
- Foreign Futures Trading Law;
- Regulations Governing the Standard for Incorporation of Securities Companies;

- Rules for the Administration of Securities Investment Trust Enterprises.
- (e) Others:
  - Broadcasting and Television Law;
  - Motion Picture Law;
  - By-laws Governing the Execution of the Motion Picture Law;
  - Employment Service Act;
  - Rules Governing the Approval and Administration of Foreign Specialist and Technical Personnel Employed by Public or Private Enterprises and Ranking Executives Employed by Overseas Chinese or Foreign National Invested Enterprises.

### III. INTRODUCTORY STATEMENTS

4. In his statements the representative of Chinese Taipei *inter alia* recalled that Chinese Taipei, which encompasses the islands of Taiwan, Penghu, Kinmen and Matsu, was short of natural resources. Its only substantial resource - labour - was the source of its strong rate of growth. The main economic indicators were as follows:

Chinese Taipei's Main Economic Indicators

Year	GNP (Billion US\$)	GNP per Capita (US\$)	*Annual Final Budget of Central Government (Billion US\$)	Annual Changes in Prices		Unemployment Rate (%)	Foreign Exchange (Billion US\$)	Export Statistics (Billion US\$)	Import Statistics (Billion US\$)
				Consumer price (%)	Wholesale price (%)				
1993	226.2	10,852	<del>37.5</del> <b>42.7</b>	2.9	2.5	1.5	<del>92.5</del> <b>83.6</b>	85.1	77.1
1994	243.9	11,597	<del>37.3</del> <b>39.6</b>	4.1	2.2	1.6	<del>90.3</del> <b>92.5</b>	93.0	85.3
1995	263.0	12,396	<del>36.3</del> <b>42.9</b>	3.7	7.4	1.8	90.3	111.7	103.6
1996	<del>275.1</del> <b>274.6</b>	12,872	<del>39.5</del> <b>40.9</b>	3.1	-1.0	2.6	88.0	<del>116.0</del> <b>115.9</b>	<del>101.3</del> <b>102.4</b>
<b>1997</b>	<b>284.8</b>	<b>13,198</b>	<b>44.8</b>	<b>0.9</b>	<b>-0.5</b>	<b>2.7</b>	<b>83.5</b>	<b>122.1</b>	<b>114.4</b>

- Since 1960, the "Fiscal Year" refers to the 12-month period beginning from 1 July 1 of the preceding year to 30 June of the designated year. **The item excludes repayment of government debt.**



Chinese Taipei's Expenditure on Gross National Product

Unit: Billion US\$

Year	Gross National Product	Gross Domestic - Product	Private - Consumption	Government - Expenditure	Gross Fixed - Capital Formation	Increase in - Inventory	Export of Goods & Services	Imports of Goods & Services
1993	226.2	<del>213.7</del> <b>222.6</b>	<del>121.7</del> <b>126.8</b>	<del>34.2</del> <b>35.6</b>	<del>50.6</del> <b>52.7</b>	<del>3.2</del> <b>3.3</b>	<del>94.5</del> <b>98.5</b>	<del>90.5</del> <b>94.3</b>
1994	243.9	<del>232.0</del> <b>241.0</b>	<del>137.2</del> <b>142.6</b>	<del>35.0</del> <b>36.3</b>	<del>53.1</del> <b>55.2</b>	<del>2.2</del> <b>2.3</b>	<del>102.3</del> <b>106.3</b>	<del>97.9</del> <b>101.7</b>
1995	263.0	<del>250.7</del> <b>260.2</b>	<del>150.0</del> <b>155.7</b>	<del>36.5</del> <b>37.8</b>	<del>57.5</del> <b>59.7</b>	<del>1.8</del> <b>1.9</b>	<del>122.3</del> <b>126.9</b>	<del>117.4</del> <b>121.8</b>
1996	275.1	<del>272.7</del> <b>272.3</b>	<del>164.2</del> <b>164.6</b>	<del>39.6</del> <b>39.4</b>	<del>57.3</del> <b>57.0</b>	<del>1.1</del> <b>0.8</b>	<del>131.8</del> <b>132.2</b>	<del>121.3</del> <b>121.7</b>
<b>1997</b>	<b>284.8</b>	<b>283.3</b>	<b>172.1</b>	<b>41.0</b>	<b>59.4</b>	<b>3.0</b>	<b>139.5</b>	<b>131.7</b>

Chinese Taipei's Employment Population by Sectors

Unit: 1000 Persons

Year	Agriculture Sector	Industrial Sector	Services Sector
1993	1,005	3,418	4,323
1994	976	3,506	4,456
1995	954	3,504	4,587
1996	918	3,399	4,751
<b>1997</b>	<b>878</b>	<b>3,502</b>	<b>4,795</b>

Chinese Taipei's Balance of Payments

Unit: Million US\$

Year	Current Account	Capital Account	Long term capital	Short term capital	Change in Net Foreign Asset
1993	6,714	-4,662	-2,660	-2,062	-1,541
1994	6,154	-1,397	-1,960	563	-4,622
1995	4,824	-8,190	-1,227	-6,963	3,931
1996	10,481	-8,875	-2,974	-5,901	-1,102

Year	Current Account	Capital Account	Financial Account	Reserves
1993	6,714	-328	-4,629	-1,541
1994	6,154	-344	-1,397	-4,622
1995	4,824	-650	-8,190	3,931
1996	10,481	-653	-8,802	-1,102
1997	7,776	-314	-8,154	728

He added that government policies had restructured the economy from agriculture towards basic and heavy industries. As part of an import substitution and integration process, intermediate goods industries were established. Transportation was streamlined and large investments were made in new ports, airports and highways. The Chinese Taipei authorities had also intensified rural development and supported the moves to improve farm income. More recently, industrial restructuring was further promoted. Educational institutions placed greater emphasis on science and technology in order to provide a highly trained workforce. In the 1990's, economic liberalization and the internationalization

of the economy had continued. Infrastructure investments, the regulation of pollution and the privatization of the economy had accelerated. Employment had shifted from the agricultural sector to the industrial and service sectors. The representative of Chinese Taipei also stated that when Chinese Taipei initiated its import-substitution strategy, exports were mostly composed of sugar, rice, bananas, tea and processed agricultural products. Few industrial products were sufficiently competitive for export. Gradually the import substitution industries became capable of producing competitive export products. As a result, the share of exports of traditional products declined whilst industrial products took an increasing share of exports. At first, major export items were labour intensive products such as textiles and plywood. Recently, electronic goods had become major export items. Recent total exports value in US\$000 was as follows:

YEAR	1993	1994	1995	1996	1997
TOTAL	85,061,411 <b>85,091,458</b>	92,948,783 <b>93,048,783</b>	111,598,800 <b>111,658,800</b>	115,942,064	<b>122,080,673</b>

Recent total imports value in US\$000 was as follows:

YEAR	1993	1994	1995	1996	1997
TOTAL	77,061,203	85,322,194 <b>85,349,194</b>	103,549,956 <b>103,550,044</b>	101,373,051 <b>102,370,021</b>	<b>114,424,665</b>

5. Referring to the direction of the future economic policies, the representative of Chinese Taipei said that overall global economy expanded steadily in ~~1996~~ **1997**, in contrast, Chinese Taipei's economy reached its slowest growth rate that year at ~~5.9~~ **6.8** per cent, the ~~lowest~~ **highest** in six years: ~~This was a significant reduction since its peak in 1991 at 7.6 per cent.~~ Economic growth for ~~1994~~ **1995** and ~~1995~~ **1996** had been ~~6.5~~ **6.0** per cent and ~~6.0~~ **5.7** per cent respectively. The ~~downturn~~ **upturn** in Chinese Taipei's economy could be attributed to ~~slackening~~ **strong** private investment and ~~shrinking public investment, especially in the real estate sector~~ **consumption**. In ~~1996~~ **1997** inflation was ~~moderate~~ **low** at the rate of ~~3.1~~ **0.9** per cent, compared with ~~4.1~~ **3.7** and ~~3.7~~ **3.1** in ~~1994~~ **1995** and ~~1995~~ **1996**. Trade surplus in ~~1996~~ **1997** ~~rose to a nine year high of US\$14.7 billion~~ **was US\$7.7 billion**. However, the rise in trade surplus stemmed from a drop in imports rather than an expansion of exports. For ~~1997~~ **1998**, the economy of Chinese Taipei was expected to grow ~~6.7~~ **5.3** per cent, with per capita GNP expected to reach almost ~~US\$14,000~~ **US\$12,030** and consumer prices to rise ~~no more than 3~~ **1.9** per cent. Nevertheless, these expectations would, ~~to a large extent,~~

depend on whether public investment projects proceed according to schedule. An additional source of major impetus to growth would be the private sector as a result of ~~regained~~ strength in private consumption, steady improvement in the investment climate and greater private investment in public projects. In his statements he also outlined the sectors where Chinese Taipei would need transition periods to bring specific measures into full conformity with WTO obligations and said that Chinese Taipei was ready to assume obligations comparable to those undertaken by WTO Members with a comparable level of economic development. **The representative of Chinese Taipei stated that his government would not claim any right granted under WTO Agreements to developing country Members or to a Member in the process of transforming its economy from a centrally planned into a market, free-enterprise economy.**

6. Members of the Working Party warmly welcomed the application of Chinese Taipei for accession to the WTO. Notwithstanding limitations on its natural resources and the relative size of the economy, Chinese Taipei had transformed itself into one of the world's most dynamic trade centres. Chinese Taipei's membership of the WTO would strengthen the multilateral trading system. Members also congratulated Chinese Taipei on its willingness to make the required adjustments promptly and to only seek a minimum of transition periods in which to bring its economy fully into conformity with the requirements of the WTO. Members noted, however, that membership of the WTO required full observance of the MFN and national treatment principles, **in particular, GATT 1994 required the grant of any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country, whether or not a contracting party, to products originating in or destined for the territories of all other contracting parties. Similar MFN requirements applied in respect of the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS).** It also required the taking of comprehensive market access commitments on goods, including agricultural products, and services, which would be reflected in the respective schedules of concessions and commitments annexed to the Draft Protocol of Accession. Several members of the Working Party were of the view that Chinese Taipei should assume a level of obligations commensurate to that of the developed economy original Members of the WTO, and that Chinese Taipei should apply the WTO Agreement fully from the date of accession, without recourse to any transition periods.

7. **The representative of Chinese Taipei acknowledged the importance of observing the principles of MFN and national treatment in the WTO and the broad scope of that obligation. He stated that upon accession Chinese Taipei would fully observe its MFN and national treatment obligations in respect of any advantage, favour, privilege or immunity granted to**

**WTO Members or other countries or separate customs territories, unless specifically exempted from its GATS commitments.**

#### IV. ECONOMIC ~~POLICES~~ POLICIES

##### Foreign Exchange Policies

8. In response to requests from members of the Working Party for information on the foreign exchange system prevailing in Chinese Taipei, the representative of Chinese Taipei stated that all current account transactions were free from foreign exchange controls. As for residents, any company or individual could freely settle foreign exchange with authorized banks up to an amount of US\$50 million and US\$5 million respectively per year. As for non-residents, any non-resident could open a New Taiwan dollar account with local commercial banks. However, foreign financial institutions outside the territory of Chinese Taipei could only deposit local earned revenue of New Taiwan dollars into their accounts. There was no restriction when the remittance was related to an outward/inward investment project approved by the competent authority. The foreign exchange rate was determined by the market, and there were no discriminatory currency practices. In response to further questions, he said that enterprises established under the Company Law of Chinese Taipei could freely purchase the foreign exchange required for imports or for invisible trade settlements through the authorised foreign exchange banks without any restriction. There was no restriction on the use of foreign exchange for overseas investment provided that the investment had been approved by the authorities. Authorized foreign exchange banks and foreign banks were free to take part in the Chinese Taipei foreign currency call loan market. Since 1991, forward foreign exchange transactions had been permitted. The representative of Chinese Taipei said that these requirements would be gradually phased out as market conditions permitted. He expressed the view that Chinese Taipei's ~~currency~~ **foreign exchange** practices were fully consistent with Article XV of the GATT 1994.

9. Some members of the Working Party noted that Chinese Taipei was not a member of the International Monetary Fund (IMF) and thus would have to enter into a Special Exchange Agreement as provided for in Article XV:6 of the GATT 1994 incorporating obligations consistent with Fund Article VIII. Some members also expressed concern that elements of Chinese Taipei's foreign exchange system provided scope for practices that distorted trade flows. The representative of Chinese Taipei said that in the context of accession to the WTO, Chinese Taipei was prepared to comply with the provisions of Article XV of the GATT 1994 regarding its foreign exchange restrictions. He added that in order to comply with GATT 1994 Article XV, Chinese Taipei had negotiated a Special Exchange Agreement with the WTO. Chinese Taipei expected that the Special Exchange Agreement would cease to be effective if Chinese Taipei became a member of the IMF.

10. [The Special Exchange Agreement between the WTO and Chinese Taipei, within the meaning of Article XV:6 of the GATT 1994, which is part of the obligations of Chinese Taipei under the WTO Agreement, including GATT 1994 is reproduced in Annex II of the Appendix to this Draft Report.]

#### Pricing Policies

11. Some members of the Working Party noted that Chinese Taipei had price controls for the domestic prices of certain commodities and that there were no price controls applied exclusively to imports, they requested a full list of the products subject to price controls, and the plans to eliminate such price controls. In response the representative of Chinese Taipei stated that price controls applied primarily in the area of public utilities under control of the Public Utility Rate Commission. The products specified in the list reproduced in Attachment A to this Draft Report were the only ones subject to price controls. In relation to the sale of tobacco and alcoholic beverages, the representative of Chinese Taipei stated that minimum profit or pricing of tobacco and alcohol products had been abolished. The regulation on the maximum retail margin would cease to be effective when the monopoly system is formally abolished. He further added that petroleum, natural gas and liquefied gas were subject to price controls in order to maintain stability in energy prices. Salt, sugar and fertilizer were subject to price controls to stabilize farmers' income and production costs. Chinese Taipei intended to phase out price controls as soon as possible, keeping in view the objectives noted above. Future liberalization of price controls would take into account the timetable for privatizing state enterprises which had been involved in exercising price controls, such as the Taiwan Fertilizer Company, and the Taiwan Salt Industrial Corporation. Some members of the Working Party noted that they could see no justification for price controls on sugar and salt. In response, the representative of Chinese Taipei stated that the price controls on salt were expected to be abolished by end of the year 2001. Domestic sugar prices were set by Taiwan Sugar Company, which was the sole supplier of sugar. The sugar price set by Taiwan Sugar Company took into account the price at which Taiwan Sugar purchased sugar cane from local growers (which was set 10 years ago according to the farmers' production cost at that time), and its own cost of production. The domestic sugar price had been decreasing, as the increase in import of sugar (the cost of which was lower), helped to bring down Taiwan Sugar's cost. Industrial users of sugar were consulted, in order to ensure that the price control would not seriously affect their competitiveness. There was no discrimination between cane and beet sugar. The price control system would be replaced by **in conjunction with** a tariff rate quota system. **The private sector would be free to import sugar at out-quota tariff rates. Moreover, a certain percentage of the tariff quota would be allocated to private sectors. Therefore, importation of sugar would not be subject to monopoly.** It was expected that the oil product market would be

fully liberalized by ~~the end of the year 2002~~ **June 2000**. It was not Chinese Taipei's policy to add to the list of products subject to price control set out in Attachment A to this Draft Report, unless the economy or a specific sector thereof was in serious difficulty or in a state of emergency.

12. [The representative of Chinese Taipei stated that, from the date of accession, Chinese Taipei would ensure that price controls applied to the products covered in the list reproduced in Attachment A to this Draft Report, and to any other product, would be applied in a WTO-consistent fashion, taking account of the interests of exporting WTO Members as provided for in Article III:9 of the GATT 1994. The price levels of the goods subject to price controls would be published in accordance with Article X of GATT 1994. The Working Party took note of these commitments.]

## V. FRAMEWORK FOR MAKING AND ENFORCING POLICIES

### Powers of Executive, Legislative and Judiciary, Administration of Policies on WTO-related Issues

13. In response to requests for information, the representative of Chinese Taipei stated that the subject matter of international trade, **including all matters covered by the WTO Agreements**, fell within the power of the central government. In the event that measures taken by the sub-central government had an impact upon international trade, those measures became subject to regulation by the central government **and the central government could overrule or invalidate measures of sub-central governments**. By way of example, he noted that the procurement decisions of sub-central government were subject to the disciplines of the Government Procurement Law made by the central government. He further noted that ~~all administrative decisions affecting trade could be appealed to the Administrative Court, which conducted judicial review of administrative decisions that affect the rights and interests of natural and legal persons. The Administrative Court was an independent judicial body.~~ **a natural or juridical person whose rights and interests in a matter relating to issues covered by the WTO Agreements are impaired by an administrative action in Chinese Taipei is permitted to appeal such action. In cases of administrative action allegedly contrary to law, such appeal would be to the High Administrative Court with the possibility of seeking a further appeal to the Supreme Administrative Court. In cases of an administrative action that is allegedly improper, but not illegal, an appeal committee, organised by a higher administrative level, drawn from government officials not involved in the enforcement of the matter at issue, experts from academia and other experts, will** would review the matter and recommend a correction to the administrative action.

14. Some members of the Working Party enquired whether international treaties were self-executing under the law of Chinese Taipei and sought a commitment that Chinese Taipei would bring its foreign trade laws and regulations into conformity with WTO provisions at the time of accession. In response, the representative of Chinese Taipei said that, under its Constitution, international treaties enter into force after being duly ratified by the Legislative Yuan and promulgated by the President. An international treaty had the same force and effect as domestic laws.

15. ~~{The representative of Chinese Taipei stated that the laws and regulations that would be amended or newly made, within six months after accession, for the purpose of implementing the accession commitments are reproduced in Attachment E to this Draft Report. He further stated that if, in the future, any law or regulation was found not to be WTO-consistent, Chinese Taipei would ensure that it was brought into conformity with the requirements of the WTO Agreement.}~~ {The representative of Chinese Taipei confirmed that Chinese Taipei would fully implement its obligations under the WTO Agreement and its Draft Protocol of Accession upon accession to the WTO, unless specifically provided in this Draft Report and Protocol. **Further, central authorities would eliminate or nullify measures taken by sub-central authorities in Chinese Taipei that are inconsistent with WTO provisions from the date of accession.** A list of some of the laws that would be amended as part of Chinese Taipei's implementation of its obligations is reproduced in Attachment E to this Draft Report.} The Working Party took note of this commitment.}

## VI. POLICIES AFFECTING TRADE IN GOODS

16. Chinese Taipei undertook negotiations on market access in goods. The Schedule of Concessions reflecting the results of those negotiations is reproduced in Part I of Annex I of the Draft Protocol of Accession reproduced in the Appendix to this Draft Report.

### Import Regulations

#### Registration of Importers and Exporters

17. Some members of the Working Party noted that Chinese Taipei required a registered importer/exporter to clear all imports and exports through its customs. Further, Chinese Taipei conditioned registration as an importer or exporter on being an enterprise in Chinese Taipei and meeting a NT\$5 million minimum capital requirement. These members of the Working Party stated that they considered that the minimum capital requirement was excessive and could act as a restraint on trade. They requested that the minimum capital requirement be eliminated and that registration



should be automatic, open to all individuals and enterprises interested in engaging in import/export without regard to investment or establishment in Chinese Taipei and conform to WTO rules.

18. In response, the representative of Chinese Taipei stated that the purpose of the registration requirement was not to restrain trade, but to ensure that importers/exporters had sufficient financial resources to support their import/export operations. The precondition of NT\$5 million minimum capital requirement had been abolished in September 1997. With the elimination of that capital requirement, the only condition for importer/exporter registration was that the enterprise list import and/or export activities in its ~~business licence~~ **profit-seeking enterprise registration certificate**. No fee was charged for the registration. Chinese Taipei however would like to retain the registration system, which operated as an automatic licensing procedure pursuant to the Agreement on Import Licensing

19. The representative of Chinese Taipei stated that any enterprise ~~or individual interested in importing/exporting (whether or not invested or established in Chinese Taipei) would be permitted to register, and that~~ **including sole proprietorships, interested in importing and/or exporting and having included in its profit-seeking enterprise registration certificate export/import or buying/selling as a business item, would be permitted to register as an importer/exporter. Registration as a profit-seeking enterprise required maintenance of an address in Chinese Taipei, but did not impose minimum investment or similar requirements.** ~~the~~The registration system **to become an importer/exporter** would conform to WTO rules, including the automatic licensing provisions of the Agreement on Import Licensing, and would not restrain trade. The Working Party took note of these commitments.

#### Advertising and Trade in Alcohol and Tobacco Products

20. Some members of the Working Party considered that the rules applying to the advertising of tobacco and alcohol products, which had a stronger effect on imports, should not be used to discriminate either *de facto* or *de jure* against imported products. The representative of Chinese Taipei stated that under current law, alcohol products could be advertised ~~in newspapers and~~ on television and radio during specified times. While beer and wine could be advertised in magazines **and newspapers**, spirits could not be advertised in these publications. New spirits products could be advertised in magazines for a period of one year following their release onto the market. The representative of Chinese Taipei also said that advertising of tobacco products was governed by the Tobacco Hazard Prevention Act, which came into force on 19 September 1997.

21. The representative of Chinese Taipei confirmed that from the date of accession Chinese Taipei would not use advertising rules to discriminate against imported tobacco and alcohol products. The one-year limitation on advertising of alcoholic beverages would be eliminated upon accession. He also stated that, upon accession, Chinese Taipei would permit advertising for alcoholic beverages in all media, subject to regulation in relation to the content and timing of advertising. He further confirmed that the advertising rules for tobacco and alcohol products and implementation of those rules would be consistent with WTO requirements from the date of accession. The Working Party took note of these commitments.

22. Concerning the right to sell and trade in tobacco and alcoholic beverages, the representative of Chinese Taipei stated that, upon accession, enterprises engaged in the distribution and/or trade of imported alcohol and tobacco products would not be required to provide information beyond that requested of firms engaged in the distribution and/or trade of like domestic products in Chinese Taipei concerning their business plans or corporate structures and that such information will be requested on the same timetable as applied to the latter firms. He also stated that taxes and other charges of whatever character, including licensing and other administrative fees, related to trade and distribution of imported alcohol and tobacco products would not be applied in excess of those applied to firms dealing with like domestic products. The Working Party took note of these commitments.

#### Customs Tariff

23. Several members of the Working Party requested information on the tariff structure of Chinese Taipei, the existence of bilateral rates of duty, in particular the products covered by bilateral trade concessions, the existence of mixed duties, whether trade measures were being adopted on a MFN basis, the level of average effective rates of duty and the actual levels of protection in force. Some members noted that in 1992 some 413 agricultural and 21 non-agricultural products accounting for 5.4 per cent of total tariff lines were subject to duty rates ranging from 30 per cent to 50 per cent. In response, the representative of Chinese Taipei said that since 1 September 1980, Chinese Taipei's tariff had two columns of duty rates. The differential duty rates in Column II were applied to imports from countries or areas that granted reciprocal tariff treatment to Chinese Taipei's exports. At present, Column II duty rates applied to products from 153 countries or areas which amounted for almost 98 per cent of the total value of imports. Products from the following WTO Members did not fall within Column II: Angola, Cuba, Djibouti, Gambia, Mauritania, Mozambique, Myanmar, Romania, Uganda and Zimbabwe. The representative of Chinese Taipei undertook that upon accession to the WTO, MFN treatment would be extended to all WTO Members applying the **WTO rules** to Chinese Taipei. He added that between 1984 and 1992, the tariff had been revised across-the-board and duty

rates have been lowered by some 50 per cent. During that same period, 668 items had become duty free, and 13165 items had their duty rates reduced. An additional tariff reduction in 1995 had further reduced duty rates on 758 items, with an average duty reduction of 2.8 per cent. **Besides, the duty rates of 1,358 items had been further reduced in 1998 including 289 items in accordance with the WTO Ministerial Declaration on Trade in Information Technology products on December 1996.** Further reductions for ~~4,130~~ **750** tariff lines were pending in the Legislature. At present, the highest nominal duty rate was 50 per cent, but this was levied only in a few agricultural product areas. The simple average of nominal duty rates had declined from 30.81 per cent in 1984 to ~~8.72~~ **8.25** per cent in ~~1996~~ **1998**.

24. In response to further questions, the representative of Chinese Taipei indicated that in ~~1996~~ **1997** out of a total of ~~8,070~~ **8,274** dutiable items, 40 items were subject to specific duties and 114 items were subject to mixed duties. The remaining ~~7946~~ **8,119** dutiable items were subject to *ad valorem* duties. Some members of the Working Party stated that, in their view, Chinese Taipei should preferably adopt an *ad valorem* approach throughout the tariff in order to increase the predictability and transparency of the tariff régime. The representative of Chinese Taipei said that more than 98 per cent of the tariff lines were already subject to *ad valorem* duties. In future reviews of its tariff system, Chinese Taipei would take into account the views of members in this respect.

#### [Tariff Rate Quotas

25. The representative of Chinese Taipei stated that following revision of its system ~~of area restrictions~~ **import restriction** on certain imported products, Chinese Taipei **would introduce a system of** ~~now maintained the~~ tariff rate quotas, described in paragraphs [50, 54, 58 **and** 61 ~~and 126~~] below and recorded in the relevant part of the Schedule of Concessions. **The representative of Chinese Taipei noted that products subject to import restriction would be completely liberalised upon Chinese Taipei's accession to the WTO, with young coconuts and motor vehicles subject to tariff rate quotas.]**

#### Other Fees and Charges (Article II:1(b))

26. The representative of Chinese Taipei stated that except as provided in the Schedule of Concessions on Goods (Part I of Annex I to the Draft Protocol of Accession of Chinese Taipei) all other fees and charges covered by Article II:1(b) of the GATT 1994 would be bound at the level of zero.

Fees and Charges for Services Rendered

27. The representative of Chinese Taipei said that there were no taxes, charges or fees levied on imports only. The trade promotion fee authorized by the Foreign Trade Act had a ceiling of 0.05 per cent, and was levied on all imports and exports exclusively to promote import and export trade. He stated that the Trade Promotion Fee was a very small charge, no more than 0.05 per cent of customs value (currently only 0.0425 per cent), applied to both imports and exports to fund trade promotion activities. He added that in addition to import tariffs and taxes applied equally to imported and domestic products (e.g., the Commodity Tax, the VAT, and the Alcohol and Tobacco Tax), the Harbour Construction Dues and the Trade Promotion Fee were the only charges applied to imports. In response, some members of the Working Party stated that the Trade Promotion Fee did not appear to be consistent with Article VIII of the GATT 1994.

28. In response to questions concerning the Harbour Construction Due, the representative of Chinese Taipei explained that the customs authorities collected a Harbour Construction Due for goods entering Chinese Taipei through ports. The levy, introduced in 1948 to fund harbour expansion and maintenance, was imposed at the fixed rate of ~~0.5~~ **0.4** per cent and did not apply to inter-island trade.

29. Some members of the Working Party stated that they considered that this levy and fee were inconsistent with Article VIII(1)(a) of the GATT 1994. These members of the Working Party considered that the levy and fee discriminated against imports because they were only applied to imported goods and not to like domestic products and they were not in conformity with Article III of the GATT 1994. Some members of the Working Party pointed out that the *ad valorem* nature of the Harbour Construction Dues and the Trade Promotion Fee made it impossible for them to reflect the approximate cost of the services rendered. The representative of Chinese Taipei said that both the Harbour Construction Dues and the trade promotion fee applied to imports as well as exports. In his view, the Harbour Construction Dues could be treated as an internal tax or a service fee to improve port facilities and services. Chinese Taipei considered both the Harbour Construction Dues and the trade promotion fee to be service fees as contemplated under Article VIII of the GATT 1994. He acknowledged that 25 per cent of the Harbour Construction Dues proceeds were used to provide financial assistance to the cities where the harbours are located. Upon accession to the WTO, the revised Commercial Port Law would require that any revenue generated through the Harbour Construction dues be used exclusively for the development of commercial harbours.

30. Some members of the Working Party stated that the levy of ~~0.5~~ **0.4** per cent was a revenue charge to fund harbour up-keep and expansion based on import taxation, and was not a charge for specific services rendered. This levy and the trade promotion fee should be brought into conformity

with GATT 1994 in advance of Chinese Taipei's accession. The representative of Chinese Taipei responded that a transitional period would be required to bring the levy into conformity with Article VIII of the GATT 1994. The representative of Chinese Taipei stated that after reviewing the comments made by Working Party members, and subject to agreement on a transitional period, Chinese Taipei had decided to bring the Harbour Construction Dues into conformity with Article VIII of the GATT 1994. He added that the Trade Promotion Fee would not be revised because it was considered in conformity with GATT 1994 Articles III, and VIII. In addition, neither charge would be increased in its level of application, or included in the taxable base of imports for the purposes of applying domestic taxes such as the Commodity Tax. If requested, Chinese Taipei would consult with the Members concerning the effect of these measures on their trade.

31. [In response to the statement of the representative of Chinese Taipei regarding maintenance of the Trade Promotion Fee, some members continued to express concern that the fee was inconsistent with Articles II and VIII of GATT 1994 and requested that Chinese Taipei bring it into conformity with the WTO upon accession.]

32. The representative of Chinese Taipei confirmed that the Trade Promotion Fee would be applied in conformity with WTO obligations and would not exceed 0.05 per cent of the customs value of the good. The Working Party took note of these commitments. Some members expressly reserved the right to pursue this issue pursuant to the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes.

33. The representative of Chinese Taipei stated that Chinese Taipei would require a transitional period of 15 months to bring its Harbour Construction Dues levy into conformity with the requirements of the WTO Agreement, particularly to make it a specific charge because of the need to modify the budget plans to compensate for the anticipated revenue losses resulting from the modification of the levy.

34. The representative of Chinese Taipei stated that Chinese Taipei would bring the Harbour Construction Dues into conformity with Articles III and VIII of the GATT 1994 ~~within a period of 15 months from the date of accession to the WTO, and in any case by 31 December 2000 (whichever occurred first)~~ **by 1 January 2001. The Harbor Tax would be based on the cost of the services provided and not applied on an ad valorem basis.** Within the same time-frame Chinese Taipei would exclude these charges from the valuation base for the application to imports of domestic taxes, such as the Commodity Tax and the Tobacco and Alcohol Tax. During this transitional period, the Harbour Construction Dues would not exceed ~~0.5~~ **0.4** per cent of the taxable base. The Working Party took note of these commitments.}

[The representative of Chinese Taipei stated that Chinese Taipei would bring the application of the Harbour Construction Dues into conformity with Articles II and VIII of the GATT 1994 upon accession and would exclude those charges from the valuation base for the application to imports of domestic taxes, such as the Tobacco and Alcohol Tax. Specifically, the Harbour Tax would be a specific charge based on the cost of the services provided and not applied on an ad valorem basis. The Working Party took note of these commitments.] [The representative of Chinese Taipei stated that Chinese Taipei would bring the Harbour Construction Due into conformity with Articles III and VIII of the GATT 1994 by the date of its accession to the WTO. The Working Party took note of this commitment.]

#### Internal Taxes Applied to Imports

35. In response to questions, the representative of Chinese Taipei stated that VAT, Commodity Tax, tobacco and alcohol monopoly tax were applied equally to imported and domestic products.

#### Commodity tax

36. Some Working Party members sought information from Chinese Taipei on the application of the special commodity tax. In response, the representative of Chinese Taipei said that the tax was imposed on imported goods at the time of importation, and on like domestic goods upon their release from the factory. For imported goods, the amount of the commodity tax was the taxable value established in accordance with the Customs Import Tariff, plus customs duties, plus harbour construction dues multiplied by the tax rate. For domestic goods, the amount of the tax was calculated on the basis of one of two methods. The first method applied when the manufacturer sold products through wholesalers or if the manufacturer was paid to manufacture the products for others. The second method considered a 12 per cent promotional expense. The goods subject to the commodity tax were: rubber tires, cement, machine-made cool drinks, flat glass, oil and gas, certain electric appliances and motor vehicles. Chinese Taipei believed that many Working Party members had similar practices. He noted that the 12 per cent promotional expense represented a manufacturer's typical promotion expense. The tax allowed a deduction of 12 per cent for promotional expenses when goods were circulated not through an exclusive wholesaler or distributor. Chinese Taipei considered that it treated imported goods the same as the goods sold through distributors, and did not discriminate against imports. The commodity tax was a special excise tax. The determination of the tax base had taken into account common practices. The 12 per cent deduction only applied if the domestic sales were not through a sole distributor. In response, some Working Party members noted that a critical consideration in the application of this internal tax was consistency with national treatment and other WTO obligations and the avoidance of subsidization.

37. Some members of the Working Party were of the view that the basis for the application of the commodity tax to imports was artificially inflated because the tax base of domestic and imported goods were different. Domestic goods were assessed on an ex factory basis, excluding the cost of delivery and transfer of the goods to the wholesale level whereas the base for imported goods was the import value plus transportation, insurance and other customs charges and customs duty. They also noted that domestic goods profited by having an additional 12 per cent deduction for promotional expenses prior to the calculation of the tax. These members of the Working Party considered that Chinese Taipei should address the central issue of equal application of the tax. The bases for calculation of the tax were inequitable, and the incorporation of a 12 per cent differential in the valuation of imports and domestic products based on the concept of promotional expenses could not be justified, and should be eliminated prior to accession. Those members considered that due to the different tax bases, the tax was applied in a manner that were not in conformity with Article III of the GATT 1994. They stated that Chinese Taipei should eliminate by the date of its accession any domestic tax measures or methods of applying domestic taxes whose applications vary according to whether the items are locally manufactured or imported.

38. The representative of Chinese Taipei stated that from the time of Chinese Taipei's accession, changes to the Commodity Tax would modify the base for the tax. From that date, the tax would be calculated on the basis of the sale price. The sale price was the manufacturer's wholesale price for the current month; if the manufacturer sold directly to retailers, wholesale profit could be deducted from the selling price. Deductible wholesale profit rate was determined on an industry-by-industry basis. Imported goods were taxed on the basis of their CIF value and therefore were not eligible for the tax adjustment. He further added that in order to equalise the treatment of domestic and imported products, prices of domestic manufactured goods sold directly to retailers contained elements of wholesale profits which were not included in the tax base. He further stated that the current practice of assessing the commodity tax based upon engine displacement of automobiles and the licence plate tax was fully consistent with Article III of the GATT 1994. **Some members of the Working Party were of the view, however, that application of a tax based on characteristics such as engine displacement could *de facto* discriminate against imports.**

39. The representative of Chinese Taipei stated that Chinese Taipei would amend its laws to remove the ~~allowance of 12 per cent for promotional expenses~~, **allowance provided** when goods were circulated not through an exclusive distributor, and ~~to~~ **would** use selling prices as the base for levying the commodity tax. He further stated that Chinese Taipei would eliminate by the date of its accession any domestic taxes, ~~or tax assessment methods that resulted in the discriminatory taxation of domestic and imported products~~ **or application thereof which was inconsistent with Article III of the GATT**

~~1994. [He further stated that Chinese Taipei would eliminate by the date of its accession any domestic tax measures or method of applying domestic taxes, whose application varied according to whether the articles are locally produced or imported. In particular, he stated that Chinese Taipei would change the method of assessing the commodity tax on automobiles and the license plate tax from one based on engine displacement to...]~~ The Working Party took note of these commitments.

Gross Business Receipt Tax, General Sales Tax and VAT

**Business Tax: Gross Business Receipt Tax and VAT**

40. Some members of the Working Party asked Chinese Taipei to describe the application of the business tax, its scope and level of application, the portion of the tax revenue accounted for by imports, etc. In response, the representative of Chinese Taipei said that ~~the Gross Business Receipt Tax (GBRT)~~ **Business Tax** applied to the sale of goods and the rendering of services. The tax was levied in two forms. The first form was a general sales tax which applied to the business of insurance, banking, investment trusts, securities, agricultural wholesale, pawn shops and small business operators. The second form, a VAT business tax, applied to all other businesses. The VAT was applied at the rate of 5 per cent, to both domestic and imported products. All goods, both domestically manufactured and imported, were generally taxed at the point of sale. Revenue from both kinds of tax imposed on imported goods had represented ~~2.34~~ **1.98** per cent of total tax revenue in ~~1996~~ **1997** (1 July ~~1995~~ **1996** to 30 June ~~1996~~**1997**). Chinese Taipei considered that the imposition of the tax at the point of sale simplified the procedure by levying the tax on the taxable goods' imported value and the importers' added value jointly, rather than separately. However, in some cases, to minimise tax avoidance imported goods were subjected to business VAT at the time of importation. The reason for this was that if business VAT was levied at the time of sale, it was possible that certain imported goods with particular end uses could avoid payment of the tax, i.e. motor vehicles imported for personal use, or goods imported by a financial institution. He further noted that because the tax paid on inputs could be deducted from the tax paid on outputs collected from purchases, goods imported for use and goods imported for resale were not differentiated at the time of importation. In relation to the tax base for calculation of the amount of business VAT payable, the representative of Chinese Taipei noted that imported goods were taxed on the basis of the customs duty paid value plus the commodity tax, if applicable. The harbour construction dues would be removed from the tax base. If the commodity tax was payable, the commodity tax formed part of the value added, and was counted as the tax base for the business, whether the goods were imported or manufactured domestically. In addition, the business importer could deduct the input tax from the output tax and was only taxed for the value added to the goods. Therefore, there was no double counting or



"tax-on-tax". He added that Chinese Taipei, after examining whether all goods could be taxed at the time of importation, had found that it was common practice in those economies which imposed VAT to levy the tax at the time of importation.

Monopoly tax on tobacco and wine

41. Some members of the Working Party sought information on the monopoly tax for tobacco, wine, spirits and beer. In their view, there was a serious transparency problem in this sector. In response, the representative of Chinese Taipei confirmed that imported tobacco and wine were subject to a Monopoly Tax, in lieu of customs duty, harbour construction fees, commodity tax and value-added business tax. The Monopoly Tax imposed on domestic tobacco and wine products was assessed on an *ad valorem* basis, equivalent to the operating revenue minus all relevant cost and expenses of the Taiwan Tobacco and Wine Monopoly Bureau (TTWMB) and was considered a sales tax. On average, imported tobacco and wines were subject to the Monopoly Tax at the rate of approximately 120 per cent of the import price. Some members of the Working Party requested that Chinese Taipei provide information on cost of production, and indicate how the TTWMB's methodology to determine the tax rate complied with the GATT 1994, in particular Articles I, III, X, XI, XVI, and XVII, a list of the taxes applied to imports, their negative rates, the value basis as well as the methodology used to determine that domestic tobacco, spirits and wine were subject to a tax rate of approximately 185 per cent of cost. ~~These members also requested information concerning differences in the amount of tax payable on certain whiskies. The representative of Chinese Taipei stated that foreign spirits had only been permitted to be imported for a short period, and that due to recent exchange rate fluctuations these were approximate figures. He also noted that Scotch and Irish whiskies were higher quality and price products, were classified as one category and subject to a higher tax rate than other whiskies. Some members of the Working Party recalled that this issue had been raised in a WTO panel. In their view, these measures appeared to be inconsistent with Article III of the GATT 1994.~~

42. Some members of the Working Party reiterated their concerns in relation to the operation of the Monopoly Tax scheme, particularly in relation to the lack of sufficient transparency in its operation. Without the availability of data to calculate domestic costs, it was not possible to accurately determine whether the Monopoly Tax was equally applied to domestic and imported products. In their view the Monopoly Tax appeared to have a greater impact upon imported products. They did not consider Chinese Taipei's explanations of the methodology used to determine the Monopoly Tax adequate, substantiated and verifiable. It was not possible to conclude that domestic and imported products were taxed in an equivalent manner. As there were large discrepancies

between the rates quoted by Chinese Taipei and the information available to national authorities, it also appeared that the tax system was discriminatory. These members stated that no transition period would be appropriate. Chinese Taipei should either eliminate the Monopoly Tax on imports of wine and distilled spirits immediately upon accession or replace the Monopoly Taxes with reasonable *ad valorem* import duties, and ensure that internal taxes applied equally to domestic and imported wine and spirits. These members of the Working Party disagreed with the view that a system for the *ad valorem* taxation of domestic goods based on net profits of the TTWMB could be considered as equivalent to a specific tax on imported goods. It appeared to these members that due to the lack of transparency mentioned above, there were problems in assessing the consistency of the Monopoly Tax system with the GATT 1994. Nevertheless the Monopoly Tax for imported wine, cigarettes and distilled spirits was significantly higher than the effective tax rate for similar domestic products in breach of Article III of the GATT 1994. These members requested, therefore, that the operation of the TTWMB be altered prior to Chinese Taipei's accession, to enhance transparency and to operate in a manner consistent with the provisions of the GATT 1994. The official monopoly plan ought to be liberalised and the trade impact of the plan fully reviewed prior to accession. The representative of Chinese Taipei said that due to the alteration of the scheme over recent years, the Monopoly Tax on imported products tended to be lower than the tax applied to domestic products. In any event, the Legislative Yuan was determined to repeal the tobacco and wine monopoly system. Alcohol and tobacco products were classified according to production methods and other features, with different tariff rates and taxes applying to different products. Classification and tariff and tax rates were carefully monitored in order to ensure that no discrimination occurred between domestic and imported goods.

43. Some members of the Working Party asked that details be provided of the scheme which would replace the Monopoly Tax and reiterated that no transitional period was appropriate for a situation which was in clear breach of Article III of the GATT 1994. The representative of Chinese Taipei responded that public hearings had been completed, and a plan had been developed. He provided the Working Party with a summary of the reform plan and said that he considered that the future regime would improve trade in alcohol and tobacco products. The new scheme would be implemented six months after Chinese Taipei's accession or, if the Legislature gave its approval before accession, the new system would become effective six months after the implementation of the new laws.

44. [The representative of Chinese Taipei stated that, [prior to accession,] [within six months after enactment of the Tobacco and Alcohol Administration Law and the Tobacco and Alcohol Tax Law and in any event no later than six months after Chinese Taipei's accession] the Monopoly Tax would

be abolished and that tobacco and alcohol products would be subject to (i) import duties as reflected in Chinese Taipei's Schedule of Concessions (Part I of Annex I to the Draft Protocol of Accession) in the same manner as other imported products and (ii) the tobacco and alcohol tax. The representative of Chinese Taipei also stated that [from the date of accession,] [within six months after enactment of the Tobacco and Alcohol Administration Law and the Tobacco and Alcohol Tax Law and in any event no later than six months after Chinese Taipei's accession] internal taxes and charges of whatever character related to trade and distribution of alcohol and tobacco products would be applied equally to domestic and imported products, including with respect to domestic distribution and sales of these products without regard to the ownership of the enterprise. The Working Party took note of these commitments.]

### Quantitative Restrictions

#### Area restrictions

45. In the early stages of the Working Party, some members noted that discriminatory area restrictions were imposed on many products: (i) peaches: limited to imports from Europe and the United States; (ii) lemons and limes, grapes, plums, whole ducks, turkey cuts: issuance of import licenses was suspended except for imports from the United States; (iii) oranges and other mandarins, including tangerines and satsumas, and grapefruits: imports from the United States were free, imports from South Africa were limited in quantity; (iv) apples: imports from the United States and Canada were free; imports from other areas were subject to quantitative restrictions. There were also restrictions on cigarettes and bilateral agreements on the importation of beer, wine and cigarettes. In their view, the area restrictions were discriminatory trade measures inconsistent with the GATT 1994 and, in particular, the MFN principle. Those members emphasized that there was no justification to permit the continuation of such discrimination. Chinese Taipei should eliminate those measures from the date of its accession to the WTO.

46. In response the representative of Chinese Taipei said that the area restrictions operated to maintain the diversity in the origin of imports and to maintain trade balances with certain areas, or to facilitate agriculture restructure. Only a small percentage of industrial and agricultural products were subject to the discriminatory restrictions. Area restrictions for alcoholic beverages and cigarettes had been eliminated on 1 September 1994. ~~Area restrictions in place on the agricultural products listed in Attachment C to this Draft Report would be liberalized.~~ The tariff rate quotas offered as a liberalization measure to be implemented after accession for certain agricultural products would be distributed, ~~through a bidding procedure~~ **as indicated in Chinese Taipei's market access schedule,**

**through procedures** consistent with GATT 1994 and the Agreements on Agriculture and Import Licensing Procedures.

47. With regard to automobiles, some members noted that Chinese Taipei's Import Regulation 209, provided that only motor vehicles from "Europe and the American Continent" may be imported into Chinese Taipei. The representative of Chinese Taipei agreed that this restriction was discriminatory. It was imposed pursuant to the Automobile Industry Strategic Development Plan. Chinese Taipei's car industry was currently not a competitive one, as the size of the market was not substantial enough to allow for economies of scale. The total production value in 1992 was US\$8.2 billion, representing 5 per cent of the total production value of the whole manufacturing sector. Workers directly employed in the car industry were in the number of 120,000. A sudden opening of the market would result in serious economic and social problems.

48. Some members of the Working Party stated that a transitional period was not appropriate, and that the area restrictions on automobiles should be eliminated prior to accession. In response, the representative of Chinese Taipei undertook to eliminate the area restrictions on automobiles. Up to now the liberalisation of car imports had proceeded as follows: (i) heavy trucks could be imported freely from February 1994; (ii) passenger cars could be imported without quantitative restrictions from North America and Europe (excepting Eastern Europe). Passenger cars from other areas were currently under either quantitative or area restrictions; (iii) light trucks and station wagons could be imported freely from North America and Europe. Imports of light trucks and station wagons from other areas were currently under either quantitative or area restrictions. He assured the Working Party that it was not the intention of Chinese Taipei to employ measures not permitted by the WTO Agreement, such as voluntary export restraints or other grey area measures to liberalise automobile imports.

49. At the request of some members of the Working Party, the representative of Chinese Taipei provided a comprehensive listing, covering both tariff and non-tariff measures, of all trade preferences in force. He added that once area restrictions were eliminated, there would remain no trade preferences extended on a bilateral basis. The representative of Chinese Taipei assured the Working Party that area restrictions would be brought into conformity with the requirements of the WTO Agreement.

50. The representative of Chinese Taipei undertook that area restrictions applying to imports of certain passenger cars and certain small commercial vehicles, certain automobile chassis and motorcycles would be eliminated upon Chinese Taipei's accession to the WTO. Passenger cars and light commercial vehicles were the only industrial products that would be subject to tariff-rate quotas

after WTO accession. Tariff rate quotas would be allocated in a manner consistent with Article XIII of the GATT 1994. The tariff-rate quotas would be increased at the annual rate of 20 per cent. The tariff rate quota system would be eliminated no later than [31 December 2006]. He confirmed that area restrictions for alcoholic beverages and cigarettes had been eliminated from 1 September 1994. Chinese Taipei also undertook that upon its accession, area restrictions on agricultural products would be eliminated. The tariff rate quotas would be administered in a manner consistent with the requirements of the WTO Agreement, [in particular the Agreement on Agriculture, the Agreement on Import Licensing Procedures and GATT 1994]. The Working Party took note of these commitments.

#### Import Licensing

51. Several members of the Working Party noted that historically Chinese Taipei had maintained a complex network of non-tariff measures consisting of quantitative restrictions affecting some 27 items, non-automatic import licensing affecting some 246 items, including 27 items which were subject to quantitative restrictions and standards inspections, quarantine, labelling requirements, etc. These members requested detailed information on the schemes. Some members added that the bans on liquid milk, rice, passenger cars equipped with diesel engines and motorcycles of 150cc or more, applied by Chinese Taipei were inconsistent with WTO obligations and would have to be eliminated. These members requested that Chinese Taipei eliminate, prior to accession to the WTO, all import restrictions inconsistent with the GATT 1994 and the WTO Agreements, in particular the Agreements on Agriculture, Sanitary and Phytosanitary Measures and Technical Barriers to Trade.

52. In response, the representative of Chinese Taipei said that a system of licensing had been operating in relation to the importation of certain products that consisted of area restrictions, discretionary licensing and import controls. Automatic licensing operated to grant an import license without requiring the Customs to screen the goods. Discretionary licensing required that the Board of Foreign Trade issued import licenses for certain products, following approval by consent letter of the relevant agencies. In the case of such products, the Council of Agriculture, Industrial Development Bureau, Department of Health, Department of Environmental Protection and other agencies were required to consent to the issue of licenses for both import controls and discretionary licensing in respect of products falling within their respective jurisdictions. Once the importation was approved, the Board of Foreign Trade issued an import license.

53. The representative of Chinese Taipei stated that as a result of the concerns expressed by members of the Working Party, Chinese Taipei had decided to establish a "Negative List" system. The Negative List system would streamline the importation process and replace all pre-existing licensing requirements, except in cases where the product had national security, public order, ~~cultural, educational,~~ public health, or environmental protection implications. The Negative List would result in the issuing of licenses by the relevant agencies according to an objective standard, and in a transparent manner. He noted, however, that some items on the automatic license list would become subject to quantitative restriction or import ban under the Negative List system, due to the re-categorisation of those items. For products subject to import monopolies, consent letters would only be granted to importers enjoying an import monopoly. The procurement practices of the government agencies enjoying the import monopoly would be made consistent with Article XVII of the GATT 1994.

54. The representative of Chinese Taipei outlined the operation of its Negative List system under the June 1997 version as follows. Items were listed in either Table I (Table of Commodities Subject to Import Control) or in Table II (Table of Commodities Subject to Conditional Import). Items listed in Table I could not be imported unless specially approved by the Board of Foreign Trade or other relevant authorities, which were listed in Import Regulations 111/112. Items listed in Table II required that an import license be issued prior to importation, by the Board of Foreign Trade or its designated licensing banks i.e. Import Regulations 121/122. Tables I and II constituted the Negative List. In respect of items that had previously required a license issued by the Board of Foreign Trade but were not retained in the Negative List, if they were subject to administration requirement, which had no trade restriction effect, the Customs were required to carry out an inspection to determine that all requirements for importation were fulfilled. The items subject to that requirement were listed in the "List of Commodities Entrusted to Customs for Import Examination" ("the Entrusted List"). The Entrusted List was published together with the Negative List in a consolidated volume arranged by HS Code number. The Negative List and the Entrusted List each accounted for 8 per cent of tariff lines, the remaining tariff items were free of this requirement. Items contained in Table I were subject to general import bans, which in respect of most products were justified under Articles XX and XXI of the GATT 1994, whilst others were required to protect domestic sectors. In the case of bans necessary to protect domestic sectors, an entitlement to import the necessary quantity could be auctioned when domestic production fell short of demand. He stated that upon accession, the items listed in Table I could be moved to Table II if quotas or tariff quotas are used as transitional measures.

55. In response to further questions from members of the Working Party, the representative of Chinese Taipei explained that the decision whether a product should be included in the Negative List

was taken by government agencies. The legal basis for including items in the negative list was Article 11 of the Foreign Trade Act, which permitted the imposition of a restriction if the restriction was necessary to fulfil obligations under international treaties or trade agreements, or for national defence, social security, culture, human health, environmental protection reasons or to implement specific policies. After accession the inclusion of new items would be subject to a review procedure to ensure WTO consistency. Although the legislation did not specifically provide for interested parties to make representations concerning the inclusion of an item in the negative list, existing practice permitted such representations to be made to decision makers. The practice of inviting interested parties to express their view when considering changes to the Negative List would be continued. Following accession to the WTO, the number of items included in the negative list would be substantially reduced; inclusion of new items would be subject to a review procedure to ensure WTO consistency. He also noted that the effect of the recent Foreign Trade Act was to limit the types of considerations required to be taken into account by administrators when deciding whether items were to be included in the Negative List as subject to new import licensing requirements.

56. Several members of the Working Party indicated that all bans and restrictions set out in the Negative List, and the requirements for import licensing being issued by more than one regulatory agency should, be brought into full conformity with the WTO Agreement, especially the Agreement on Import Licensing Procedures. In particular, a member of the Working Party noted that some of Chinese Taipei's stated reasons for restrictions did not appear consistent with WTO requirements, e.g., restrictions required to protect domestic sectors. This member requested specific justifications for any import restrictions maintained or imposed in the future. A general statement that import bans, which in respect of most products were justified under Articles XX and XXI was insufficient to evaluate any commitment. In response, the representative of Chinese Taipei noted that although the Agreement on Import Licensing Procedures allowed Members to have more than one import licensing entity, Chinese Taipei would work towards a system that required import licenses to be obtained from one regulatory entity only. Some members of the Working Party said that all import bans, quantitative restrictions import licensing restrictions, and other non-tariff measures inconsistent with the requirements of the WTO Agreement would have to be eliminated prior to Chinese Taipei's accession. Some members of the Working Party said that if Chinese Taipei believed that certain of its import bans, quantitative restrictions and administrative requirements were not inconsistent with the provisions of the WTO, the onus was on Chinese Taipei to demonstrate this. They requested Chinese Taipei to modify this list to show: the precise description of the product affected by HS number, the measure or measures applied to each, the specific WTO provisions which justified the maintenance of the measure or measures and the responsible agency. If border measures were to be justified to enforce Technical Regulations or Sanitary and Phytosanitary Measures, the table should also show the

relevant national standard(s) and any international standard(s). The Working Party would then be in a position to examine the matter further. The representative of Chinese Taipei stated that a table containing the justifications for placing items on the Negative List would be submitted to the Working Party.

57. [The Consolidated List of Commodities Subject to Import Regulations and Commodities Entrusted to Customs Import Examination is referred to in Attachment D to this Draft Report. The representative of Chinese Taipei undertook to notify any changes introduced to the Consolidated List in accordance with the Agreement on Import Licensing Procedures. The Working Party took note of these commitments.]

58. {In response to a request that Chinese Taipei produce a plan for the elimination of quantitative or other non-tariff measures on fish, the representative of Chinese Taipei stated that Chinese Taipei would eliminate all quantitative restrictions on these products from the date of accession, with the sole exception of import bans on mackerel, carangid and sardines. ~~As indicated in Attachment C of the Draft Report, upon accession to the WTO Agreement, the~~ The existing import controls for mackerel, carangid and sardines would be replaced by tariff quotas **which would be distributed, as indicated in Chinese Taipei's market access schedule, through procedures consistent with GATT 1994 and the Agreements on Agriculture and Import Licensing Procedures.** The Working Party took note of these commitments.}

59. Some members of the Working Party noted the continued application of non-tariff measures to imports of certain yachts and vessels for pleasure or sports and a ban on the importation of motorcycles, including **those** with reciprocating internal combustion piston engines of a cylinder capacity exceeding ~~850 CC~~ 150cc. These members of the Working Party stated that the restrictions were not justified under the WTO Agreement. **In addition, some members noted that Chinese Taipei had not developed appropriate emission standards for motorcycles over 150cc which in itself could preclude effective market access even if the formal ban was eliminated. Finally, those members noted that Chinese Taipei restricted motorcycle access on certain major highways in Chinese Taipei. These issues would need to be addressed at the time the ban was eliminated to ensure effective market access for these products.**

60. The representative of Chinese Taipei stated that Chinese Taipei would eliminate the import ban on motorcycles over 150cc [two years after] [upon] accession to the WTO. [At that time, Chinese Taipei would implement a licensing system for yachts and vessels for pleasure or sports that [would require importers to have an approved abandonment/replacement right as applicable to domestically built fishing boats. These measures conformed to Article XX(g) of GATT 1994.] [conformed to the



automatic licensing provisions of the WTO Agreement on Import Licensing Procedures.] The Working Party took note of these commitments.

61. The representative of Chinese Taipei said that from the date of accession, Chinese Taipei would apply its import licensing and quantitative restrictions regime in strict conformity with WTO Agreements, in particular with the Agreements on Agriculture and Import Licensing Procedures. Chinese Taipei would also ensure that the distribution of import licenses, quotas, tariff-rate quotas, permits or any other means of approval for importation or the right of importation by central and sub-central authorities would not be conditioned on whether competing domestic suppliers of such products exist or on performance requirements of any kind, including but not limited to local content or mixing requirements, the transfer of technology, the conduct of research and development, minimum export requirements, or on the origin or nature of the enterprise, ~~except as provided in the relevant commitments in paragraph [85] of this Draft Report. [The representative of Chinese Taipei also confirmed that in accordance with~~ **would ensure that price increases, if any, in respect of imports by state trading enterprises would be imposed in a manner consistent with the requirements of Article II:4 of GATT 1994 and Article 4.2 of the Agreement on Agriculture. ; Chinese Taipei will ensure that no price increase in respect to imports, particularly by State trading enterprises, will result in protection beyond that provided by the tariff in its schedule.]** The Working Party took note of these commitments. }

62. The representative of Chinese Taipei said that Chinese Taipei also undertook to eliminate and not reintroduce or apply import bans, quantitative restrictions, licensing restrictions, or other non-tariff measures having similar effect which were not justified under specific provisions of the WTO Agreement, ~~with the exception of those measures listed in Attachment C of the Draft Report. Area restrictions for agricultural and industrial products would be liberalized from the time of accession as shown therein~~. He also noted that Chinese Taipei would not use measures related to customs procedures and technical product or safety standards as disguised barriers to trade and that any measures applied will be no more restrictive than necessary to accomplish their legitimate goals. The Working Party took note of these commitments.

#### Customs Valuation

63. Some members of the Working Party requested information on the system of customs valuation in Chinese Taipei. In response, the representative of Chinese Taipei stated that paragraph 1 of Article 12-1 of the Customs Law reflected the situations in which the transaction price would not be used as the basis of customs value. The transaction value would not be used when the invoice price did not include the cost adjustments provided under Article 12 of the Customs Law and the

importer failed to provide objective and quantifiable information to support the price calculation. In addition, if the Customs had any doubts concerning the adequacy or accuracy of an invoice, it normally requested the importer to provide an explanation or other evidence to substantiate the validity of the invoice. If the importer refused to give explanations or the evidence provided contradicted the facts, and further investigation proved that the invoice price was not the price actually paid or payable, the Customs could determine that the invoice price would not be accepted as the customs value. In such a circumstance, Article 12-2 to 12-6 of the Customs Law provided that the value was assessed in the following sequence: firstly, the transaction value of identical goods; secondly, the transaction value of similar goods; thirdly, the deductive value; fourthly, the computed value; and, fifthly, any other reasonable value.

64. Some members of the Working Party asked whether any minimum import values were used in Chinese Taipei. The representative of Chinese Taipei replied that although Article 12 of its Customs Law provided for use of a duty paying value list which provided a pre-determined value for imported products, the Executive Yuan, by administrative order, had eliminated the pre-determined values. The discretionary power had been eliminated as the result of the April 1997 amendment to the Customs Law.

65. Some members of the Working Party said that some aspects of the customs valuation regime of Chinese Taipei appeared to be inconsistent with the requirements of the Agreement on the Implementation of Article VII (Customs Valuation Agreement) in the following respects: the authority to use the duty paying value list or any reference price mechanisms or other arbitrary lists of prices used for customs valuation purposes on agricultural and other imports should be eliminated; and the selection of valuation methods outside the hierarchy provided in the Customs Valuation Agreement, particularly in the case of valuation of leased and rented goods, should be addressed. They also noted that precise WTO consistent rules on the determination of whether parties were related when dealing with the customs valuation of transactions between related parties were required; and provisions giving effect to the WTO Ministerial Decision on Customs Valuation should be enacted.

66. Some members of the Working Party also expressed concern regarding the practice of requiring importers to post bonds for prompt clearance of goods, in particular horticultural goods, based on pre-determined reference prices. These reference prices were not established in a transparent manner, were often changed without prior notice and no opportunity was provided for comment on the rate established. In the view of these members, this practice had the same effect as use of reference prices to calculate duties. In response, the representative of Chinese Taipei stated

that its use of reference prices in determining the amount of the bond to be posted to facilitate prompt clearance of goods was not inconsistent with the WTO obligations, in particular, the obligation under the Agreement on Customs Valuation. However, Chinese Taipei would continue to improve the current practice to make the bond amount a closer reflection of the actual value of the goods. He noted in this connection that any bond paid would be refunded, if a post-clearance assessment of the customs value of the goods was less than the bond amount. **In particular, Chinese Taipei will immediately adopt an equitable, transparent Customs bonding system for any perishable fruits and vegetables subject to such requirements that allows for potentially frequent adjustment to the bond value to take account of prevailing market forces. Such a system will include the following characteristics:**

- **The fixing of specific bond values for each supplier country. Upon request, Chinese Taipei Customs authorities will make available to any domestic or foreign interested party the data, the data source, and the methodology used in formulating the reference price upon which the value of the bond is based.**
- **Timely adjustments to the bond value, as frequently as is necessary, to take account of prevailing international market prices, and seasonal quality consideration.**
- **Consideration of alternative data sources, should representatives of an exporting country believe that more appropriate and accurate data exist beyond that being employed by Chinese Taipei in setting the bond values.**
- **The establishment of a mechanism that would provide, at the request of either an exporting country or Chinese Taipei authorities, for prompt consultations should a question or concern arise relative to an established bond value.**

**The Working Party took note of this commitment.**

67. Responding to comments from some members of the Working Party detailing other areas where the customs valuation regime of Chinese Taipei did not concord with the provisions of the Agreement, the representative of Chinese Taipei indicated that these issues had been addressed in the implementing legislation for WTO accession to be approved by the Legislative Yuan.

68. The representative of Chinese Taipei confirmed that amendments to bring the Customs Law into conformity with the Customs Valuation Agreement would be made prior to accession, either by eliminating the inconsistent practices or amending current laws and regulations to bring procedures

into line with the Customs Valuation Agreement. { He confirmed that Chinese Taipei would implement the Customs Valuation Agreement fully upon accession, **without recourse to any transition period.** ~~The representative of Chinese Taipei also committed that Chinese Taipei would, upon accession, cease using pre-established or reference prices to establish the amount of any bond that might be posted in connection with customs clearance of horticultural products.~~ } He further committed that Chinese Taipei would, with a view to resolving specific problems, upon request, provide information to WTO Members on the methods for determination of customs valuation of specific products and consult concerning the effect of Chinese Taipei's customs valuation procedures on their trade. The Working Party took note of these commitments.

#### Rules of Origin

69. Some members of the Working Party requested information about the elaboration of rules of origin in Chinese Taipei whether in the context of free trade agreements or otherwise, and also requested Chinese Taipei to confirm that its rules of origin for both preferential and non-preferential trade complied fully with the WTO Agreement on Rules of Origin.

70. The representative of Chinese Taipei said that the Customs Law had been amended in April 1997 to provide a legal basis for the establishment of rules of origin fully consistent with the WTO Agreement. The Rules of Origin on Imported Goods set out the criteria for determining origin.

#### Preshipment Inspection

71. Some members of the Working Party requested information on whether the services of a preshipment inspection firm were employed by Chinese Taipei. The representative of Chinese Taipei said that Chinese Taipei did not use pre-shipment inspection. The representative of Chinese Taipei noted however that Chinese Taipei had amended the Foreign Trade Act in April 1997 to provide the legal basis for the authority to regulate preshipment inspection activities of firms mandated by foreign governments.

72. The representative of Chinese Taipei stated that Chinese Taipei would ensure that its laws and regulations relating to preshipment inspection would be consistent with the relevant WTO Agreements, in particular, the Agreements on Preshipment Inspection and Customs Valuation. The Working Party took note of this commitment.

#### Anti-Dumping and Countervailing Duties

73. In response to questions from members of the Working Party the representative of Chinese Taipei said that in 1984 Chinese Taipei had enacted "The Implementing Regulation on the Imposition of Countervailing Duties and Anti-Dumping Duties". That Regulation provided that countervailing or anti-dumping duties could be levied on goods found to have received subsidies or to have been dumped and which threatened domestic industries. In the view of Chinese Taipei the implementing regulations had been in compliance with the requirements of the Tokyo Round Codes on Anti-Dumping and Subsidies and Countervailing Measures. In pursuance to the ~~1994~~ **1997** amendment to the Customs Law, Chinese Taipei undertook to revise the Regulations to make them consistent with the Uruguay Round Agreements prior to accession to the WTO and to submit them to the WTO.

74. The representative of Chinese Taipei stated that, Chinese Taipei would ensure that its legislation on anti-dumping and countervailing duties was in full conformity with the requirements of the WTO Agreement, in particular Article VI of GATT 1994 and the Agreements On the Implementation of Article VI and Subsidies and Countervailing Measures from the date of accession. Chinese Taipei would also ensure that any anti-dumping or countervailing duties imposed on any product after its accession were in accordance with the requirements of Article VI of GATT 1994 and the Agreements On the Implementation of Article VI and Subsidies and Countervailing Measures. The Working Party took note of these commitments.

#### Safeguards Regime

75. Some members of the Working Party noted that a provision in the Foreign Trade Act, referred to as the "trade imbalance clause" permitted Chinese Taipei to suspend trade from specific countries because of persistent trade deficits and did not specifically authorise the type of actions foreseen in the Understanding on Balance of Payments Provisions of GATT 1994. In response to requests for justification of this provision and measures taken pursuant to it, the representative of Chinese Taipei said that, in his view, Articles XI, XII, and XIX of the GATT 1994 authorized the maintenance of this particular provision of the Foreign Trade Act. Some members of the Working Party disagreed with this opinion and stated that the provision in question was not in conformity with the requirements of WTO Agreement, in particular GATT 1994 Articles I, II, XI, XII, XIII, XIV and XIX. Following further discussions in the Working Party, the representative of Chinese Taipei agreed that certain provisions of the Foreign Trade Act were inconsistent with the provisions of the WTO.

76. The representative of Chinese Taipei stated that in April 1997, the Foreign Trade Act had been revised to address members' concerns about the trade imbalance clause. This clause had been replaced with one that was consistent with Article XII of the GATT 1994. The representative of

Chinese Taipei further confirmed that the provisions of the Foreign Trade Act would be implemented from the time of accession in a manner conforming to the provisions of the WTO Agreement. Moreover, the representative of Chinese Taipei stated that should a critical balance of payment situation develop, ~~{Chinese Taipei would use price-based measures}~~ **{Chinese Taipei would give preference to those measures referred to in the Understanding on the Balance of Payments Provisions of GATT 1994 as price-based measures}** to address the situation and would maintain any measures only so long as necessary ~~to restore balance of payment equilibrium~~. **In the circumstance that Chinese Taipei must resort to measures that are not price-based, Chinese Taipei will transform these measures into price-based measures within 6 months after implementing the initial measures.** Moreover, ~~such any measures taken for balance-of-payment reasons would~~ **would not be used to** provide import protection for specific sectors, industries or products.

77. In response to further questions the representative of Chinese Taipei informed members of the Working Party that Chinese Taipei operated a system to compensate farmers for damage caused by competition from imports of agricultural products. Relief was accorded if producers of major agricultural products suffered serious injury as a result of the liberalisation of imports due to trade negotiations or policy changes. If the quantity of such products imported during the injury period had increased by 20 per cent or more compared with a reference period of the previous three years; or the imported products had been subsidised or had otherwise benefited from unfair trade practices. Serious injury was deemed to occur when the market price fell below the cost of production. The sixteen products eligible for relief under the Regulations were as follows: citrus, apples, plums, peaches, guavas, pears, wax apples, grapes, tea leaves, beef, pork, duck meat, bred shrimps, pineapples, chicken meat and clams. **In 1995, the legislation was amended to the “Rules for Redressing Damage to Farmers Caused by Agricultural Imports.” It broadened the eligible products to all agricultural products.** Chinese Taipei submitted to the Working Party information concerning the draft Plan on ~~Safeguards for Agricultural Products~~ **implementation of this program.**

78. The representative of Chinese Taipei stated that, from the time of accession, the safeguards regime would be fully consistent with the WTO Agreement on Safeguards. ~~{The representative of Chinese Taipei confirmed that safeguards on agricultural products would be included in the calculation of Chinese Taipei's AMS calculations and AMS reduction commitments}~~ **measures taken to redress damages to farmers caused by agricultural imports would be included in the calculation of Chinese Taipei's AMS calculations and AMS reduction commitments according to the Agreement on Agriculture.}** The Working Party took note of these commitments.

#### Export Regulations

79. In response to requests for information on any restrictions maintained on exports, the representative of Chinese Taipei stated that no products were prohibited from export from Chinese Taipei. Ammunition, narcotics, protected wildlife, and strategic high-tech products were subject to strict export controls, and could only be exported under special export permits. As a result of measures adopted by importing countries, certain other items such as textiles were subject to an export licensing system. He provided the Working Party with a list of all products subject to export licensing maintained to ensure:

- (i) the implementation of quantitative restriction arrangements and voluntary restraint arrangements;
- (ii) national security, the security of supply of certain daily necessities and important industrial materials, including rice and salt;
- (iii) social and financial policies, including narcotics control;
- (iv) protection of endangered species of wild fauna and flora, including Formosan land-locked salmon, and white-skin sugar cane;
- (v) hygiene and health, including puffer fish, turtles, prawns and pork;
- (vi) agricultural development, including bananas, seedless water-melons, onions, eels, and raw sugar.

80. In order to streamline the granting of an export licence, a system to permit the grant of an automatic electronic export licence was under development. .

#### Export Processing Zones/Export subsidies

81. Some members of the Working Party requested information on the Export Processing Zones (EPZs), in particular, information on the total value of trade as well as the percentage of EPZs production. In response, the representative of Chinese Taipei said that the EPZs were established pursuant to the Statute for the Establishment and Management of Export Processing Zones. Investors in the EPZs were entitled to the following incentives:

- (a) exemption from the following duties and taxes:
  - (i) customs duties on imported machinery and equipment, raw materials, fuels, commodities, components, and samples;
  - (ii) commodity tax on the exported or imported products, machinery and equipment, raw materials, components, and samples; and

- (iii) deed tax on the newly built standard buildings acquired from the EPZs Administration or the buildings legally acquired from the EPZs Administration;
- (b) no business tax on exported goods and their related labour services as well as on the goods purchased by the export enterprises;
- (c) due to the exemption from taxes or duties, there was an exemption from the requirement to keep certain documents and to pay tax deposits etc. In addition, transfers of property to different enterprises within an EPZ were not subject to the business tax. The representative of Chinese Taipei further added that the EPZs were managed by the Export Processing Zones Administration, Ministry of Economic Affairs. Various products and services were produced in the EPZs. The representative of Chinese Taipei noted that there were ~~three~~ **four** EPZs in Chinese Taipei. In 1994, 96 per cent of production in the EPZs was exported. Under Article 5 of the Statute for the Establishment and Management of Export Processing Zones, most of the production of the EPZs was required to be exported. A certain percentage of the production could be sold on the local market, provided that it was accorded the same treatment as imported products, and was subject to customs duties. The production from the EPZs sold in the domestic market was subject to customs duty on the final product, not on inputs into the product. If goods produced in the EPZs for local sale were less than 50 per cent of the annual production, the EPZs Administration would automatically approve the domestic sale of the goods. If the goods produced for local sale were in excess of 50 per cent of annual production, the approval by the EPZs Administration was discretionary. However, no such application for approval had ever been refused. The representative of Chinese Taipei added that there was no local content requirement for enterprises wishing to operate in the EPZs. In the past the subsidiaries or branches of enterprises could not be located in the EPZs. In April 1997 Chinese Taipei had amended the Implementing Regulation in order to permit subsidiaries or branches of enterprises to be located in the EPZs. EPZs products which entered the domestic market accounted for only 3-4 per cent of the value of EPZs total production in 1994 and 6-7 per cent in 1997. In April 1997 Chinese Taipei had lifted the 50 per cent limit on local sales through amendments to the Statute. Domestic sales had exceeded 50 per cent of the production of crystal oscillators, electronics testers, voice synthesizers, capacitor parts, sensors, etc. Around 41.6 per cent of EPZs production had benefited from the tax exemption granted by the Statute for Upgrading Industries.

82. Some members of the Working Party noted that some of the arrangements providing for fiscal incentives for businesses located or operating in the EPZs appeared to be in conflict with the provisions of the SCM Agreement and the Agreement on TRIMS. They requested further information on the fiscal incentives offered. In response, the representative of Chinese Taipei indicated that



investments in the Export Processing Zones were exempted from customs duties and the commodity tax on imported machinery, raw materials, fuels, commodities, components and samples, and the deed tax on the new buildings purchased from or otherwise acquired from the EPZs Administration. No business tax was charged on the exported goods and their related services, nor was the business tax levied on purchases by those enterprises. These enterprises were also exempted from applying for tax exemption, guarantee, relevant bookkeeping, and paying provisional tax. He further stated that in Chinese Taipei's view those practices complied with the requirements of the WTO Agreement and did not constitute export subsidies. Their trade effect, if any, was minimal: 0.185 per cent of the total exports.

83. Some members of the Working Party noted that import duty and tax exemptions on goods imported into the EPZs were provided for goods not directly incorporated into the exported product. Direct taxes on the profits from the exports of those enterprises were also exempted. In their view these practices appeared to be in conflict with the SCM Agreement. Those subsidies could also be countervailable. The representative of Chinese Taipei replied that the purpose of the EPZs was to create duty-free zones for the production of exports, in order to create an environment where exports manufactured from imported inputs need not obtain a refund of duties. This was consistent with the obligations contained in the WTO Agreement. The limitation on duty refunds/exemptions on inputs directly incorporated into exported products was applied by many developed economies, for the purpose of administrative expediency, rather than being based on the theory that refunds/exemptions of duties on imported inputs not directly incorporated into the exported products would unduly increase the exporters' competitiveness and should not be allowed. Because the products were primarily for export, it was therefore not necessary to limit exemptions or refunds to the extent of products directly incorporated into the products exported from the EPZs. In fact, in Annex II of the same Agreement, inputs consumed in the production process, for which drawback of import charges was allowed, are defined to cover energy, fuel and oil in the production process and catalysts which are consumed in the course of their use to obtain the exported product as well as the inputs physically incorporated. Because the exports from the EPZs did not receive "undue" amounts of refund or exemption the relevant practices did not constitute a subsidy. The representative of Chinese Taipei added that the SCM Agreement Annex I "Illustrative List of Export Subsidies" did not contain the requirement that the input be physically incorporated into the exported product. He stated that the exemption from corporate income tax for EPZs enterprises had been abolished together with the Statute for Encouragement of Investment at the end of 1990. The current tax exemption granted to EPZs enterprises also applied to enterprises located outside the EPZs, whether or not they exported their products, provided that they met the requirements set forth in the Statute for Upgrading

Industries. Consequently, the practice was neither a specific subsidy nor conditional upon export performance.

84. Some members of the Working Party reiterated that the incentives provided in the EPZ appeared to be incompatible with the SCM Agreement. They expected that Chinese Taipei would ensure that sales into the market of Chinese Taipei from the EPZ would be subject to normal taxes, tariffs, and other border measures. In addition, these members considered that Chinese Taipei should satisfy the Working Party that the regime of the EPZ was consistent with all the requirements of the WTO concerning the treatment of goods, services and intellectual property. The representative of Chinese Taipei replied that Chinese Taipei had decided to levy duties on EPZ products entering the domestic market on the basis of ex-factory prices minus value added resulting from manufacturing or processing activities in the EPZ, and would undertake to do so in the future. The formula to be used in calculating the value added by the EPZ would take into account the relevant practices of other economies. Chinese Taipei hoped that the changes to the system would alleviate concerns that the current system operated as a disincentive for EPZ products entering the domestic market. He considered that all aspects of the EPZ were consistent with the WTO, particularly when the April 1997 amendments to the Statute Governing the Administration of Export Processing Zones takes effect after accession. ~~In connection with the exemption of import duties for imported machinery used by EPZ he noted that this exemption was not conditional upon export performance and the trade effects of this practice, in his view, were far below the threshold of 5 per cent for actionable subsidies set out in that Agreement.~~ **In the interim, elimination of the limits on sale of products into the domestic economy had removed the requirement to export products from an EPZ and the proportion of goods exported from the zones had declined over the first six months of 1998. While the fiscal incentives previously provided under the EPZ statute could be considered by some members to constitute subsidies, elimination of the export requirement, in Chinese Taipei's view, resolved this issue.**

85. The representative of Chinese Taipei confirmed that, from the date of its accession, all taxes, charges, and measures affecting imports, including import restrictions and customs and tariff charges, applied to imports from abroad into other parts of Chinese Taipei would be applied to EPZ products entering the domestic market. ~~These taxes, charges, and measures~~ **While customs duties** would be applied on the basis of ex-factory prices {minus value added resulting from manufacturing or processing activities in the EPZs}, **other taxes, charges and measures would be based on the ex-factory price.** He further added that preferential arrangements provided to enterprises located within the EPZs would be extended {to all enterprises whether domestic or foreign and maintained in a WTO consistent manner, in particular with regard to the principles of non-discrimination and national

treatment.] ~~in a WTO-consistent manner~~. **Furthermore, export requirements or incentives would not be reintroduced.** The Working Party took note of these commitments.

#### Internal Policies Affecting Trade in Goods

##### Industrial Policies Including Subsidies

86. Some members of the Working Party stated that in Chinese Taipei there were currently in place a number of official industrial assistance programs that could be considered prohibited industrial subsidies under the WTO Agreement on Subsidies and Countervailing Measures (the SCM Agreement) were currently in place. These practices included all export subsidies that were of the type contained in the illustrative list set out in Annex I to the SCM Agreement (including preferential tax rates and other subsidies contingent upon export performance) and other subsidies contingent upon the use of domestic over imported goods, as provided for in Article 3 of the SCM Agreement.

87. Some members of the Working Party said that they considered that many of the industrial promotion plans currently being implemented by Chinese Taipei acted as disguised subsidies. These members requested that Chinese Taipei review these measures in light of the WTO Agreement on Subsidies and Countervailing Measures. The representative of Chinese Taipei recalled that Chinese Taipei had, as an observer, participated in the meetings of the GATT 1947 Committee on Subsidies and Countervailing Measures. He said that Chinese Taipei undertook to notify all relevant laws and regulations in order to facilitate the Committee's discussion of the industrial promotion plans. Moreover, Chinese Taipei undertook to notify its subsidy practices according to Articles 25 and 28 of the WTO Agreement on Subsidies and Countervailing Measures.

88. In response to questions about industrial subsidies maintained by Chinese Taipei, the representative of Chinese Taipei explained that the Statute for Upgrading Industries provided financial assistance to industry, tax exemptions or accelerated depreciation, assistance to "Important Technology-Based Enterprises Engaged in Manufacturing Business", and "Important Invested Enterprises Engaged in Manufacturing Business". **The representative of Chinese Taipei explained that to qualify as an "important technology-based enterprise," the following three criteria must be met: (1) products to be produced under the investment plan should belong to the ten emerging industries; (2) the paid-in or increased paid-in capital for the investment plan should be over NT\$200 million; and (3) the amount of the fund available for the purchase of brand-new machinery/equipment in the investment plan should be over NT\$10 million. "Important invested enterprises" include enterprises in the manufacturing as well as services industries. In other words, the products to be produced under the investment plan are not limited to those of**

the ten emerging industries. The criteria for paid-in or increased paid-in capital and the amount of funds for purchasing brand-new equipment/machinery are different from industry to industry. He further explained that the benefits specified in Article 5 of the Statute (conferring accelerated depreciation of assets) applied to all enterprises, organized in the form of a company pursuant to the Company Law of Chinese Taipei, including companies incorporated by foreign investors or entities. He added that all industrial sectors could be entitled to receive accelerated depreciation for investment in structural adjustment and energy saving devices deemed eligible pursuant to subparagraph 2 of Article 5 (by order of the Executive Yuan.) So far there had been no applications filed under subparagraph 2 of Article 5. The representative of Chinese Taipei said that in the fiscal 1996 the total value of the tax exemptions or tax reductions granted, pursuant to the Statute, was approximately US\$0.44 billion. ~~Details of the Statute for Establishment and Administration of a Science-Based Industrial Park would be provided in the notifications required by the SCM Agreement.~~

89. Some members of the Working Party expressed concern that Article 18 of the Statute for the Establishment and Administration of a Science-Based Industrial Park (“SSP”) constituted a prohibited subsidy because the business tax was exempted from sales of domestically produced machinery and equipment sold to enterprises inside such an industrial park, but was imposed on imported machinery and equipment sold to enterprises inside a park. In their view, this constituted an import substitution subsidy. Some members of the Working Party pointed out that a similar provision could be found in Article 17 of the Statute for the Establishment and Management of Export Processing Zones (Amended Edition) (“EPZ law”). The representative of Chinese Taipei explained that the business tax was not included in the scope of either Article 18 of the SSP or Article 17 of the EPZ law, that business tax was, in fact, exempted on machinery and equipment that was imported for resale. Such imports were covered by the very broad exemption from business tax under Article 41 of the Business Tax law for goods imported by businesses for “business operations purposes.” Some members asked the Chinese Taipei representative why, if this was the case, was there a need for the preceding article of the SSP, Article 17, which refers specifically to the business tax and exempts from such tax imports of machinery and equipment into a park. The representative of Chinese Taipei explained that the provisions of Article 18 of the SSP and Article 17 of the EPZ Law were redundant to Article 41 paragraph 2 of the Business Tax Law in respect of the business tax. The representative of Chinese Taipei stated that the details of the Statute for Establishment and Administration of a Science-Based Industrial Park would be provided in the notification required by the SCM Agreement.

90. Some members of the Working Party noted that Article 7 of the Statute for Upgrading Industries (SUI) gave tax credits to industries investing in particular regions filling criteria to be determined by the Executive Yuan, and requested more information on those criteria. The representative of Chinese Taipei noted that the criteria set by the Executive Yuan were whether a particular region was poor or the economic development was stagnated relative to population, levels of employment, transportation capacity, tax revenues, the average regular income per family, and the availability of public facilities. For this purpose, each year the counties were ranked in a published list which determined levels of regional assistance. ~~He confirmed that no industrial commodities currently benefitted from domestic income and price supports, nor were domestic subsidies granted which might affect trade.~~ Chinese Taipei would notify the investment tax credit provided under Article 7 of the SUI.

91. Some members of the Working Party expressed concern about the transparency of the criteria used to determine which enterprises would receive assistance under the Statute for Upgrading Industries and requested information on the scope of application for tax benefits, whether they applied to domestic and foreign investors, to all industrial sectors and to specific areas, as well as a breakdown of expenditures. In response, the representative of Chinese Taipei said that under the tax incentive programme, any company ~~established in the form of a company~~ for establishing a renowned brand and image exceeding NT\$3 million expenditure in a tax year was entitled to a tax credit of ~~5~~ **10** per cent of the tax payable **in 1993**; if the expenditure exceeded NT\$5 million and the company was authorized by the Ministry of Economic Affairs to use the symbol of "excellence", the tax credit was ~~10~~ **15** per cent of the tax payable. Other tax benefits were allocated to all industrial sectors or to particular industrial sectors. In a recent period the incentives under the Statute for Upgrading Industries related to the Business Income tax had included accelerated depreciation, corporate investment tax credit, institutional shareholders tax credit, foreign investment loss reserves, exemptions from the mandatory distribution of profits, deferral of income tax for stock dividends, etc; benefits had also concerned the Individuals' Investment Income Tax, Deferral of Land Value Increment Tax, Stamp Tax, Deeds Tax, etc.

92. Some members of the Working Party enquired whether all of the criteria listed in Article 21 of the Statute for Upgrading Industries were required to be established before a business could be eligible for assistance from the Development Fund. Those members also requested examples of how the Executive Yuan determined when assistance should be paid for "other purposes approved by the Executive Yuan" as prescribed by sub-paragraph 6 of that Article. The representative of Chinese Taipei said that only one criteria needed to be satisfied, and that sub-paragraph 6 only applied when

none of the other criteria applied. He also explained that the value of the revolving Fund was approximately NT\$66 billion at the end of July 1997.

93. Noting that the Statute for the Development of Medium and Small Businesses and the Statute for Upgrading Industries provided for industrial incentives, some members of the Working Party requested an estimate of their ~~value~~ **set-up amount** in a recent period. In response to another question, the representative of Chinese Taipei noted that Chinese Taipei had established the Fund for Development of Small and Medium Businesses in 1992, with a total value of NT\$12 billion. **Until March 1998, the allocated amount of the Fund is NT\$9.1 billion. Furthermore, almost all enterprises could qualify as small or medium sized enterprises.**

94. **Some members expressed concerns that the tax credit provided in connection with the creation of internationally recognized brands constitutes an export subsidy and thus prohibited under the SCM Agreement. Article 4 of the implementing regulations for the relevant law lists covered expenses, which include, in part, “expenses for international market investigation for the development of new products.” The representative of Chinese Taipei stated that the Regulation on Creation of International Brands will be amended to be consistent with WTO requirements, upon accession, without any recourse to a transition period. Any future programme in this area would be consistent with WTO requirements and would not reintroduce prohibited subsidies. The Working Party took note of these commitments.**

95. Some members of the Working Party also noted that among the measures to support new and promising industries were tax concessions and that industrial cooperation programmes could be applied in certain areas. Reference was also made to the existence of two separate steel prices and the need to ensure that the lower domestic price was not used to indirectly subsidize the export of steel. With regard to steel, the representative of Chinese Taipei said that besides direct export price at the world market level, ~~Chinese~~ **China** Steel Corporation (CSC) maintained a two-tier pricing in the domestic market. The higher domestic price offered to customers whose products were sold and consumed in the domestic market was based on the landed, duty-paid price of imported steel products. The lower one (i.e. indirect export price), applied to customers who manufactured steel into final products for exports, was based on the landed, duty-free price of imported steel products. The indirect export price was aimed to ensure that CSC's pricing remained competitive with that of imported steel. The two-tier pricing system had been abolished in 1994 and China Steel Corporation had been privatized in April of the same year. Prices of China Steel Corporation's products since then had been determined according to the market condition. There had been no State intervention in the

determination of prices whatsoever. Since then the domestic steel market had been free and competitive.

96. Some members of the Working Party asked how Chinese Taipei proposed to stimulate development of desirable industries, particularly high-technology and high value-added industries. The representative of Chinese Taipei said that in addition to the Statute for Upgrading Industries, Chinese Taipei had eased the requirements relating to the acquisition of land used for factory construction and had taken steps to satisfy long term demand for industrial sites. Chinese Taipei had also provided medium and long-term training programmes to highly qualified personnel in order to upgrade skill levels, and had developed the necessary infrastructure pursuant to the Development Plan.

97. In response to additional questions concerning the specific measures taken by Chinese Taipei to support new and promising industries, the representative of Chinese Taipei indicated that Chinese Taipei supported research and technological development in the areas and technologies identified as promising and major focuses of attention. The Ministry of Economic Affairs (MOEA) gave priority to funding scientific research and development. Such investment had increased yearly. The MOEA also contracted with non-profit seeking research institutes to develop "Generic Technology" required by promising industries. Promising industries could also enjoy tax incentives, pursuant to Article 8 of the Statute for Upgrading Industries. Promising industries were "Important Technology-Based Enterprises". Pursuant to the Statute, the scope of the words "Important Technology-Based Enterprises" was defined by order of the Executive Yuan. In order to support industries deemed to be "Important Technology-Based Enterprises", the following steps were taken. First, the relevant authority of Chinese Taipei determined the generic technologies to be developed for the relevant industries. Second, the Executive Yuan and the Legislative Yuan would review and approve the required budget. Third, the MOEA would enter contracts with non-profit research institutions to execute the required research. Fourth, private companies might be invited to participate in the joint development of the required technologies, or alternatively, following development of the technology, might be offered the technology at a market price. Fifth, the non-profit research institutions might sub-contract specific research tasks to private companies. Sixth, if the private companies had the capacity to develop the required technology by themselves, the authorities could assist them in obtaining the necessary finance, or could provide other assistance. The ten promising industries specified in the six year Development Plan were as follows: telecommunications industry, information industry, consumer electronics industry, semi-conductors industry, precision machinery and automation industry, aerospace industry, advanced materials industry, specialty chemicals and pharmaceuticals industry, medical and health care industry and pollution control industry. The eight key technologies to support the development of the above-mentioned new and promising industries

are: optoelectronics, information software, industrial automation, applied materials technology, advanced sensing technology, bio-technology, resource development and energy conservation.

98. In response to questions from members of the Working Party concerning the incentives allocated to the use of advanced technology and their consistency with WTO obligations, the representative of Chinese Taipei said that in addition to the funding of research and development by the MOEA, funds were also allocated for technology import or "Inward Technology Transfer". Subsidies applied to the purchase of automation equipment and pollution prevention equipment. The subsidy took the form of a tax credit to purchasers. Depending on whether the equipment was imported or of domestic manufacture, different tax credits applied.

99. **Some members of the Working Party expressed continued concern regarding the assistance granted for the purpose of developing the "Top-Ten Emerging Industries." In their view, such assistance included practices that constituted import substitution and export subsidies and a wide range of R&D funding. These members sought assurances that Chinese Taipei had included all such assistance in its subsidy notifications, emphasizing that such notifications would be without prejudice to the legal status of such assistance. The representative of Chinese Taipei assured the concerned members and the Working Party that (1) the top-ten emerging industries did not now, and would not in the future, benefit from any measure meeting the definition of an "export subsidy" under Article 3 of the SCM Agreement, and (2) all government assistance to those industries is strictly limited to (i) R&D funding, all of which Chinese Taipei had notified, and which represented the totality of "Measures for Assistance in the Development of New Leading Products"; (ii) low-interest loans granted under Article 21 of the SUI; and (iii) SUI Article 6 tax credits.**

100. **The representative of Chinese Taipei confirmed that the "Program for the Development of Critical Components and Parts" was nothing more than an exhaustive list of the goods/products covered by Top Ten Emerging Industries and that the Program involves support or assistance measures only under the "Measures for Assistance in the Development of New Leading Products." With respect to low interest loans under Article 21 of the SUI, the representative of Chinese Taipei confirmed that the loans that Chinese Taipei maintained were not given to a specific enterprise, industry or group of enterprises or industries within the meaning of Article 2 of the SCM Agreement, did not require the purchase of domestically produced goods or services, and did not constitute an incentive or inducement to purchase domestically produced goods or services over imported goods or services. With respect to Article 6 tax credits, the representative of Chinese Taipei explained that under Article 6 of the**



**SUI, enterprises that purchased domestically produced automation machinery and equipment, including “automatic machine equipment,” received a larger tax credit than if they purchased imported automation machinery and equipment. The representative of Chinese Taipei confirmed that Chinese Taipei would eliminate the Article 6 tax credit differential upon accession and would not in the future reintroduce it or any other tax credit differential that favours domestically produced automation machinery and equipment, including “automatic machine equipment.” The Working Party took note of this commitment.**

101. The representative of Chinese Taipei said that the Export/Import Bank (Ex-Imbank) was a government owned bank which provided financing and insurance schemes. It provided secured loans to export firms if the terms of sale provided payment terms of 181-360 days, in order to provide working capital prior to payment. Interest accrued on such loans at the rate of ~~6.375 per cent for NT\$ loans, and~~ 0.75 per cent above LIBOR for US\$ loans **in August 1997**. The bank also provided deferred payment "export credits" with a duration of more than one year to exporters or importers in relation to shipments of machinery and equipment, and products including turnkey capital goods. The amount of the down payment was not less than 15 per cent of f.o.b. contract value. Interest was charged at the rate of ~~6.25 - 6.75 per cent for NT\$ loans, and~~ 6.5 - 7.75 per cent for US\$ loans. **Meanwhile t**The Bank also provided a fixed rate re-lending facility to overseas banks to enable the purchase of manufactured goods of Chinese Taipei origin, at the rate of ~~5.5~~ **8** per cent, and ~~5.75~~ **8.25** per cent depending on maturity date. He added that the Ex-Imbank provided an overseas investment financing system which financed domestic firms seeking overseas investments. That system did not provide a more favourable interest rate than commercial loans from other banks. Financing by the Ex-Imbank was not linked to or conditional upon export performance. The representative of Chinese Taipei reiterated that no export subsidies were paid to export enterprises.

102. Some members of the Working Party referred in detail to the aeronautics and space industry. These members requested information concerning the Aeronautics and Space Industries Development Programme, asked whether private or government owned enterprises had received assistance from the Ministry of Defence and enquired about the use of industrial cooperation programmes in this sector. In this connection, a member of the Working Party noted that Chinese Taipei had indicated that the Ministry of Defence would use its operating funds, technical personnel, technology and equipment facilities to assist government-owned and private enterprises in the development of research and the development and the manufacturing of aeronautics and space products and their associated equipment. These members indicated that there could be no exemption, transitional or otherwise from subsidies disciplines for any sector or product such as the aeronautics and space industry. The representative of Chinese Taipei said that the Aeronautics and Space Development Centre of the Chung Shan Science

Research Institute, Ministry of Defense had entered into an agreement with the Taiwan Aerospace Corporation and the Industrial Technology Research Institute for technology transfer. If a government entity purchased imported aeronautics and space products, the Committee for Aviation and Space Industry Development could enter into a technology transfer agreement, known as an "Industrial Co-operation Agreement". If the foreign supplier entered such an agreement, the supplier was required to provide a credit line in an amount equal to a percentage of the purchase price as a commitment to technology transfer and the purchase of domestic aeronautics and space products. Private companies that purchased foreign aeronautics and space products were encouraged to enter into such "Industrial Co-operation Agreements", and if they did so were recommended to commercial banks by the government of Chinese Taipei. If they did not enter such agreements, no such recommendation was made, and decisions by the banks whether to accord loans to those companies were taken by the banks.

103. [The representative of Chinese Taipei stated that, as provided for in Article 28, any such measure falling within the scope of Article 3 of the SCM Agreement granted or maintained within its territory would be notified by Chinese Taipei. Such notification would provide a three year period for the elimination or modification, as appropriate, of these subsidies, during which time they would not be subject to challenge as prohibited subsidies under Part II of the SCM Agreement, but would remain actionable under Part III of the SCM Agreement. The Working Party took note of these commitments.]

104. {The representative of Chinese Taipei stated that, ~~at the time of~~ **upon** accession, Chinese Taipei would provide a complete notification of all of its subsidies which were specific to an enterprise, industry or group thereof (within the meaning of Articles 1 and 2 of the SCM Agreement) in conformity with Article 25 of the SCM Agreement. ~~This notification would include, but not necessarily be limited to, the subsidies notified under Article 28.~~ [The representative of Chinese Taipei stated that, upon accession, Chinese Taipei would provide a complete notification of all of its subsidies which were specific to an enterprise, industry or group thereof (within the meaning of Articles 1 and 2 of the SCM Agreement) in conformity with Article 25 of the SCM Agreement. This notification would include, but not be limited to, the subsidies notified under Article 28 as well as the Development Fund and Article 8 tax benefits of the Statute for Upgrading Industries; tax and interest benefits under part IV, section 9 of the Aeronautics and Space Industries Development Program; and benefits under the Statute for the Establishment and Administration of a Science Based Industrial Park.] [The Working Party took note of this commitment.]

105. [The representative of Chinese Taipei stated that, at the time of accession, Chinese Taipei would provide a complete notification of all of its subsidies which were specific to an enterprise, industry or group thereof (within the meaning of Articles 1 and 2 of the SCM Agreement), in conformity with the requirements of Article 25 of the SCM Agreement. This notification would include, but not necessarily be limited to, the subsidies notified under Article 28.] [The representative of Chinese Taipei stated that, upon accession, Chinese Taipei would provide a complete notification of all of its subsidies which were specific to an enterprise, industry or group thereof (within the meaning of Articles 1 and 2 of the SCM Agreement) in conformity with Article 25 of the SCM Agreement. This notification would include, but not be limited to, the subsidies notified under Article 28 as well as the Development Fund and Article 8 tax benefits of the Statute for Upgrading Industries; tax and interest benefits under part IV, section 9 of the Aeronautics and Space Industries Development Program; and benefits under the Statute for the Establishment and Administration of a Science-Based Industrial Park.] [The Working Party took note of these commitments.]

#### Technical Barriers to Trade

106. In response to requests for information, with respect to the publication of the laws, regulations, administrative orders and technical rules and standards, invitation of comments by the public, inquiry points, consultation agencies and other agencies required under the Agreement, the representative of Chinese Taipei said that, currently, only the Regulation for the Establishment of National Standards promulgated in September 1996 contained a provision that set forth the length of time for soliciting comments. There were nine laws, regulations and administrative orders relevant to the implementation of the Agreement on TBT in Chinese Taipei. The respective notifications should be submitted to the WTO in due course.

107. The representative of Chinese Taipei added that Chinese Taipei had formed a national committee to deal with and to coordinate all matters relating to the Agreement. To ensure that the Agreement was applied by all domestic relevant bodies, Chinese Taipei had promulgated the "Points of Operation Concerning Enquiries under the World Trade Organization's Agreement on Technical Barriers to Trade". With respect to the publication of the technical regulations, standards and procedures for assessment of conformity, and to the invitation of comments by the public, details concerning the enquiry point and consultation agency that are required to be involved under the Agreement are as follows:

- (i) notices of proposed or adopted technical regulations, standards and procedures for assessment of conformity shall be published in the monthly Official Gazette of

Standards, distributed by the National Bureau of Standards under the Ministry of Economic Affairs;

- (ii) currently, only the Regulation for the Establishment of National Standards promulgated in September 1996 contained a provision that set forth the length of time for soliciting comments. Apart from this there were no explicit rules, either at the central level or at the local level, that set forth the length of time required for soliciting comments. In principle, all government bodies shall provide a reasonable time period (generally 60 days) for presentation comments.

108. In response to questions concerning the registration and certification requirements for imported pharmaceuticals, cosmetics and medical devices, the representative of Chinese Taipei said that the requirements and approval standards for the importation of pharmaceuticals, cosmetics and medical devices did not exceed the requirements applied in some advanced WTO members, and were the same for imported and domestic goods. The sanitary requirements for food stuffs were the same for imported and domestic goods. Domestic goods were also subject to inspection in order to maintain effective quarantine in certain instances. Goods found to be contaminated with toxigenic *vibrio cholerae* were destroyed. The regulation on pesticide residue tolerances had been developed on a "positive listing principle". The same tests applied equally to domestic and imported goods. The CODEX standards set by FAO/WHO were one of the references used in determining the pesticide maximum residue limits. There were no procedures for the recognition of foreign quarantine or other standards in Chinese Taipei. Chinese Taipei was endeavouring to modify standards so that they complied with international standards, except where national security, animal and plant health considerations, or differences in environment, climate, geography or important technology considerations necessitated deviations from international standards.

109. The representative of Chinese Taipei stated that recognition of foreign quarantine or other standards would be dealt with in a manner consistent with Article 2.7 of the Agreement on Technical Barriers to Trade. The Working Party took note of this commitment.

110. Some members of the Working Party reaffirmed that Chinese Taipei would need to reform its standards regime to bring it into conformity with the WTO Agreement on Technical Barriers to Trade, particularly in the area of notification procedures. The representative of Chinese Taipei replied that Chinese Taipei was reviewing its standards with a view to bringing them into conformity with the TBT Agreement and had decided to incorporate notification procedures into the draft amendments to its relevant laws.

111. The representative of Chinese Taipei also provided examples of particular differences between its standards and ISO and IEC standards, such as domestic electrical standards, Chinese Taipei television broadcasting systems, the designation of industrial products, and the requirement of "weight" certificates for all imports of automobiles. He said that Chinese Taipei was prepared to comply with the Agreement on TBT but might need a transitional period for the rectification of laws or practices which did not comply with the Agreement. In response, some members of the Working Party stated that they considered that a transitional period of general application was not appropriate.

112. Following examination of Chinese Taipei's technical barriers to trade regime, some members of the Working Party stated that in addition to taking a commitment to apply the Agreement on Technical Barriers to Trade from the date of accession, without recourse to a transitional period, Chinese Taipei should commit itself to eliminate the specific problems members of the Working Party had identified and which are listed below. In this regard, some members of the Working Party stated that, as a condition of its accession, Chinese Taipei would be required to eliminate the mandatory conformity assessment procedures and standards for imports that were not applied to similar domestic goods and were not based on relevant internationally recognized criteria. Chinese Taipei would be required to accept equivalent third country standards and regulations in particular, in the case of automobiles and heavy-duty vehicles, concerning the safety requirements (lightening, specification of brakes, horns), emission standards and test procedures, fuel consumption, on board diagnostic systems, evaporative requirements, vehicle noise). Whenever new standards were imposed by Chinese Taipei, enough time would have to be made available for manufacturers to adapt their products. Chinese Taipei would be required to abandon carry-over testing for vehicles whose model types are unchanged from one year to the next and which were identical in emission-related aspects with the previous model-year vehicles as well as additional quality control testing when manufacturers in-house test data are made available. Chinese Taipei would be required to provide for a simplified homologation for vehicles supplied in small volumes and to extend to CKD vehicles the same acceptance of self certification for emissions as applied to BU imports. The representative of Chinese Taipei said that because of the high density of cars, Chinese Taipei has serious concerns over pollution resulting from emissions but would nevertheless accept cars meeting the standards adopted by the United States. Furthermore, Chinese Taipei's current practice was to accept the results of tests carried out by the original car manufacturers according to the emission standards set by Chinese Taipei. New emission and noise standards were implemented with prior notice of three to four years.

113. Some members of the Working Party also stated that Chinese Taipei should also ensure compliance with requirements for publication of mandatory conformity assessment procedures and standards and ensure the establishment of a recommended comment period of 60 days prior to

finalization of such measures. Chinese Taipei should also eliminate from the date of its accession its requirements for performance testing of imported livestock. Chinese Taipei should also replace the weight certificate system for automobiles with an automobile safety certification system of general application, which would take effect prior to Chinese Taipei's accession. It was also noted that the current requirements for performance testing of imports of livestock were inconsistent with Article 2, paragraph 2.2 of the Agreement on Technical Barriers to Trade. These members requested that all such inconsistencies with the Agreement on Technical Barriers to Trade be eliminated upon accession. They also stated that Chinese Taipei should submit its statement on implementation and administration of the Agreement on Technical Barriers to Trade to the Committee on Technical Barriers to Trade at the time of accession.

114. Some members **of the Working Party** further stated that Chinese Taipei should confirm that all relevant laws relating to its technical regulations, standards, conformity assessment procedures, and labelling, including product coverage, would be administered by Chinese Taipei in conformity with relevant international standards and guidelines. Chinese Taipei should also undertake that the controls applied in connection with technical regulations, standards, conformity assessment procedures, and labelling would be applied in no less favourable a manner for imported products than for like domestic products. Such requirements should be administered in a manner which did not unnecessarily impede trade or create barriers to imported products, and should not be applied to imported products in an arbitrary manner, in a way which discriminated between supplier countries where the same conditions prevail, or as a disguised restriction on international trade.

115. The representative of Chinese Taipei stated that Chinese Taipei would fully apply the provisions of the Agreement on Technical Barriers to Trade from the date of its accession to the WTO, without recourse to any transitional period. The Working Party took note of this commitment.

#### Sanitary and Phytosanitary Measures

116. Some members of the Working Party asked whether the regulations regarding sanitary and phytosanitary measures including quarantine and inspection provisions were published and readily available to importers and exporters and whether these measures were based on sound scientific evidence. They also asked whether Chinese Taipei would accept the sanitary and phytosanitary measures of other economies which offered equivalent levels of health protection. In this connection, information was requested on certain provisions of the Commodity Inspection Law and its Implementation Rules concerning the inspection of imports, bilateral arrangements, inspection fees, the inspection quantities and sample quantities, the sanitary requirements obtaining products such as coconut and palm oil, milk, fresh fruits, poultry, bovine meat, pork. In response, the representative of

Chinese Taipei said that the most commonly used SPS measures in the agricultural sector were set out in the Commodities Inspection Law, the Statute for Prevention and Control of Infectious Animal Diseases, the Plant Protection **and Quarantine** Act, the Quarantine ~~Restrictions~~ **Requirements** on the Importation of Animal and Animal Products, the Quarantine Restrictions on the Importation of Plants and Plant Products, the Law Governing Food Sanitation, the Regulations Governing the Quarantine at International Port, and the Quarantine Regulation for Cholera on Imported Fishery Products.

117. In response to questions whether Chinese Taipei was prepared to apply phytosanitary standards in a transparent manner based on scientific evidence, the representative of Chinese Taipei stated that in developing its standards Chinese Taipei referred to relevant international biological and entomological publications. It also evaluated the probability of harm resulting from the introduction of the pests or diseases. In addition, comments on the proposed measures were often sought from relevant organisations. In order to ensure transparency in the future, when a regulation was promulgated by the authority, it would be notified to the relevant associations and trading partners. The representative of Chinese Taipei also provided the Working Party with detailed information on various quarantine rules and import bans concerning the following products: rice and rice products, sugar, wheat flour, meat and offal, fish, dairy products, and fruits. He stated that even though all safety inspection requirements and standards applied equally to domestic goods, some phytosanitary requirements only applied to imported goods, when only imported goods risked contamination by particular diseases and pests.

118. The representative of Chinese Taipei added that the sanitary requirements for food were set by the Law Governing Food Sanitation. The standards set out in that law were developed with reference to the CODEX standards set by the FAO/WHO. In setting sanitary standards, Chinese Taipei used Codex standards with modifications as necessary, to ~~a~~ allow a higher level of protection, if there was a scientific justification, or otherwise as set out in the relevant provisions of paragraphs 1 through 8 of Article 5 of the Agreement on SPS. He further added that imported products were subject to mandatory inspection by the Bureau of Commodity Inspection and Quarantine (BCIQ). The BCIQ's statutory duties were to protect product safety, protect consumers' interests and prevent the dissemination of plant and animal diseases and insect pests. The BCIQ applied scientific methods in its inspection and quarantine practices. Quarantine regulations were established in accordance with disease and insect pest variations, and international trends. The BCIQ had entered into arrangements to recognise ~~the standards of~~ the certification, **issued by** inspection and veterinary authorities of certain of its trading partners. The determination and publication of infectious animal diseases had been transferred from the BCIQ to the Council of Agriculture. Chinese Taipei had

determined that ~~the following were among the infectious animal diseases: rinderpest; foot and mouth disease; bovine ephemeral fever (bovine influenza); contagious bovine pleuropneumonia; tuberculosis (bovine tuberculosis); brucellosis; blackleg (gas gangrene); anthrax; equine infectious anaemia; glanders; epizootic lymphangitis; trypanosomiasis; sheep pox and goat pox; scabies of sheep; rabies; viral haemorrhagic septicemia; newcastle disease; fowl cholera; pullorum disease; bovine malignant catarrh; blue tongue; pseudorabies (ajjeszky's disease); african swine fever; swine vesicular disease; trichinellosis; bovine mastitis caused by streptococcus agalactiae; avian infectious laryngotracheitis; vesicular stomatitis; vesicular exanthemas; duck viral enteritis; bovine spongiform encephalopathy (BSE); porcine reproductive and respiratory syndrome (PRRS)~~ **in addition to the List A and List B animal diseases of the Office International des Epizooties, the following were also among the infectious animal diseases: Vesicular exanthema, Erysipelas, Scabies, Bovine ephemeral fever (Bovine influenza), Gas gangrene, Streptococcal mastitis, Infectious pancreatic necrosis, Wirling disease and Bacterial Kidney disease.** The plant pests or diseases referred to in the Enforcement Rules concerned harmful organisms which are fungi, slime mould, bacteria, viroids, phytoplasma, parasitic plants, nematodes, insects, mites, molluscs, and invertebrates or vertebrates directly or indirectly causing harmful effects to plants **and plant products.**

119. The representative of Chinese Taipei added that the importation of fresh fruit was prohibited from areas where infestations of mango seed weevil, **mango weevil**, Chinese citrus fly, peach fruit fly, cucurbit fly or guava fruit fly had occurred. Fresh fruit could only be imported from areas which had been infested with Mediterranean fruit fly if the BCIQ gave approval ~~following~~ **prior to any phase of** quarantine treatment at the place of origin. Fresh fruit could only be imported from areas subject to codling moth, apple maggot, plum curculio, peach twig borer, Mexican fruit fly, West Indian fruit fly, South American fruit fly or Queensland fruit fly and lethal yellowing, kaincoper disease, cadang-cadang disease, bronze leaf wilt, root (wilt) disease, Guam coconut disease, leaf scorch disease of coconuts, and arrowhead scale of Citrus and red and black citrus ~~leaf-mixer leafminer~~, if imported with a certificate stating that the fruit had been thoroughly inspected and found free of infestation **or has been treated with an appropriate treatment prior to shipment.** The representative of Chinese Taipei added that there were 449 standards applying to agricultural and processed agricultural products administered by the Bureau of Standards.

120. In response to the information presented by the representative of Chinese Taipei on the sanitary and phytosanitary regime, some members of the Working Party requested that Chinese Taipei enter a commitment that in implementing the terms of the Agreement on Sanitary and Phytosanitary Measures as follows: Chinese Taipei would enforce its sanitary or phytosanitary measures based on accepted scientific principles and an assessment of the risks involved; follow the notification



procedures of the SPS Agreement; not maintain a measure unless based on sufficient scientific evidence; ensure that existing international standards were applied when they exist; accept the sanitary and phytosanitary measures of other WTO Members as equivalent, even if these measures differed from Chinese Taipei's measures or from those used by other countries trading in the same product, upon demonstration that such measures achieved the appropriate level of sanitary or phytosanitary protection; and, ensure that sanitary and phytosanitary measures were adapted to the sanitary or phytosanitary characteristics of the area, including areas within a country or other political boundary, from which the product originated and to which the product was destined. Some members also requested that Chinese Taipei recognize exports as being from pest or disease free areas and areas of low pest or disease prevalence.

121. Some members of the Working Party stated that new quarantine regulations applying to air-freighted fresh fruit, whereby inspectors were being sent to the exporting countries to inspect the fruit prior to shipment imposed excessive burdens on importers and acted as a barrier to trade. The representative of Chinese Taipei replied that this measure was typically applied by developed economies. Chinese Taipei had held intensive discussions with the trading partners that had indicated they had problems with Chinese Taipei's SPS provisions. Some of the problems had been resolved, and technical experts had discussed existing problems.

122. Some members of the Working Party requested that Chinese Taipei eliminate the following practices from the date of its accession to the WTO without recourse to any transitional period: quarantine controls applied to imported agricultural commodities without adequate notification, consultation, or a clear scientific basis for their application; certificates nominally granted for health sanitation or quarantine reasons which were in fact never granted, and therefore acted as *de facto* bans on importation; and the arbitrary denial of certification with no criteria being made available to traders to indicate under what conditions certificates can be obtained, and no explanation being given for non-approval of certification.

123. The representative of Chinese Taipei stated that the ban on imports of live swine due to the infestation of Porcine Reproductive and Respiratory Syndrome (PRRS) had been removed, and that live swine which met the quarantine requirements would be allowed entry into Chinese Taipei from the date of accession. The Working Party took note of this commitment.

124. **Some members of the Working Party raised various concerns regarding Chinese Taipei's practices with respect to application of SPS measures. In their view, Chinese Taipei had, in the past, adopted SPS measures without providing notice of the action and the criteria for its application to traders and often bases quarantine areas on political geographical regions,**

**rather than scientifically justified areas. In addition, Chinese Taipei had at times failed to base its SPS measures on international guidelines or recommendations and had in some cases adopted and maintained measures without sufficient scientific evidence. In particular, scientific risk assessments that take into account assessment techniques developed by international organizations had not been provided in some cases.** The representative of Chinese Taipei stated that Chinese Taipei would fully apply the provisions of the Agreement on Sanitary and Phytosanitary Measures from the date of its accession, without recourse to any transitional period **and would address the concerns raised by members.**

~~{The representative of Chinese Taipei confirmed that in implementing the terms of the SPS Agreement, Chinese Taipei would:~~

- ~~(a) — only enforce SPS measures which were based on accepted scientific principles and an assessment of the risks involved, and after adequate notification of the measure and the criteria for its application;~~
- ~~(b) — not maintain a measure without sufficient scientific evidence;~~
- ~~(c) — apply international standards where they exist, except as otherwise provided for in the SPS Agreement; and~~
- ~~(d) — accept the SPS measures of other WTO Members as equivalent, even if these measures differ from Chinese Taipei's own or from those used by other countries trading in the same product, upon demonstration that such measures achieve the appropriate level of sanitary or Phytosanitary protection.~~
- ~~(e) — ensure that SPS measures are adapted to the sanitary or Phytosanitary characteristics of the area, including areas within a country or other political boundary, from which the product originated and to which the product was destined. Chinese Taipei shall recognize pest or disease free areas and areas of low pest or disease prevalence.}~~

~~{He also stated that Chinese Taipei would, by the date of entry into force of its Protocol, notify to the WTO all relevant laws, decrees, regulations, and administrative rulings of general application relating to its sanitary and phytosanitary measures, including product coverage and relevant international standards, guidelines and recommendations. The Working Party took note of these commitments.}~~

#### Trade Related Investment Measures

125. Some members of the Working Party requested information on the investment regime of Chinese Taipei, in particular the local content requirements prevailing in the automotive sector. Some members of the Working Party said that Chinese Taipei needed to notify its TRIMs such as the local

content requirements for motor vehicles and the mixing requirements in force for coal and cement production, and specify a schedule for their elimination. In response the representative of Chinese Taipei said that Chinese Taipei only maintained local content requirements on automobiles and motorcycles. In the case of small automobiles, at least 50 per cent of the motor vehicle plus at least four items from a list of fifteen designated major items were required to be of local manufacture. For large automobiles (3.5 to 10 tons), at least 37 per cent of the motor vehicle plus at least three items from a list of fifteen designated major items were required to be of local manufacture. For large automobiles over ten tons, at least 31 per cent of the motor vehicle plus at least two items from a list of fifteen designated major items were required to be of local manufacture. For motorcycles, at least 90 per cent was required to be of local manufacture. These local content rules applied equally to domestic and foreign enterprises. He added that a local content requirement on government procurement of incinerators had been eliminated, but that a local content requirement on electric locomotives remained. He noted that this was an exception to national treatment permitted under Article III of the GATT 1994, as these products were not intended for commercial resale.

126. Some members of the Working Party said that Chinese Taipei needed to notify its TRIMs such as the mixing requirements in force for coal and cement production, and specify a schedule for their elimination. The representative of Chinese Taipei said that Chinese Taipei had no mixing requirements for cement production. The mixing requirements for coal were imposed upon importers of coal. Importers of coal were required to purchase local coal which was at least 1.41 per cent of the amount of coal that they wished to import. Chinese Taipei planned to lower this requirement to 0.72 per cent by the end of 1998. However, the ratio had actually been lowered to 0.55 per cent as of the end of 1996. Chinese Taipei was of the view that the requirement was an Article III mixing requirement and not a TRIMs issue, and therefore this measure did not require notification under the TRIMs Agreement. Nevertheless, Chinese Taipei would eliminate the mixing requirements for coal within thirty-six months following accession. Some members of the Working Party indicated that the requirement should be eliminated more rapidly. <sup>427</sup> The representative of Chinese Taipei stated that Chinese Taipei ~~would eliminate the mixing requirement relating to the use of coal within 36 months of its accession to the WTO~~ **undertook to eliminate the existing local content and sourcing requirements applied to the production of automobiles and motorcycles and the mixing requirement relating to the use of coal upon accession to the WTO.** The ~~WTO~~ Working Party took note of this commitment. <sup>4</sup>

~~{The representative of Chinese Taipei stated that Chinese Taipei undertook to eliminate the existing local content requirements applied to the production of automobiles and motorcycles [and the mixing~~

~~requirement relating to the use of coal] upon accession to the WTO. The Working Party took note of this commitment.]~~

127. [The representative of Chinese Taipei confirmed that Chinese Taipei did not apply measures inconsistent with the TRIMS Agreement and would not do so in the future. The Working Party took note of this commitment.]

#### State-Trading

128. Some members of the Working Party requested that Chinese Taipei provide information on the State owned enterprises covered by Article XVII of the GATT, and the WTO Understanding on the Interpretation of Article XVII operating in Chinese Taipei. At the request of members of the Working Party, the representative of Chinese Taipei supplied details of the State enterprises operating in the energy industry, the agriculture-fertiliser industry, the metals-mining industry, heavy industry, the petrochemical industry, the paper manufacturing industry, and the tobacco products and alcoholic beverages industry. He noted that the provincial government of Taiwan Province owned the **Taiwan Chung Hsin Paper Corporation**, the **Tang Eng Zong Iron Works Corporation Co. Ltd**, the **Taiwan Agricultural and Industrial Development Corporation Enterprise Co. Ltd**, the **Kaohsiung Sulphate Corporation Kao-Hsiung Ammonium Sulphate Co. Ltd**, and the Taiwan Tobacco and Wine Monopoly Board (TTWMB). He indicated that the Chinese Petroleum Corporation had enjoyed a monopoly to import crude oil and refined products and to export refined products which had been abolished on 26 June 1996. The Taiwan Sugar Corporation enjoyed a monopoly to import and export sugar. All liquid ammonia imports were monopolised by the Taiwan Fertiliser Company, which also centrally administered purchase and sales, except for imports of waste acid gas. The Taiwan Salt Works (Taiwan Salt Industrial Corporation) held a monopoly to import salt, except for imports of industrial salt used in the production of alkali-chloro. The TTWMB held a monopoly in the production and trading of tobacco and alcohol products. Taiwan Sugar Corporation supplied all the alcohol requirements of the TTWMB. The representative of Chinese Taipei asserted that neither Taiwan Power Company, China Steel Corporation (before it was privatized) nor Aerospace Industrial **Development** Corporation enjoyed import or export monopoly. These enterprises did not enjoy any special treatment in their trade or production activities.

129. In response to further questions from some members of the Working Party, the representative of Chinese Taipei said that the above-mentioned State-owned and the provincial enterprises were profit oriented and operated on the basis of commercial considerations. Purchases by State enterprises in principle were made by public tender and the purchase decisions were based upon such factors as qualities, specifications, deliveries and prices. Non-commercial factors did not come into play. Area

restrictions applied to two neighbouring economies that were the only instances where purchase decisions could deviate from commercial considerations when the amount of the procurement involved exceeded US\$600,000 had been abolished on 1 June 1997. These State enterprises imported raw materials for products where production could meet the demand of the domestic market. The reselling price of the imported products was determined in the same way as for domestically produced products. There was no discrimination against imports. The purchasing decisions of Taiwan Power Company and China Steel Corporation (before it was privatized) were also generally based upon criteria such as quality, specification, delivery and price. However, since the government of Chinese Taipei was the largest shareholder in these enterprises, the purchasing decisions were affected by the government's economic and trade policies. Some members noted that the State-enterprises were not subject to the Fair Trade Law and asked how this could be justified in light of Articles XVII and III of the GATT 1994. The representative of Chinese Taipei replied that some of the practices of these enterprises had been exempted from the provisions of the Fair Trade Law for an interim period of five years to permit the commercial adjustment and their eventual privatization. This temporary exemption from the application of the Fair Trade Law had expired in February 1996. The procurement by these companies would be governed by the Agreement on Government Procurement once Chinese Taipei became a signatory.

130. Some members of the Working Party referred to the status and operations of the publicly owned retail stores which offered buyers between 20 per cent and 30 per cent discounts on identical merchandise purchased in the free market. In their view the pricing policies of these stores were highly irregular. Prices were fixed in a manner which could undermine sales in the free market as suppliers were required not to sell at a lower price to open market stores. There were no limits on purchases or resale of goods purchased in the publicly-owned retail stores and access was not restricted to members only. In response, the representative of Chinese Taipei said that there were 55 publicly owned retail stores in operation. These stores do not discriminate against imported products and do not create obstacles to importation and distribution of imported products. The United Cooperative Association (UCA) was a private entity commissioned by the government to supply daily necessities to employees of the government and educational institutions. The rules governing the negotiation practices contemplated the determination of a base price which was 15 per cent to 30 per cent lower than the market price. Access to these stores was restricted to members and the resale of merchandise was prohibited. In the Ministry of Defense PX stores, the selling price was 2 per cent above the sourcing price to cover the operating expenses. Some members of the Working Party said that many privately owned stores used the public stores as sources of supply, which resulted in market distortions. Some members of the Working Party also said that the UCA requirement that suppliers not sell at lower prices to any store in the free market appeared to be in

conflict with the Fair Trade Law. In addition, the operating practices of the UCA and the Military PX stores harmed both manufacturers who were forced to sell at unrealistically low prices, and private retailers who were forced to compete with subsidised publicly-owned stores. Prices in the publicly-owned retail stores were 15-30 per cent below retail levels, and in many cases manufacturers were forced to supply these stores at below cost prices. The publicly-owned retail stores appeared to have up to 40 per cent of market volume. This factor, combined with their prices, made it difficult for private retailers to compete in the market place. These members considered that the publicly-owned retail stores should be subject to the Fair Trade Law. The representative of Chinese Taipei responded that the UCA and the Military PXs were not entirely exempted from the operation of the Fair Trade Law, and that the exemption was limited to the organisation of the UCA because it fell within the definition of horizontal collaboration among the stores participating in the organisation of the UCA. Otherwise, all other business practices of the UCA were subject to the Fair Trade Law. He further added that publicly owned businesses did not de jure or de facto discriminate against imported products and did not create obstacles to the importation and distribution of imported products in terms either of price or of quantity. Some members of the Working Party asked that Chinese Taipei take steps to control the persons allowed to gain access to the UCA and Military PX stores, the quantity of products allowed to be purchased by the public employees, establish and publish new procurement and product listing guidelines which reflected market dynamics, and establish a fairer price setting procedure. These members also asked whether the UCA and Military PX stores received any subsidisation in their operations. The representative of Chinese Taipei said that shopping centres, supermarkets and discount stores in many cases offered merchandise at the same or lower prices than those of the Military PX stores. Because of the prices of private stores, the incidence of resale of products purchased at Military PX stores was almost non-existent. In addition the Military PX Headquarters had made rules to prohibit the resale of products purchased in the Military PX stores. Concerning the purchasing decisions of the Military PX stores, the representative of Chinese Taipei noted that needs of military personnel and the condition of the market were examined. The decision to purchase was advertised in newspapers. All suppliers, whether importers of foreign goods or local manufacturers who could meet the limited purchase volume requirements of the Military PXs stores were eligible to enter into negotiations to supply the stores. The Fair Trade Commission, i.e. the administrative agency responsible for enforcing the Fair Trade Law, had been monitoring very closely the business practices of UCA. It had fined different UCA stores for their failure to prevent the entry by individuals who did not have legal access to these stores. It had also fined several private stores who held themselves out as UCA stores in order to deceive consumers. The Commission was looking into the pricing practices of suppliers of the UCA stores to see whether there was any abuse of market power by the UCA stores.

131. Some members of the Working Party stated that Chinese Taipei must agree to additional transparency in the operation of all of its State-trading enterprises, particularly in the area of agricultural products, e.g. by demonstrating that mark-ups on State-traded imports do not discriminate against imported goods *vis-à-vis* domestically-produced goods, and in the area of export subsidies. The representative of Chinese Taipei said that the operations of the State-owned enterprises were based on commercial considerations such as quantity, price, quality, supply stability and risk and that there was no discrimination against imports.

132. The representative of Chinese Taipei said that the following State **or Provincial** enterprises would be notified as State-trading enterprises under Article XVII for the purposes of the Understanding on the Interpretation of Article XVII of the GATT 1994: ~~Taiwan Power Company;~~ Chinese Petroleum Corporation; Taiwan Sugar Corporation; Taiwan Fertilizer Company; Taiwan Salt Works (Taiwan Salt Industrial Corporation); China Shipbuilding Corporation; ~~and~~ Taiwan Machinery Manufacturing Corporation; **Taiwan Tobacco and Wine Monopoly Bureau; China Engraving and Printing Works; Taiwan Provincial Food Bureau; and Taiwan Provincial Fruit Marketing Cooperative.** He stated that the TTWMB, which was owned and managed by provincial authorities, upon the Working Party's decision, would also be notified under Article XVII as long as it maintains its current nominal import/distribution monopoly and other special privileges under law and regulation in the distribution, or trade of tobacco and alcohol products. Private traders could import alcohol and tobacco products using TTWMB as the nominal importer. The statutory monopoly would be abolished with the implementation of new laws establishing a tobacco and alcohol tax and administration system. The representative of Chinese Taipei also stated that some private trade in rice and sugar, as reflected in Chinese Taipei's agricultural market access schedule, would be permitted ~~under the [tariff quota for that product] [appropriate arrangements].~~ He further stated that for some time after the date of accession, importation of fertilizer would be limited to the Taiwan Provincial Food Bureau or the Taiwan Fertilizer Company, firms owned and managed by the provincial authorities, and that during this period, both entities would be notified under Article XVII as long as they maintain this monopoly or any other special privileges under law and regulation in the distribution, or trade of fertilizers. The Working Party took note of these commitments.

133. [The representative of Chinese Taipei said that Chinese Taipei would eliminate the import monopoly on fertilizers within four years after accession to the WTO. The Working Party took note of these commitments.]

134. [The representative of Chinese Taipei stated that, upon request of any WTO Member, full information on the pricing mechanisms of its state trading enterprises would be provided for both

domestic and traded goods, including, but not limited to, domestic procurement prices, contract terms for delivery of exported and imported goods, and financing terms and conditions. The representative of Chinese Taipei confirmed that for all "state trading enterprises," Chinese Taipei would ensure that any fees or charges assessed to importers or end-users by these state trading enterprises would not afford protection in excess of the tariff rate provided for imports listed in the Schedules annexed to Chinese Taipei's Draft Protocol of Accession, plus fees and charges consistent with Article VIII of the GATT. Imports in excess of the level of the tariff quotas specified in the Schedules will not be reserved for state-owned or state-operated enterprises, and may be imported and distributed by private firms and other non-state-trading enterprises. State trading enterprises would not be used as a conduit for subsidized exports, nor would notification of these enterprises under Article XVII exempt them from other notification requirements under WTO Agreements, e.g., Article 4(2) of the Agreement on Agriculture. He further indicated that Chinese Taipei would not take any measure to influence or direct these enterprises as to the quantity, value, or country of origin of goods purchased. Furthermore, Chinese Taipei would not resort to either price pooling for the procurement of goods for export or targeted discriminatory export pricing and, in particular, Chinese Taipei would not export rice imported under its minimum access commitment. The Working Party took note of these commitments.]

135. [The representative of Chinese Taipei also undertook that all State-trading enterprises within the definition of Article XVII of the GATT 1994 would operate in a transparent manner and in compliance with that Article and with the other relevant Articles of GATT 1994, in particular with Articles I, II, III, XI and XIII. The Working Party took note of these commitments.]

#### State Ownership and Privatization

136. Some members of the Working Party enquired whether State owned enterprises would be privatized. The representative of Chinese Taipei said that the policy was to privatize ~~all~~ **most** State owned enterprises, ~~except those which involved security and defence, and certain public utilities.~~ The statutory framework required to implement this policy was in place. ~~In 1994-1995 China Steel Corporation (CSC), China Petrochemical Development Corporation, and BES Engineering Corporation had been privatized. Further share issues were planned, but in order to minimise economic dislocation and internal resistance the privatisation programme would progress cautiously.~~

137. In response to further requests for information, the representative of Chinese Taipei stated that information on the privatization of State owned enterprises could be obtained through the website of the Council for Economic Planning and Development. Since 1989, more than ~~30~~ **40** offerings (including CSC's two DR issues in 1992 and early 1997, representing 360 million shares and 203 million shares respectively), and several sales of assets had been conducted. Sales of government



owned companies had yielded total proceeds of nearly NT\$ ~~247.2~~ **349** billion, corresponding to US\$ **8 10.2** billion (based on ~~January~~ **July** 1998 data). ~~Seven~~ **Fourteen** of the targeted SOEs had been successfully privatized, including ~~China~~ **Chung Kuo** Insurance Co. **Ltd.** (CIC), China Petrochemical Development ~~Co.~~ **Corporation** (CPDC), BES Engineering ~~Co.~~ **Corporation**, CSC, YangMing Marine Transport ~~Co.~~ **Corporation** (YMTC), ~~LP~~ **Liquefied Petroleum** Gas Supply Administration, **Veterans Gas Manufactory**, and Chang Hwa Commercial Bank, **First Commercial Bank**, **Hua Nan Commercial Bank**, **Taiwan Business Bank**, **Taiwan Fire and Marine Insurance Co. Ltd.**, **Taiwan Navigation Co. Ltd.** and **Taiwan Life Insurance Co. Ltd.** In addition, 3 plants of the Taiwan Machinery Manufacturing ~~Corp.~~ **Corporation** (TMMC) have been privatized by private placement. The details of the ~~7~~ **14** privatized enterprises were as follows:

Privatized State-Owned Enterprises in Chinese Taipei

Company	Date of Privatization	% Government Shareholding ( <del>January</del> 1998 data)
<del>China</del> <b>Chung Kuo</b> Insurance Co. Ltd., MOF	5 May 1994	<del>36.36</del> <b>30.66</b>
China <del>Petrochemicals</del> <b>Petrochemical</b> Development Co., MOEA	20 June 1994	<del>48.87</del> <b>16.23</b>
BES Engineering <del>Co.</del> <b>Corporation</b> , MOEA	22 June 1994	0.0
China Steel <del>Co.</del> <b>Corporation</b> , MOEA	12 April 1995	<del>40.0</del> <b>40.69</b>
YangMing Marine Transport <del>Co.</del> <b>Corporation</b> , MOTC	15 February 1996	<del>45.04</del> <b>43.53</b>
<del>LP</del> <b>Liquefied Petroleum</b> Gas Supply Administration, VAC	16 March 1996	0.0
<b>Veterans Gas Manufactory</b> , VAC	<b>1 January 1998</b>	<b>40.00</b>
Chang Hwa Commercial Bank, TPG	1 January 1998	<del>40.0</del> <b>30.72</b>
<b>First Commercial Bank</b> , TPG	<b>22 January 1998</b>	<b>40.85</b>
<b>Hua Nan Commercial Bank</b> , TPG	<b>22 January 1998</b>	<b>41.36</b>
<b>Taiwan Business Bank</b> , TPG	<b>22 January 1998</b>	<b>40.96</b>
<b>Taiwan Fire and Marine Insurance Co. Ltd.</b> , TPG	<b>22 January 1998</b>	<b>30.05</b>
<b>Taiwan Navigation Co. Ltd.</b> , TPG	<b>20 June 1998</b>	<b>39.08</b>
<b>Taiwan Life Insurance Co. Ltd.</b> , TPG	<b>30 June 1998</b>	<b>31.89</b>

- Note: MOEA = Ministry of Economic Affairs
- MOF = Ministry of Finance
- MOTC = Ministry of Transportation and Communications
- VAC = Veteran Affairs Council
- TPG = Taiwan Provincial Government

Recent changes had made it easier for the shares of SOEs to be listed on the Taiwan Stock Exchange and the OTC market. In addition, the priority shares issued to employees of SOEs had been raised, with each employee now entitled to purchase shares equal in value **up** to 48 months' pay, instead of just 24 months as before. The timetable for the next 5 years involved the privatization of ~~42~~ **39** SOEs, together with the modification of legislation needed to pave the way for the privatization process.

Privatization Timetable for 42 SOEs

Date	Authority	Company
December 1997	VAC	<del>Veterans Gas Manufactory,</del> Pharmaceutical Plant
June 1998	MOF	<b>The Farmers Bank of China</b>
	MOEA	Taiwan Fertilizer <del>Co.</del> <b>Corporation,</b> Taiwan Machinery Manufacturing <del>Co.</del> <b>Corporation</b>
	VAC	<b>Veterans</b> Food Products Factory, <b>Veterans</b> Nan-tzu Abrasives Factory, Kang-shan <del>Rope</del> <b>Ropery</b> Factory, Tai-chung Lumber Processing Factory
	TPG	Kao-Hsiung Ammonium <del>Sulfate</del> <b>Sulphate</b> <del>Co.</del> <b>Corporation,</b> Taiwan Chung Hsing Paper <del>Co.</del> <b>Corporation,</b> <del>Agriculture &amp; Development Co.,</del> <del>Taiwan Navigation Co.,</del> <del>Taiwan Film Culture Co.,</del> <del>Taiwan Shin Sheng Daily News</del>

Date	Authority	Company
December 1998	TPG	<del>Hua Nan Commercial Bank</del> <del>First Commercial Bank,</del> <b>Agricultural and Industrial Enterprise Co. Ltd.</b> <b>Taiwan Film Culture Co. Ltd.,</b> <del>Taiwan Business Bank,</del> <del>Taiwan Fire &amp; Marine Insurance Co.,</del> Taiwan Development & Trust <del>Co.</del> <b>Corporation,</b> <del>Taiwan Life Insurance</del> <b>Taiwan Bookstore</b>
June 1999	MOF	Chiao Tung Bank
	VAC	Veterans Printing Works, <b>Veterans</b> Plastics Works, Taipei Iron Works, Taipei Paper Manufactory, Lung- <del>chi</del> Chemical <del>Works</del> <b>Plant,</b> Tao- <del>yuan</del> Furniture <b>Factory</b>
	TPG	Taiwan Provincial Government Printing Factory
	TCG	Taipei City Government Printing House
December 1999	MOEA	Aero <del>Industry</del> <b>Industrial</b> Development <del>Co.</del> <b>Corporation</b>
	MOF	Central Reinsurance <del>Co.</del> <b>Corporation</b>
	TPG	Tang Zong Iron Works Co. Ltd.
June 2000	TPG	<del>Fertilizer Sales &amp; Transportation Department of Food</del> <del>Bureau</del> <b>Taipei Bank</b>
December 2000	TPG	Taiwan Tobacco & Wine Monopoly Bureau
June 2001	MOEA	<b>Taiwan</b> Salt Industrial <del>Co.</del> <b>Corporation</b> China Shipbuilding <del>Co.</del> <b>Corporation,</b> Chinese Petroleum <del>Co.</del> <b>Corporation,</b> Taiwan Power <del>Co.</del> <b>Corporation-</b>
	MOTC	Chunghwa Telecom Co. <b>Ltd.</b>
	VAC	RET-SER Engineering Agency
	TPG	<b>Taiwan Motor Transport Co. Ltd.</b> <b>Hsin Sheng Press Co. Ltd.</b>

Date	Authority	Company
	<b>KCG</b>	<b>Bank of Kao-Hsiung</b>
<b>June 2002</b>	<b>TPG</b>	<b>Taiwan Railway Administration</b> <b>Taiwan Railway Freight Co. Ltd.</b>

- Note: TPG = Taiwan Provincial Government
- TCG = Taipei City Government
- **KCG = Kao-Hsiung City Government**

138. {The representative of Chinese Taipei confirmed the readiness of Chinese Taipei to ensure the transparency of its ongoing privatization program and to keep WTO Members informed of its progress. He stated that ~~{if it becomes an established WTO practice,}~~ his authorities would provide annual reports to WTO Members on developments in its programme of privatization as long as it was in existence. The Working Party took note of this commitment.}

#### Taiwan Tobacco and Wine Monopoly Bureau (TTWMB)

139. The representative of Chinese Taipei said that the privatisation of the TTWMB was under review independently of the tax reform plan. He provided information concerning the calculation methodology, and stated that the units used by Chinese Taipei were 1000 sticks for cigarettes, and litres for alcohol. He explained that the prices of domestic wine and tobacco products were equal to the sum of operating costs plus the Monopoly Tax.

140. With regard to tobacco products, some members of the Working Party said that the future operations of the TTWMB should provide equal opportunities to all tobacco product exporters. The representative of Chinese Taipei replied that following the reforms the TTWMB would have no regulatory function, nor a monopoly on the distribution of tobacco and alcohol products. The TTWMB would, pursuant to the draft Tobacco and Alcohol Administration Law, be restructured so that it would only operate as a business venture. Within the central government, the regulatory functions would be carried out by the Ministry of Finance. Moreover, the TTWMB would have no influence upon the market access of tobacco exporters. He submitted to the Working Party the summary of the Tobacco and Alcohol Reform Plan reproduced in Attachment B.

141. [The representative of Chinese Taipei stated that from the date of accession, TTWMB would be reformed to bring its operations in the area of international trade and domestic distribution into conformity with GATT 1994 and the other obligations of the WTO. He added that Chinese Taipei

would establish an open and equitable trade and distribution system in these products and would ensure national treatment and non-discriminatory treatment for these products.] [From the date of accession][Within six months of the date of accession], TTWMB would not have a regulatory function concerning tobacco and alcoholic beverages and would operate on a commercial basis subject to the same laws, regulations, rules, decrees, directives, administrative guidance, policies and measures applicable to other firms in Chinese Taipei. Any special or monopoly privileges granted to TTWMB in the domestic distribution and international trade of alcohol and tobacco products would be eliminated from that date. Both domestic and foreign firms would be eligible to participate in the distribution and trade of these products on an equal basis, as noted in the Schedules annexed to the Draft Protocol of Accession.] The Working Party took note of these commitments.

142. [The representative of Chinese Taipei confirmed that from the date of accession, TTWMB would be a business operation without any regulatory function. Within the central government, the regulatory functions will be carried out by the Ministry of Finance. All special or monopoly privileges granted to TTWMB in the domestic distribution and international trade of alcohol and tobacco products will be eliminated, and both domestic and foreign firms will be eligible to participate in the distribution and trade of these products on an equal basis, as noted below and in the Schedules attached to the Draft Protocol. The representative of Chinese Taipei further stated that the reform of TTWMB would also include the gradual elimination of its monopoly on the production of alcohol and tobacco products. Production of tobacco and alcohol products will be opened to other domestic and foreign firms according to the following schedule: [Tobacco]...[date]; [wine]...[date]...[Beer]...[date];[Spirits]...[date]. Any subsidies provided for the domestic production of tobacco and grapes would be bound and gradually reduced as provided for in the Schedule attached to the Draft Protocol of Accession. All firms producing tobacco or alcohol products in Chinese Taipei would have access on an equal basis to imported and domestic inputs, including any remaining benefits from such subsidies, for their production and processing activities consistent with the provisions of the WTO. He added that Chinese Taipei would begin processing applications for firms seeking authorization to produce alcohol products six months in advance of the date when such activities are liberalized, in order to provide new entrants with the possibility of operating under the reform program from its inception. He further stated that all enterprises in Chinese Taipei that produce these products would be subject to the same protection, formalities, fees, and penalties under law, without regard to their ownership or length of establishment. He stated that fees charged would not be excessive or unduly burdensome and that penalties for violation of the Tobacco and Alcohol Tax and Administration Laws will not exceed in severity the penalties applied for similar violations in other sectors. To ensure adequate transparency after reform, Chinese Taipei would provide WTO Members with annual reports on the volumes of tobacco and alcoholic products manufactured in Chinese Taipei and on taxes paid by TTWMB and other domestic

production enterprises by taxable category. This would be accompanied by an annual independent accounting review of the operations of TTWMB and other domestic production enterprises based on standard and customary accounting procedures, including a fiscal balance sheet that reports on costs, expenditures, and revenues of TTWMB, and on its profits and losses. Recognizing that sales into the domestic market of large quantities of smuggled or counterfeit imports of alcohol and tobacco products undermined Chinese Taipei's market for legally marketed products, and wishing to discourage such activities in the future, the representative of Chinese Taipei confirmed that all such contraband seized would be destroyed, and that Chinese Taipei intends to make additional efforts to prevent such illegal imports. In this regard, Chinese Taipei would ensure that certain alcoholic beverage imports would be accompanied by a certificate of origin similar to that issued by the regulatory authorities in the country of origin. The Working Party took note of these commitments.]

#### Government Procurement

143. In response to questions concerning the Chinese Taipei's procurement policies, the representative of Chinese Taipei stated that the Procurement Department of the Central Trust of Chinese Taipei was a non-exclusive procurement agent for government entities and State enterprises which solicited offers and products from foreign sources. It did not exercise nor operate as an import monopoly. The Trading Department of the Central Trust of Chinese Taipei acted as a non-exclusive import/export agent for government organisations, public and private enterprises. The Taiwan Supply Bureau functioned as a non-exclusive tender and purchase agent for local and provincial government organisations.

144. In response to a series of questions from members of the Working Party concerning tendering requirements for government procurement contracts, the representative of Chinese Taipei said that tender requirements set by the procurement agencies were based on factors such as performance, design, international standards, domestic standards, or reference brands (or equivalents to the reference brands). Any special tender requirements were clearly described in the tender documents. The threshold above which open tenders were required was NT\$50 million, except in circumstances that allow for non-competitive tenders. The division of contracts in order to avoid the tender threshold was subject to an administrative penalty. Chinese Taipei's tender notices were required to contain similar types of information as that required by the WTO Government Procurement Agreement. All unsuccessful bidders were, at their request, informed of the reasons why they did not win a contract. There was no provision for an unsuccessful bidder to appeal against a decision not to award a tender.

145. In response to questions the representative of Chinese Taipei said that a bidder could be required to submit a commitment to implement an ~~industry~~ **industrial** co-operation plan (ICP) to the

amount of a certain percentage of the contract price. Some members of the Working Party said that the increased use of the requirement that tenderers agree to technology transfers was inconsistent with the Agreement on Government Procurement.

146. Some members of the Working Party said that Chinese Taipei should apply for and commence negotiations on accession to the Agreement on Government Procurement (AGP). The representative of Chinese Taipei said that Chinese Taipei had carefully examined the request and had decided to accede to the Government Procurement Agreement. He added that Chinese Taipei undertook, prior to acceding to the Government Procurement Agreement, to take steps to improve the procedural aspects of the current practices. The representative of Chinese Taipei said that Chinese Taipei had prepared a draft Government Procurement Law which will replace the existing procurement requirements set by the various audit laws and regulations. The draft Law takes full account of the AGP requirements, including the establishment of a bid challenge procedure. The draft Law was currently being reviewed by the legislature. A Government Procurement Gazette was being officially published from 1 November 1996 after a ten-month long trial publication. The ceiling limitation of 49 per cent for the acquisition of interests in existing construction firms had been abolished from 3 November 1995. Foreign experiences can be counted in the determination of qualification for Class A construction company licenses. From 1 June 1997 the area restriction in the procurement practices had also been lifted. The issues of the industrial cooperation program (ICP), and the limitation on foreign suppliers' market access/lowering of the threshold were being dealt with in the accession negotiations for the AGP. Some members of the Working Party noted that negotiations were continuing regarding Chinese Taipei's commitments regarding product coverage and implementation of procedures associated with the procurement process. In particular, additional clarity was required regarding procedures to address disputes arising in the context of the procurement and contract performance process. The representative of Chinese Taipei noted that the contract performance process did not fall within the coverage of any WTO rules.

147. The representative of Chinese Taipei stated that Chinese Taipei had notified the Committee on Government Procurement of its intention to accede to the Agreement on Government Procurement and had initiated negotiations to that end by the submission of an offer. The representative of Chinese Taipei confirmed that Chinese Taipei would accede to the Agreement on Government Procurement (GPA) within one year of its accession to the WTO. If, however, new government procurement laws necessary to comply with the GPA were enacted prior to Chinese Taipei's accession to the WTO, Chinese Taipei would accede to the GPA within one year of enactment of those laws or at the time Chinese Taipei accedes to the WTO, whichever was later. The Working Party took note of these commitments.

Agreement on Trade in Textiles and Clothing

148. The representative of Chinese Taipei stated that Chinese Taipei recognized that the quantitative restrictions on imports of textiles and clothing products originating in Chinese Taipei under arrangements between Chinese Taipei and WTO Members that ~~were~~ **are** in force on the date prior to the date of accession of Chinese Taipei to the WTO would be notified to the Textiles Monitoring Body (TMB) as being the base levels for the purpose of application of Articles 2 of the Agreement on Textiles and Clothing. Thus, for the purpose of Chinese Taipei's accession to the WTO, the phrase "day prior to the date of entry into force of the WTO Agreement" contained in Article 2.1 of the Agreement on Textiles and Clothing would be deemed to refer to the day prior to the date of accession of Chinese Taipei to the WTO. To these base levels the increase in growth rates provided for in articles 2.13 and 2.14 ~~and no quantitative limits of flexibility use provided for in article 2.16~~ of the Agreement on Textiles and Clothing would be applied, as appropriate, from the date of accession of Chinese Taipei to the WTO.

Barter Trade

149. Some members of the Working Party requested information on the treatment of imports under barter arrangements. The representative of Chinese Taipei said that Chinese Taipei had only had agricultural barter trade with Korea. Since 1992 the barter of Korean apples and pears for Chinese Taipei bananas had been stopped. In 1997, a new agreement had been made between Korea and Chinese Taipei, which provided for barter of Korean apples and pears for Chinese Taipei bananas, lychees, mangoes, garlic, onions and oranges. Under the existing bilateral arrangement, Korea was provided with access to the local market in respect of apples (which were currently subject to area restriction) and nashi pears (which were currently under import ban) up to a specified volume. He noted that following the elimination of the area restrictions on apples and quantity restrictions on nashi pears, there would be no need to maintain this arrangement after Chinese Taipei's accession to the WTO. **The barter trade arrangement had been terminated from 1 October 1997.**

150. in response to further questions concerning purchase requirements, the representative of Chinese Taipei said that no mandatory counter purchase requirements were imposed. The current practice of encouraging the purchase of locally manufactured components was granted to foreign investors who had exported substantial quantities of components or parts back to their home countries but had no monetary implications or value. The purpose of the scheme was to encourage export of locally made automotive parts by giving a public announcement of the Government's appreciation for increased export volume by particular suppliers. The scheme was not a subsidy program nor did it impose any mandatory requirement to make local purchases.



Agricultural Policies

151. Some members of the Working Party noted that Chinese Taipei had indicated that it did not apply subsidies to exports of agricultural products, and accordingly these members stated that Chinese Taipei should agree to bind its export subsidies at zero in its Schedule of Concessions. These members noted however, that Chinese Taipei exported the surpluses of rice generated by artificially high internal price supports sustained by an import ban on competitive products. ~~Recently~~ **On average from 1990 to 1992**, exports had represented some ~~42~~ **10** per cent of production and some ~~145,000~~ **160,000** tons. These members asked that Chinese Taipei explain how the difference between the price paid to producers and the export price was funded as well as the meaning of the expression "a comfortable rate of self sufficiency in rice". Information was also requested on total price support expenditures of Chinese Taipei and the use of government assisted loans as provided in the Statute for Agricultural Development. Some members also enquired whether the import ban on rice was of a general application and requested its elimination.

152. The representative of Chinese Taipei stated that Chinese Taipei's policy was to liberalise the agricultural sector. ~~All domestic price supports would be scaled down consistent with the outcome of the Agriculture Agreement of the Uruguay Round.~~ In response to questions, the representative of Chinese Taipei indicated that the price support mechanisms operated to purchase agricultural products from farmers at guaranteed prices, which were set above the production cost of the product. ~~He noted that all [AMS] domestic price supports would be scaled down consistent with the requirements of the WTO Agreement on Agriculture, i.e., phase downs would be completed [within six years after accession to WTO] [by the year 2000].~~ The purpose of the rice price support was to maintain a stable food supply and to maintain farmers' income. The rice price support mechanism consisted of two elements: planned purchase and supplementary purchase. The purchase was made twice in a year divided into two crops. Aged rice was exported at prices lower than the production costs due to the lower quality when compared to new rice. The Food Bureau mandated the Central Trust to auction off the rice with the base price taking into account the international rice price. The feed plants, livestock farming business and aquaculture business could apply to the Food Bureau through the Feedstuff Association for the purchase of feed rice. The price was set at 90 per cent of the wholesale price for imported maize at the time of purchase price payment. The difference between the guaranteed price paid to producers and the export price was funded by the government budget. The guaranteed purchase price was the only price support measure employed by Chinese Taipei. Rice imports needed a Consent Letter of the Food Supply Bureau. Because of overproduction consent letters were not given and rice could not be imported. He added that soybeans, corn and sorghum were eligible for crop purchase under the Rice ~~Crop Substitution Programme~~ **Production and Ricefields Diversification Programme**.

In addition, the importation of soybeans, corn and sorghum had been liberalised, and the duties for those products were 1.5 per cent, 1 per cent and 1 per cent, respectively. ~~He said that price supports would gradually be phased out after accession in accordance with the Schedule annexed to the Draft Protocol of Accession.~~ He also stated that Chinese Taipei would gradually reduce excess rice production. A proposal on rice imports would be submitted to the Working Party after completion of bilateral negotiations. The standards for paddy, milled and brown rice were provided. Some members of the Working Party expressed continued concern about Chinese Taipei's practice of auctioning central rice stocks for export only. These members noted that only livestock feed businesses had access to these stocks for domestic use, and only at fixed prices. In the view of these members, this practice was an export subsidy. In response, the representative of Chinese Taipei stated that in addition to livestock feed businesses, livestock and fish farmers also had access to the rice stocks. Chinese Taipei did not consider that the practice amounted to an export subsidy. **However, in order to alleviate members from the concern, Chinese Taipei assured that purchasers of rice from the central stock would not be required to export the purchased rice. Chinese Taipei also stated that upon accession, anyone having the right to trade in rice on Taiwan would have access to aged rice from central stocks on the same terms offered to exporters, and that no further trade-based restrictions would be imposed. The Working Party took note of these commitments.**

153. In response to questions concerning exports of sugar, tobacco leaves and bananas, the representative of Chinese Taipei stated that Chinese Taipei's sugar exports fluctuated with changes in the United States import quota allocated to Chinese Taipei. All exports of sugar were to the United States. The sugar supply was the monopoly of Taiwan Sugar Corporation, which was an enterprise under the supervision of the Ministry of Economic Affairs with shares partly held by private parties. Taiwan Sugar Corporation had its own sugar cane farms; it also contracts with farmers for processing the sugar cane and sharing the sugar made from sugar cane sourced from such farmers. The sugar cane growers could share 55 per cent of the sugar, which in turn could be purchased by Taiwan Sugar Corporation for export or sale in the domestic market. The purchase price was calculated on the basis of domestic price if the sugar was sold to the domestic market; and on the basis of export guaranteed price or the settlement price after payment to the Sugar Stabilization Fund, if the sugar was to be exported. The Sugar Stabilization Fund had been in existence since 1966 for the purpose of stabilizing sugar export and farmers' income. The Fund operated as follows: when the export price was higher than a threshold payment was made to the Fund; the payment amount was calculated according to the scale of the price difference and at a cumulative rate. When the export price was lower than the export guaranteed price, payment to the farmers for the price difference was made out of the Fund. Taiwan Sugar Corporation, however, had to bear the price difference all by itself. The export price had been lower than the export guaranteed price in recent years. The price difference had been paid out of the

Fund contributed by the price difference resulting from the export price exceeding the export guaranteed price in the past. Sugar prices were of two types: one was for sugar of general use, and the other was for sugar used for processing exported food products. The domestic price for sugar of general use was set by the Ministry of Economic Affairs; while the prices for sugar of export processing use was determined on the basis of London spot market price (F.O.B.) for sugar plus importation cost. The food processing companies applied to Taiwan Sugar Corporation for purchase of the needed sugar and paid the domestic price in the first instance. When the products were exported, the differences were settled

154. The representative of Chinese Taipei stated that all tobacco exports were of tobacco purchased by the Taiwan Tobacco and Wine Monopoly ~~Board~~ **Bureau** (TTWMB). Banana exports were dealt with by the Fruit Transportation and Marketing Cooperative. When the export price of bananas was lower than the export guaranteed price, the difference was covered by a fund administered by the Cooperative; when the export price was higher than the export guaranteed price, contributions were made to the fund according to the scale of the difference and at a cumulative rate. Farmers could choose whether to sell their products to the domestic market or to the Cooperative for export. The prices for domestic sales and for export are determined according to the demand and supply. Generally, export prices were higher than the domestic price. The representative of Chinese Taipei also stated that soybeans, maize and sorghum were purchased by the Provincial Food Bureau, and summer vegetables were ~~all~~ **mostly** purchased by ~~the Department of Agriculture and Forestry of the Taipei Agricultural Produce Marketing Company~~ on the basis of guaranteed minimum prices. Guaranteed purchases of **wine** grapes and wheat had been terminated in the first part of 1997 and 1995, respectively.

155. Some members of the Working Party requested an assessment of the effect of the price support programmes operated by Chinese Taipei on the exportation of Chinese Taipei's agricultural products. In response, the representative of Chinese Taipei replied that he did not consider that the price support programme constituted a subsidy on exports. Consistent with the requirements of the WTO Agreement, Chinese Taipei would submit the draft schedule of AMS commitments to the Working Party.

~~{Chinese Taipei undertook negotiations on market access concessions and domestic support and export subsidy commitments relating to agricultural goods. As noted in paragraph [15] above, the Schedule of Concessions which includes the results of those negotiations, is reproduced in Part I of Annex I of the Draft Protocol of Accession. The representative of Chinese Taipei also provided the Working Party the liberalization plan reproduced in Attachment C to this Draft Report. [The representative of Chinese Taipei and the members of the Working Party agreed that in the event of any inconsistency between the Schedule of Concessions and Commitments annexed to the Draft Protocol of Accession and~~

~~Attachment C to this Draft Report, the Schedule of Concessions and Commitments annexed to the Draft Protocol of Accession shall prevail.] The Working Party took note of this commitment.]~~

156. [The representative of Chinese Taipei indicated that upon accession, in accordance with the provisions of the Agreement on Agriculture, Chinese Taipei would eliminate all quantitative restrictions and bind all tariffs applied on imports of agricultural products listed in Annex I of the Agreement. Further, in accordance with Article 3, Part II of the Agreement on Agriculture, Chinese Taipei would not provide export subsidies, nor support in favour of domestic producers, in excess of the commitment levels specified in the Schedule annexed to this protocol, and confirmed that from the date of accession, support previously granted for the production of tobacco and grapes would be eliminated. The Working Party took note of these commitments.]

## VII. TRADE RELATED INTELLECTUAL PROPERTY REGIME

157. Some members of the Working Party noted that in recent years, Chinese Taipei had introduced a number of improvements to the protection of intellectual property rights and that Chinese Taipei was apparently ready to assume in full the obligations set out in the WTO Agreement on TRIPS. In their view the problems faced by Chinese Taipei in this area related to enforcement rather than to the intellectual property rights legislation itself. Information was requested with regard to the entry into force of the Patent Law, the Trademark Law, the Integrated Circuit Protection Law and the Industrial Design Law. Information was also requested on the existence of bilateral agreements, the border measures to combat counterfeiting, the procedures applicable to the infringement of intellectual property rights, the protection accorded to pharmaceutical inventions, the protection accorded to geographical indications and to appellations of origin for wines and spirits.

158. In response, the representative of Chinese Taipei said that the Action Plan to Comprehensively Protect Intellectual Property Rights approved by the Executive Yuan on 29 June 1993 had set out the following eight directions for efforts to strengthen the protection of intellectual property rights: (i) improving the relevant legal framework; (ii) strengthening the relevant administrative organization; (iii) enhancing the enforcement of the relevant laws and regulations; (iv) increasing education and promotion; (v) increasing the capability to negotiate with other economies; (vi) strengthening investigation and research capabilities; (vii) providing adjustment assistance to the industries concerned; and (viii) monitoring the implementation of the plan. Some members of the Working Party responded that they had noted continued high levels of piracy of computer software in Chinese Taipei and export of pirated software embodied in semiconductors. Members of the Working Party expressed concern regarding the failure to impose penalties, in particular administrative penalties and seizure of infringing product and machinery predominately used to produce such products, sufficient to deter

piracy. In addition, Chinese Taipei had decided to establish the Intellectual Property Bureau whose responsibility was exclusively for dealing with intellectual property matters. According to Article 4 of the Copyright Law, copyrights of economies or territories which have established reciprocity with Chinese Taipei were protected by Chinese Taipei. Protection also extended to foreign works published for the first time in the territory of Chinese Taipei, or foreign works which were published in Chinese Taipei within thirty days of their first publication in territories outside of Chinese Taipei. Chinese Taipei ~~had been making efforts to revise~~ **had revised** the Copyright Law to meet the requirements of TRIPS. The ~~proposed main~~ revision includes: (a) amending the definitions for public broadcast and public performance; (b) giving explicit protection for performers' performance; (c) deleting provisions concerning compulsory licenses for translation; and (d) affording a life-plus-50-years or 50 years term of retroactive protection in consistency with the obligation under Article 18 of the Berne Convention. ~~The draft Amendment was pending in the Legislative Yuan for approval, and was expected to complete the legislative process before~~ **The Amendment had been promulgated since 21 January 1998, and effective since 23 January 1998, except the retroactive protection provisions which will not take effect until** Chinese Taipei's accession to the WTO. Under paragraph 1 of Article 42 of the 1986 Patent Law, a patent holder had the exclusive right to make, sell, or use his invention. Therefore, a product patent gave protection to the product no matter which process was used in the manufacturing of the product. Paragraph 2 of the same Article provided that if the patented invention was a process, the patent protection extended to the product using the process in the manufacturing. However, if the product was subject to another party's patent, the use of the process invention required the consent of that other party. The above rules applied to all inventions, including pharmaceutical inventions. The Patent Law, after its amendment in 1994, provides in its Article 21 statutory bars to an invention patent. Article 56 of the amended Patent Law confers on the patentee of a patented article and patented manufacturing process the exclusive rights to manufacture, sell, use or import. Article 80 stipulates that where the product manufactured in accordance with a patented manufacturing process was under a product patent granted to others, the owner of such process patent shall not put his process invention into practice without the consent of the product patentee. Currently, the Trade Mark Law did not have specific provisions for the protection of geographic indications and appellations of origin for wines and spirits. However, as a general rule, if a manufacturer's use of geographic indications as trademarks caused confusion to the general consumers as to the geographical origin of the product concerned, the Bureau of Standards could on its initiative or upon petition by interested parties turn down the application of trademark registration or cancel the existing registration, as the case may be, according to Article 37, paragraph 1, sub-paragraph 6 of the Trademark Law. If appellations of origin were used as trademarks, there would be a violation of Article 37, paragraph 1, sub-paragraph 10 regarding indications of origin. The relevant trademark application would be turned down or the registration

would be cancelled. Chinese Taipei believed that the above protection should meet the requirement for the protection of geographical indications and appellations of origin contemplated in the WTO TRIPS Agreement. In addition to the administrative measures to be taken by the National Bureau of Standards, the Fair Trade Law and the Commodity Labelling Law also provide rules that can be effected, when seeking protection. Article 21(1) of the Fair Trade Law provides that enterprises (i.e. firms or individuals engaging in trade) may not make any false or misleading marking of place of origin or manufacturing or distribute, export or import goods bearing such marking. Violators may be fined up to one million New Taiwan Dollars. Under the Commodity Labelling Law, ~~distributors~~ **importers** and manufacturers are required to include information relating to the ~~place of origin~~ **name and address of the manufacturer** on product labels. ~~Failure to do so was punishable by fines, suspension or business closure.~~ **Whoever is found guilty of violating this law and failing to rectify the impropriety within a prescribed time-limit shall be punished by a fine of 5,000 to 50,000 yuan (equivalent to NT\$15,000 to NT\$150,000). In the case of grievous offence, with the prior approval of the central competent authority, the violator may also be subject to such disciplinary action as suspension or cessation of business operations.** In addition, persons using false designations may be liable under Article 339 of the Criminal Code for committing forgery. He added that the bilateral agreement on protection of ~~intellectual property rights~~ **copyright** with the United States had taken effect on 16 July 1993 and had been reinforced by a bilateral agreement regarding reciprocal treatment **on the priority rights** of trademarks and patents of 10 April 1996. The representative of Chinese Taipei welcomed any opportunity of entering into bilateral agreements with trading partners other than the United States. According to Article 4 of the Copyright Law, the reciprocity required for granting protection to foreign copyrights could be established by way of (i) a treaty or agreement, (ii) unilateral action by other economies through their laws, regulations, or other legal instruments which provide protection to Chinese Taipei's copyrights, or (iii) **customary** practices. Chinese Taipei was willing to discuss with interested parties to find a mutually accepted way to establish such reciprocity. Except the bilateral agreement with the United States, Chinese Taipei had decided to protect works originating in the United Kingdom, Hong Kong and Switzerland through unilateral administrative action in response to those three economies actions protecting works of Chinese Taipei origin. The amendments to the Patent Law and the Trademark Law passed in April 1997 would enter into force upon accession. The draft frameworks for the Integrated Circuits Layout Protection Law had been promulgated on 11 August 1995 and entered into force on 11 February 1996. He added that **during July 1992 to January 1993**, the following products were ~~set out to be~~ subject to export licensing requirements in the area of intellectual property protection: ~~8473.30.10.90~~ **8473.30.10.00** Computer PC board (only PC boards with semiconductor chips and computer software within the chip); ~~8473.30.10.90~~ **8473.30.10.00** Printer PC board (only PC boards with semiconductor chips containing computer software); 9504.10.00.10

Television video game PC boards with semiconductor chips containing computer software; 9504.10.00.10 Video games of a kind used with a television receiver; 9504.90.90.00 Other articles for funfairs, table or parlour games (palmtop electronic games containing computer software); 9504.90.90.00 Other articles for funfairs, table or parlour games (cassettes for palmtop electronic games); 9504.10.00.20 Cassettes for television video games; 8471.20.00.00 Digital automatic data processing machines (containing in the same housing at least a CPU and output unit, whether combined or not); 8471.92.20.10 Dot matrix printer; 8471.92.20.20 Laser printer; 8471.92.20.30 Daisy printer; 8471.92.20.90 Other printer; 8524.90.30.00 Recorded data processing system magnetic disks (only disks containing computer software); 8524.11.90.00 Other digital integrated circuits (used in computers, printers or TV video games and containing chips with computer software); 8542.19.90.00 Other monolithic integrated circuits (used in computers, printers or TV video games and containing chips with computer software); 8542.20.00.00 Mixed integrated circuits (used in computers, printers or TV video games and containing chips with computer software); 8542.80.90.90 Other integrated circuits and micro assemblies (used in computers, printers or TV video games containing chips with computer software).

**Export licensing requirements on the above computer-related products were lifted on 15 July 1998, however, they were subject to random checks at the port by Customs in order to ensure that infringing goods would not be exported.** CD and VCD manufacturers in Chinese Taipei were required to inscribe the source identification code (SID) on all CD's and VCD's manufactured. This measure aimed to deter the circulation of pirated CD's and VCD's.

159. In reply to further questions concerning the laws for the protection of industrial designs, semiconductor chips or trade secrets, the representative of Chinese Taipei stated that these laws were along the lines of the provisions of the WTO TRIPS Agreement. In response to a question concerning Chinese Taipei's current protection for computer programs and foreign well-known marks he said that since 1980 computer programs had been protectable as "literary works", and protectable as computer programmes since 1985 under the Copyright Law. The protection term was 50 years. Article 37(1)(6 7) of the Trademark Law was applied to provide protection for well known foreign marks in accordance with Article 6 *bis* of the Paris Convention, i.e. even when the goods were not similar to the goods in respect of which a trademark was registered. In response to a question concerning the consistency of its laws with the TRIPS Agreement, the representative of Chinese Taipei indicated that the Patent Law and the Trademark Law had adopted the relevant provisions of the TRIPS Agreement. He provided details of the Patent Law, and its provisions for compulsory licensing, in particular how it complied with the TRIPS Agreement. In his opinion, the Copyright Law was in conformity with the Berne Convention and the TRIPS Agreement. He provided details of the Copyright Law provisions to the Working Party. He said that Chinese Taipei had promulgated ~~seven~~ **one Act and eight** implementing regulations: ~~the implementing rules of the Copyright Law; the regulations for Approval of Application for Compulsory~~

~~License of Translations; the regulations for Approval of Application for Compulsory License of Musical Works; the standards of Royalty Rates for Use in Public Interest Activities; the regulations for Illustration of the Contents of Various Works in Paragraph 1 of Article 5 of the Copyright Law; the Organisational Charter of the Copyright Examination and Mediation Committee; the regulations for Mediation of Copyright Disputes; and the "Certain Amount" of Items 2 and 3 of Paragraph 1 of Article 87 bis of the Copyright Law. In addition a Statute for the Copyright Intermediary Organisations was being prepared~~ **Copyright Intermediary Organization Act; The Illustrated Contents of Each Kind of Works in Paragraph 1 of Article 5 of the Copyright Law; The Certain Amount in Item 2 and 3 of Paragraph 1 of Article 87bis of the Copyright Law; Regulations Governing Application for Approval of Compulsory License of Musical Works and Royalties for Use Thereof; Standards for Compensation for Fair Use of Works in Paragraph 4, Article 47 of Copyright Law; Regulations Governing Registration of Plate Rights; Implementation Regulations for Suspension of Release of Goods Infringing on Copyright or Plate Right by Customs Authorities; Regulations of Copyright Dispute Mediation; Organic Charter of the Copyright Examination and Mediation Committee of the Ministry of Interior.**

160. In response to further questions concerning the Trademark Law and the statement by a member of the Working Party that Chinese Taipei's Bureau of Standards applied the standards for trademark registration inconsistently with the TRIPS Agreement, the representative of Chinese Taipei provided details of the system of protection and the respective time limits which, in his opinion, were basically consistent with the TRIPS Agreement. He stated that the Bureau of Standards had recently adopted several measures to facilitate the examination process and to maintain consistency. Statistics revealed that in Chinese Taipei applications for trademark registration filed by foreign applicants had a consistently high approval rate. Concerning the question of geographic denominations of origins, he confirmed that the Trademark Law did not deal with geographic denominations of origin. However, if an application for a trademark was made and the trademark could cause confusion as to the geographic origin of the marked goods, the application could be rejected. If appellations of origin were used as trademarks their use would ~~infringe~~ **violate** Article 37 of the Law. He considered that these provisions would meet the protection required by the TRIPS Agreement. In addition to the Trademark Law, the Fair Trade Law, the Commodity Labelling Law and the Criminal Code also contain provisions that provide protection to geographical indications.

161. In response to questions concerning whether Chinese Taipei protected trade secrets, the representative of Chinese Taipei said that the Trade Secrets Law was promulgated on 17 January 1996. He assured the Working Party that the protection of trade secrets would conform with the requirements of the TRIPS Agreement.



162. In response to questions concerning whether pharmaceutical inventions could be the subject of a product patent giving protection to the product independently of the process with which it had been manufactured, the representative of Chinese Taipei said that a patent was granted on the invention, regardless of which process was used in the manufacture of the goods. He said that the examining authority could grant extensions of the time limits for the submission of supplementary information supporting a patent application.

163. The representative of Chinese Taipei said that, in ~~1989~~ **1993**, Chinese Taipei had ~~initialled~~ **formally executed** a bilateral copyright agreement with the United States. In his view, the agreement in some cases gave a higher standard of protection than the Berne Convention. The text of this agreement was made available to the Working Party as well as the Agreement Concerning the Protection and Enforcement of Rights in Audiovisual Works between the Coordination Council for North American Affairs and the American Institute in Taiwan.

164. Concerning the enforcement of intellectual property rights, the representative of Chinese Taipei said that Chinese Taipei provided training concerning intellectual property rights (intellectual property rights) to judges, prosecutors and other law enforcement officials. Newly appointed judges and prosecutors could not practice until they had completed an eighteen month training programme which included an introduction to intellectual property rights. ~~In addition~~ **Additional** training was provided to incumbent public prosecutors. Chinese Taipei had also taken steps to co-ordinate the relevant agencies in the enforcement of intellectual property rights. The Public Prosecutors' Office attached to the Chinese Taipei High Court had conducted five seminars since 1 July 1992 for representatives from government agencies including Customs, the Government Information Office (GIO), the Board of Foreign Trade (BOFT), and the Police Administration. The Ministry of Justice (MOJ) had also issued administrative directives ~~to establish a special public~~ **appoint specific public prosecutors in the** prosecutor's office to deal with intellectual property rights infringement cases. The MOJ had also issued administrative directives to public prosecutors to handle intellectual property rights complaints expeditiously and to press for harsh sentences whenever the circumstances warranted. Judgements which appeared not to have a deterrent effect would be appealed to the ~~Appellate~~ **High** Court. The Ministry of Justice had directed to all prosecutors that the discretion of commuting prison terms to fines should be exercised very carefully in intellectual property rights cases. To facilitate the investigation of intellectual property rights infringement cases, on 31 March 1993, the Public Prosecutor's Office had integrated all intellectual property rights agencies to form a task force. In a letter of 20 August 1996, the MOJ had requested all prosecutors to investigate cases where Chinese Taipei residents infringe copyrights in mainland China. If the result of the investigation meets the requirements under Article 251 of the Criminal Procedure Code, prosecutors should prosecute the case. Article ~~94~~ **100** of the Copyright Law

provided that a prosecutor could initiate an investigation and issue an indictment in the absence of a complaint. If a complaint had initiated the investigation, Article 94 100 also provided that the prosecutor could continue with the investigation or prosecution even if the injured party withdrew the complaint. When a search warrant and the seizure of goods was considered appropriate, prosecutors were required to proceed promptly. In addition to the Copyright Law, the MOJ had directed that the discretion to not prosecute a case under the Criminal Code should be exercised very carefully in intellectual property rights criminal cases. The Judicial Yuan had also encouraged judges to impose the heaviest penalties possible on intellectual property rights infringers, and had established intellectual property rights divisions in District Courts. ~~Special~~ **Specific** prosecutors had been designated to deal with intellectual property rights cases. The Public Prosecutors' Office attached to the Chinese Taipei High Court had conducted several on-the-job seminars since 1 July 1992 for new and current prosecutors. The MOJ together with the Judicial Yuan will continue to hold educational seminars and courses for new and current prosecutors and judges on a regular basis to keep them informed of the new developments relating to intellectual property rights issues.

165. The representative of Chinese Taipei also explained that border measures had been strengthened in relation to trade in products protected by intellectual property rights. Concerning computer software, Chinese Taipei had established a system for the control of exports of computer software pursuant to a memorandum of understanding signed with the United States. The Customs had been delegated to examine packages of software consigned for export, to determine whether they conformed to the export permit, invoice and packaging list or other export documents. The examinations were carried out at random with 30-50 per cent of such exports being examined. All exports of an exporter who had been previously found to have exported intellectual property rights infringing products were subject to inspection, whether or not these exports were described as computer software. All exports suspected of being counterfeit were seized, unless the exporter could provide evidence to offset such suspicion. The seized products would be confiscated when the intellectual property rights right-holder obtained a final judgment from the Courts confirming that the products were infringing intellectual property rights. Public Prosecutors were required to prosecute forgers of documents including documents which were used to support the exportation of intellectual property rights infringing products. To further deter the export of counterfeit computer software, the Board of Foreign Trade of the Ministry of Economic Affairs promulgated the Guidelines for Handling Cases Where the Export of Products related to Computer Programs was Suspected of Copyright Infringement in 1996.

166. Concerning patents and trademark infringements, the representative of Chinese Taipei stated that the Anti-Counterfeiting Committee (ACC) under the Ministry of Economic Affairs worked closely with the Customs and the Prosecutors Office. The ACC had been designated as the coordination agency

to assist the effective operation of the export monitoring system. The ACC was responsible for the enforcement of anti-counterfeiting efforts involving trademark and patents. The ACC directed the work of the intellectual property rights Enforcement Supervisory Task Force since July 1989. The ACC was empowered to refer suspected counterfeiting cases directly to the Courts for prosecution. Following conviction, the ACC could request the BOFT to impose punitive measures according to the degree of seriousness of the offence. The BOFT could refuse to issue export permits for a period of one year to the companies concerned. He added that the inspection by the Customs emphasized the examination of the product name, brand names, qualities, specifications, product serial numbers, model numbers, countries of manufacture, net weights etc. ~~Trademark infringement was not within the scope of the inspection.~~ Trademark holders with sufficient information could file a petition to the Court for the provisional attachment of the counterfeit goods or inform the prosecutor. The Customs could only seize the goods when informed by the Court or the trademark authority. If Customs suspicions were aroused concerning the export of certain goods, it would refer the matter to the ACC. There was no such mechanism to deal with imported goods. He also stated that consultations with the United States on the protection for pharmaceuticals had been concluded. On 7 July 1993, the Department of Health had issued revised public notices regarding safety monitoring which applied to all pharmaceuticals regardless of their origin.

167. In reply to questions concerning the procedures for the seizure by the Customs of infringing products, the representative of Chinese Taipei indicated that in relation to patented goods, it was necessary for the right holders to obtain a Court order before any seizure could be made by the Customs. All infringements of intellectual property rights had to be dealt with in the same manner as patent rights. The only exception was Article ~~404~~ **90bis** of the Copyright Law, which provided that right-holders upon the posting of an appropriate bond could petition the Customs to seize imports reasonably suspected to be infringing copies. The goods would be confiscated upon a Court judgment confirming the infringement. In response to questions concerning the seizure of parts imported into Chinese Taipei for the purpose of being assembled into infringing goods which would be exported to a third country, the representative of Chinese Taipei replied that Chinese Taipei had never encountered such a situation, but the goods could be seized if a Court order was obtained.

168. Some members of the Working Party asked whether any additional measures were planned in order to combat the infringement of intellectual property rights, taking into account that existing measures did not appear to be having a sufficient deterrent effect on certain commercial scale counterfeiting operations, such as watches. {Some members also noted the continued high levels of piracy of computer software embodied in semi-conductors. These members expressed concern regarding the failure to impose penalties, in particular administrative penalties and seizure of infringing

products and machinery used to produce such products, sufficient to deter piracy}. The representative of Chinese Taipei replied that Chinese Taipei had issued an Action Plan for Enforcement and Protection of Intellectual Property Rights. The Action Plan laid down a framework for the improvement of intellectual property protection, including the upgrading of the standards of protection, the application of stiff administrative measures, the strengthening of judicial enforcement and the education of the general public to respect intellectual property rights. An inter-agency Task Force had been established to co-ordinate and supervise the enforcement of intellectual property rights. Chinese Taipei was determined to enjoy a reputation as a territory that respected intellectual property rights.

169. In response to the assertion by some members of the Working Party that Chinese Taipei did not appear to protect against the transmission of infringing copyright material on its cable television network, the representative of Chinese Taipei indicated that the Government Information Office (GIO) had determined that a priority target was a crackdown on illegal cable television networks that transmitted illegal copyrighted television programmes without authorization. In the event of such a transmission being made, the GIO severed the cable connection of the broadcaster and referred the matter to the prosecuting authorities. After the Cable TV Law had been promulgated in 1993, the GIO had the authority to impose fines on those cable TV networks which transmitted copyrighted televisions programmes without authorization, and refer cases to the prosecuting authorities.

170. [Recognizing that sales into the domestic market of smuggled or counterfeit imports of alcohol and tobacco products undermine Chinese Taipei's market for legally marketed products, and wishing to discourage such activities in the future, the representative of Chinese Taipei confirmed that all such contraband seized would be destroyed, or otherwise disposed of, taking into account the practices of WTO Members in a similar situation, and that Chinese Taipei intends to make additional efforts to prevent such illegal imports. In addition, Chinese Taipei would ensure that certain alcoholic beverage imports be accompanied by a certificate of origin in order to combat counterfeiting. The Working Party took note of these commitments.]

171. The representative of Chinese Taipei said that the Trademark Law, Articles 4, 5, 23, 25, 34, 37 and 61 would be amended to achieve the following objectives:

- (i) to broaden the scope of reciprocal granting of the right of priority to cover the situation where there was no formal agreement but the right of priority was granted to Chinese Taipei's owner of trademark through practice;

- (ii) to include a combination of colours in the group of items that are capable of constituting a trademark so as to be consistent with Article 15 of the TRIPS Agreement;
- (iii) to extend administrative protection to well known marks by providing that no applications may be filed for registration of a trademark design which was identical with or similar to another person's well-known trademark or mark and likely to cause the public to form a mistaken belief.

He added that the Patent Law, Articles 21, 51, 56, 57, 78, 79, 80, 82, 88, 91, 105, 109, 117 and 122 would also be amended to achieve the following objectives:

- (i) to delete the requirement of reciprocity in respect of the granting of patents for micro-organisms, extension of patent protection terms and the granting of exclusive import rights so as to be consistent with Articles 3 and 4 of the TRIPS Agreement;
- (ii) to limit compulsory licensing in respect of semi-conductor technology to public non-commercial use or to remedying anti-competitive practice, so as to be consistent with Article 31(c) of the TRIPS Agreement;
- (iii) to provide patent owners and his/her exclusive licensees the right to request destruction or other necessary disposition of the infringing goods, raw materials or instruments used, in connection with the infringement, so as to meet the requirement of Article 46 of the TRIPS Agreement which calls for giving the judicial authority to order disposition outside the channels of commerce;
- (iv) to provide for shifting the burden of proof in respect of process patents as required by Article 34 of the TRIPS Agreement;
- (v) to provide for longer term of protection for industrial design, so as to meet the minimum requirement of 10 years of the TRIPS Agreement.

These amendments had been passed in April 1997 and would enter into force at the time of accession. [Some members of the Working Party expressed their appreciation to the representative of Chinese Taipei for the information on efforts to implement the TRIPS Agreement. These members re-emphasized the need for effective enforcement of Chinese Taipei's intellectual property laws as part

of its obligations under the TRIPS Agreement]. [The representative of Chinese Taipei said that effective enforcement was already carried out on a continuing basis].

172. The representative of Chinese Taipei stated that Chinese Taipei would fully apply the provisions of the Agreement on TRIPS by the date of accession, without recourse to any transitional period. [Chinese Taipei would furthermore ensure by the date of accession:

- (a) full protection of geographical indications (including against trademarks which contain or consist of such an indication), as well as of well-known marks (including the enhanced protection pursuant to Article 16.2 and 3 of the TRIPS Agreement);
- (b) the establishment of a registration system for trademarks which incorporates all conditions as set out in the TRIPS Agreement;
- (c) the amendment of Chinese Taipei Copyright Law to comply with Article 14(1) of the TRIPS Agreement;
- (d) the extension to all WTO members of advantages currently given on the basis of reciprocity, the elimination of any reciprocity requirements; and in particular,
- (e) effective enforcement (including implementation of the special requirements related to border measures).

The Working Party took note of these commitments.]

## VII. POLICIES AFFECTING TRADE IN SERVICES

173. Several members of the Working Party stressed that Chinese Taipei must undertake a substantial package of initial commitments in its Services Schedule with minimum exceptions from MFN treatment. Chinese Taipei engaged in market access negotiations on services with members of the WTO. The results of those negotiations are reproduced in Part II of Annex I to the Draft Protocol of Accession.

174. The representative of Chinese Taipei confirmed that MOTC would license additional facilities-based operators effective from July 2001; and, consistent with Chinese Taipei's commitments under the GATS, there would be no limitations on the numbers of licenses after Chinese Taipei becomes a member of the WTO. In addition, MOTC will deregulate international voice simple resale service from July 2001. From that time, market access to services-based competition will be fully open. The Working Party took note of these commitments.

175. Some members of the Working Party welcomed Chinese Taipei's commitment to permit attorneys of foreign legal affairs (AFLA) to establish a partnership with or employ a lawyer licensed in Chinese Taipei three years after Chinese Taipei's accession to the WTO. They also noted that, as from the date of its accession, Chinese Taipei has agreed to permit an AFLA to form a cooperative relationship with licensed lawyers of Chinese Taipei, except that such relationship must not be in the form of a joint liability and profit sharing arrangement. The representative of Chinese Taipei confirmed that the prohibition of a "profit sharing" arrangement did not preclude payment for services rendered, but was intended to encompass general agreements between these service providers on division of any profits. He also confirmed that cooperative arrangements between AFLAs and licensed lawyers of Chinese Taipei that were not in the form of a joint liability and profit sharing arrangement would not be considered to be a partnership under Chinese Taipei's Lawyers Law.

#### IX. [TRANSPARENCY][PUBLICATION]

176. Some members of the Working Party noted that Article X of the GATT 1994 required that all laws, regulations, judicial decisions and administrative rulings relating to trade be published promptly so that governments and traders could become acquainted with them. {Similarly, Article III of the GATS required prompt publication (at the latest by the time of entry into force - except in emergency situations) of all relevant measures of general application which pertain to or affect the operation of the GATS Agreement. These members also noted that transparency obligations arose from Article 63 of the TRIPS Agreement.} They also requested that such laws, regulations, judicial decisions and administrative rulings relating to trade be systematically and immediately translated into a WTO official language. The representative of Chinese Taipei said that Chinese Taipei would comply with the publication provisions of GATT 1994 and other relevant WTO Agreements but would not accept an additional general obligation to translate legal instruments into an official WTO language.

{Some Working Party members emphasized the importance of prior notice of laws, regulations and other measures affecting trade in goods, services and intellectual property rights, in particular the right to provide comments on proposed measures prior to their enactment and implementation. These members of the Working Party also noted that some of the WTO Agreements expressly provided for such a notice and prior comment process and urged Chinese Taipei to extend the coverage of this process to all measures related to the WTO.} ~~{The representative of Chinese Taipei said that Chinese Taipei would not accept such extension because it exceeded the obligations set out in the WTO Agreements}.~~ **The representative of Chinese Taipei noted the existence of requirements in some WTO Agreements for prior notice and a reasonable time to present comments on proposed measures. He stated that Chinese Taipei had an open and transparent system for adopting laws, regulations and other measures. Upon accession, Chinese Taipei, would provide a period for appropriate**

**authorities, including those of other WTO members, to comment on laws and regulations and other measures of general application affecting trade in goods, services, or TRIPS before such measures are enacted and implemented except in emergency situations. The Working Party took note of this commitment.**

177. [The representative of Chinese Taipei stated that the following Laws ~~and Regulations~~ shall be amended or newly made ~~[within six months from]~~ [by] the date of accession to the WTO for the purpose of putting into effect Chinese Taipei's accession commitments:

- Foreign Trade Act
- The Commodity Inspection Law
- The Trademark Law
- The Patent Law
- Company Law
- Customs Law Articles
- Statute for Commodity Tax
- Business Tax Law
- The Securities and Exchange Law
- The Certified Public Accountants' Law
- Commercial Port Law
- ~~—— Highway Law~~
- Lawyers' Law
- Architects' Law
- Statute Governing Privileges and Immunities of the Foreign Missions and their Personnel in Chinese Taipei
- Law of Pharmaceutical Affairs
- Law Governing Food Sanitation
- The Publication Law
- Central Bank Act
- Banking Law
- Copyright Law
- Copyright Intermediary Organization Act
- Tobacco and Alcohol Administration Law
- Tobacco and Alcohol Tax Law
- Statute Governing the Organization of Department of National Treasury, Ministry of Finance
- Provincial Statute for Monopoly of Tobacco and Wine in Taiwan Province



- Customs Import Tariff and Classification of Import Export Commodity
- Statute for Establishment and Management of Export Processing Zones
- Statute for Agriculture Development
- Food Management Law
- ~~Government Procurement Law~~
- Statute Governing the Organization for the Public Construction Commission, Executive Yuan
- Statute for Inspection Procedure Governing Construction Works and Procurement and Disposal of Properties by Government Agencies
- Statute for Vocational Assistance for Retired Servicemen
- **Law for the Administration of National Enterprises**

A summary of the amendments that will be introduced to some of the above-mentioned laws was reproduced in Attachment E. The representative of Chinese Taipei further stated that Chinese Taipei would ensure that from the date of accession, all laws, regulations, judicial decisions and administrative rulings relating to trade would be published promptly so that governments and traders could become acquainted with them. The Working Party took note of these commitments].

178. The representative of Chinese Taipei further stated that Chinese Taipei would ensure that from the date of accession, all laws, regulations, judicial decisions and administrative rulings **of general application** relating to trade in goods, as well as measures subject to the transparency provisions of the GATS and TRIPS Agreement would be translated and published in an official WTO language no later than ~~{30 calendar days}~~ **90 days** after enactment or issuance ~~and, except in situations of extreme emergency, prior to the date such measures are implemented or enforced.~~ **Such measures would, however, be published in the official language of Chinese Taipei prior to the date such measures are to be implemented or enforced except in cases of extreme emergency.** In respect of enquiry points required to be established under the WTO Agreement or the Protocol, the representative of Chinese Taipei stated that Chinese Taipei would establish or designate an enquiry point where, upon request of any individual or enterprise, all information relating to the measures required to be published may be obtained. Replies to enquiries for information would generally be provided within ~~{45 30 working days}~~ after receipt of a request. In exceptional cases, replies may be provided within ~~{20 45 working days}~~ after receipt of a request. Replies would be complete and would represent the authoritative view of Chinese Taipei.]

179. [The representative of Chinese Taipei noted the existence of requirements in some WTO Agreements for prior notice and a reasonable time to present comments on proposed measures. He stated that Chinese Taipei had an open and transparent system for adopting laws, regulations and other

measures. Upon accession, Chinese Taipei, would provide a period for appropriate authorities to comment on all laws, regulations and other measures pertaining to or affecting trade in goods, services, or TRIPS of at least [60 calendar days] before such measures are implemented. The Working Party took note of these commitments.]

#### Notifications

180. The representative of Chinese Taipei said that the latest upon entry to force of the Protocol of Accession, Chinese Taipei would submit all notifications (other than those required to be made on an ad hoc basis) required by any Agreement constituting part of the WTO Agreement. Any regulations subsequently enacted by Chinese Taipei which gave effect to the laws enacted to implement any Agreement constituting part of the WTO Agreement would also conform to the requirements of that Agreement. The Working Party took note of these commitments.

### X. OTHER TRADE AGREEMENTS

181. In response to questions from some members of the Working Party, the representative of Chinese Taipei stated that Chinese Taipei was not a party any trade agreement which provided for the granting of preferences to trade in goods and/or services.

#### Agreement on Trade in Civil Aircraft

182. In response to questions concerning the aerospace sector, the representative of Chinese Taipei said that its aerospace industry did not presently have the capability to assemble civil aircraft or compete internationally. Chinese Taipei did not provide any subsidies specifically for the aerospace industry. Some members of the Working Party said that a modern and sophisticated economy such as Chinese Taipei, which was also a major participant in the globalization of the world's aeronautics and space industry, should accept the Agreement on Trade in Civil Aircraft upon accession to the WTO. They further added that due to the advanced state of the industrial development of Chinese Taipei and the plans to expand the aircraft and components industry, the acceptance by Chinese Taipei of the Agreement on Trade in Civil Aircraft was a prerequisite to accession to the WTO.

183. The representative of Chinese Taipei stated that Chinese Taipei would become a signatory to the Agreement on Trade in Civil Aircraft at the same time that it acceded to the WTO.

### XI. CONCLUSIONS

184. The Working Party took note of the explanations and statements of Chinese Taipei concerning its foreign trade regime, as reflected in this report. The Working Party took note of the commitments

given by Chinese Taipei in relation to certain specific matters which are reproduced in paragraphs [12, 15, 19, 21, 22, 32, 34, 39, [44], 50, [57], 58, 60, 61, 62, 66, 68, 72, 74, 78, 85, 94, 100, [103], 104, [105], 109, 115, 123, 124, 126, [127], 132, [133], [134], [135], 138, [141], [142], 147, 152, [156], [170], [172], 174, 176, [177], [179] and [180]] of this Draft Report and noted that these commitments had been incorporated in the Draft Protocol of Accession.

185. [Having carried out the examination of the foreign trade regime of Chinese Taipei and in the light of the explanations, assurances and commitments given by the Chinese Taipei representatives, the Working Party reached the conclusion that Chinese Taipei be invited to accede to the Marrakesh Agreement Establishing the World Trade Organization on the terms set out in the draft Protocol of Accession reproduced in the Appendix to this Report, including the Annexes thereof].

[TO BE COMPLETED]

## APPENDIX

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

#### Draft Decision

[The General Council,

Having regard to the results of the negotiations directed towards the establishment of the terms of accession of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (hereinafter referred to as "Chinese Taipei") to the Marrakesh Agreement Establishing the World Trade Organisation and having prepared a Draft Protocol for the Accession of Chinese Taipei,

Decides, in accordance with Article XII of the Marrakesh Agreement Establishing the World Trade Organization, that Chinese Taipei may accede to the Marrakesh Agreement Establishing the World Trade Organization on the terms set out in the Draft Protocol for the Accession of Chinese Taipei.]

[DRAFT PROTOCOL OF ACCESSION OF THE SEPARATE CUSTOMS TERRITORY OF  
TAIWAN, PENGHU, KINMEN AND MATSU TO THE MARRAKESH AGREEMENT  
ESTABLISHING THE WORLD TRADE ORGANIZATION

The World Trade Organization (hereinafter referred to as the "WTO"), pursuant to the approval of the General Council of the WTO accorded under Article XII of the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as the "WTO Agreement"), and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (hereinafter referred to as "Chinese Taipei"),

Taking note of the Report of the Working Party on the Accession of Chinese Taipei to the WTO Agreement reproduced in document WT/ACC/..., dated ..... (hereinafter referred to as the "Working Party Report"),

Having regard to the results of the negotiations on the accession of Chinese Taipei to the WTO Agreement,

Agree as follows:

PART I - GENERAL

1. Upon entry into force of this Draft Protocol pursuant to paragraph 10, Chinese Taipei accedes to the WTO Agreement pursuant to Article XII of that Agreement and thereby becomes a Member of the WTO.
2. The WTO Agreement to which Chinese Taipei accedes shall be the WTO Agreement as rectified, amended or otherwise modified by such legal instruments as may have entered into force before the date of entry into force of this Protocol. This Protocol, which shall ~~comprise~~ **include** the commitments referred to in **[paragraph 184]** of the Working Party Report, shall be an integral part of the WTO Agreement.
3. Except as otherwise provided for in the paragraphs referred to in **[paragraph 184]** of the Working Party Report, those obligations in the Multilateral Trade Agreements annexed to the WTO Agreement that are to be implemented over a period of time starting with the entry into force of that

Agreement shall be implemented by Chinese Taipei as if it had accepted that Agreement on the date of its entry into force.

4. The Special Exchange Agreement between the WTO and Chinese Taipei reproduced in Annex II to this Draft Protocol forms an integral part of this Protocol.

5. Chinese Taipei shall ~~at the time of accession to the WTO~~ accept the Plurilateral Trade Agreement on Government Procurement listed in Annex 4 of the Agreement Establishing the WTO **according to [paragraph 147] of the Report of the Working Party.**

6. Chinese Taipei may maintain a measure inconsistent with paragraph 1 of Article II of the GATS provided that such a measure was recorded in the list of Article II Exemptions annexed to this Draft Protocol and meets the conditions of the Annex to the GATS on Article II Exemptions.

## PART II - SCHEDULES

7. The Schedules reproduced in Annex I to this Draft Protocol shall become the Schedule of Concessions and Commitments annexed to the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as the "GATT 1994") and the Schedule of Specific Commitments annexed to the General Agreement on Trade in Services (hereinafter referred to as "GATS") relating to Chinese Taipei. The staging of the concessions and commitments listed in the Schedules shall be implemented as specified in the relevant parts of the respective Schedules.

8. For the purpose of the reference in paragraph 6(a) of Article II of the GATT 1994 to the date of that Agreement, the applicable date in respect of the Schedules of Concessions and Commitments annexed to this Draft Protocol shall be the date of entry into force of this Draft Protocol.

## PART III - FINAL PROVISIONS

9. This Draft Protocol shall be open for acceptance, by signature or otherwise, by Chinese Taipei until .....

10. This Draft Protocol shall enter into force on the thirtieth day following the day upon which it shall have been accepted by Chinese Taipei.

11. This Draft Protocol shall be deposited with the Director-General of the WTO. The Director-General of the WTO shall promptly furnish a certified copy of this Draft Protocol and a notification of acceptance by Chinese Taipei thereto pursuant to paragraph 9 to each Member of the WTO and to Chinese Taipei.

This Draft Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva, this [date] day of [month] one thousand nine hundred and ninety ....., in a single copy in the English, French and Spanish languages, each text being authentic.]

ANNEX I

SCHEDULE .... - SEPARATE CUSTOMS TERRITORY  
OF TAIWAN, PENGHU, KINMEN AND MATSU

Part I - Goods

[The Schedule will be circulated in document .... ]

Part II Services

[The Schedule will be circulated in document .... ]

[TO BE COMPLETED]



[ANNEX II

SPECIAL EXCHANGE AGREEMENT BETWEEN THE  
SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND  
MATSU (HEREINAFTER REFERRED TO AS "CHINESE TAIPEI") AND THE  
WORLD TRADE ORGANIZATION (HEREINAFTER REFERRED TO AS THE "WTO")

Whereas paragraph 6 of Article XV of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as the General Agreement 1994), [as indicated in the Explanatory Notes thereof] provides that any WTO Member which is not a member of the International Monetary Fund (hereinafter referred to as the "Fund") shall, within a time to be determined by the WTO after consultation with the Fund, become a member of the Fund, or, failing that, enter into a special exchange agreement with the WTO;

Whereas paragraph 7 of the said Article provides that such special exchange agreement shall provide to the satisfaction of the WTO that the objective of the General Agreement 1994 will not be frustrated as a result of action in exchange matters by the Member in question, and taking into account that the terms of such an agreement shall not impose obligations inconsistent with those imposed by the Fund;

Whereas the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (hereinafter referred to as "Chinese Taipei") desires to accede to the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as the "WTO Agreement") in pursuance of Article XII thereof;

The World Trade Organization

and

Chinese Taipei, acting through its representative duly authorized for this purpose,

Hereby agree as follows:

ARTICLE I

Orderly Exchange Arrangements

1. Chinese Taipei shall collaborate with the WTO to promote exchange rates which reflect underlying economic fundamentals, to maintain orderly exchange arrangements with other Members of the WTO, to avoid competitive exchange alterations, and to assist, in accordance with Articles II and III of this Special Exchange Agreement, in the elimination of restrictions on the making of international payments and transfers within the multilateral system, and to promote international trade and investment.

2. Recognizing that the essential purpose of the international monetary system is to provide a framework that facilitates the exchange of goods, services, and capital among countries, and that helps sustain non-inflationary economic growth, Chinese Taipei undertakes to assure orderly exchange arrangements and to promote a stable system of exchange rates. In particular, Chinese Taipei shall:

- (i) Endeavour to direct its economic and financial policies toward the objective of fostering sustained, non-inflationary economic growth with macroeconomic stability;
- (ii) Permit exchange rates to reflect underlying economic and financial conditions;
- (iii) Avoid manipulating exchange rates or the international monetary system in order to prevent effective balance-of-payments adjustment or to gain an unfair competitive advantage over other members; and
- (iv) Follow exchange policies compatible with the undertakings under this Article.

ARTICLE II

Avoidance of Restrictions on Current Payments and Multiple Currency Practices

1. Chinese Taipei shall not, without the approval of the WTO, impose restrictions on the making of payments and transfers related to current account transactions.

2. Chinese Taipei shall not engage in, nor permit its Ministry of Finance, Central Bank, Stabilization Fund, or other agency, to engage in any discriminatory currency arrangements or multiple currency practices except as approved by the WTO.

3. Exchange contracts which involve the currency of any Member or Chinese Taipei and which are contrary to the exchange control regulations of that Member or Chinese Taipei maintained or imposed consistently with the Articles of Agreement of the Fund or with the provisions of a special exchange agreement entered into pursuant to paragraph 6 of Article XV of the General Agreement 1994 or this Special Exchange Agreement, shall be unenforceable in the territories of Chinese Taipei or in the territories of any Member.

### ARTICLE III

#### Controls of Capital Transfers

1. Chinese Taipei undertakes that it shall seek to avoid the imposition of capital controls to address balance-of-payments and macroeconomic objectives. However, Chinese Taipei may exercise such controls as are necessary to regulate international capital movements, if these movements are destabilizing to the balance of payments or jeopardize macroeconomic stability, so long as Chinese Taipei does not exercise these controls in a manner which will restrict payments for current transactions or which will unduly delay transfers of funds in settlement of commitments.

2. Chinese Taipei undertakes that measures affecting capital flows will be in accordance with this Special Exchange Agreement, the General Agreement 1994, and the WTO Agreement.

3. If Chinese Taipei institutes new capital controls or tightens existing capital controls, it shall immediately after instituting or tightening such controls consult with the WTO.

### ARTICLE IV

#### Restrictions on Payments - General

1. In the event that Chinese Taipei, with the approval of the WTO, as provided in Article II, or consistent with consultations with the WTO, as provided in Article III, as the case may be, imposes a measure to restrict payments and transfers for balance-of-payments and macroeconomic stability purposes, it shall:

(a) initiate good faith consultations with the WTO on economic adjustment measures to address the fundamental underlying economic problems giving rise to the measures; and

(b) adopt or maintain economic policies consistent with such consultations.

2. A measure adopted or maintained under Article II of this Special Exchange Agreement shall:

(a) avoid unnecessary damage to the commercial, economic or financial interests of another Member;

(b) be temporary and be phased out within a clearly-specified time-frame;

(c) be the least burdensome type of action available;

(d) be consistent with this Special Exchange Agreement and the economic policies adopted pursuant to paragraph 1(b) of this Article; and

(e) be applied on a most-favoured-nation treatment basis.

3. A measure adopted or maintained under Article III of this Special Exchange Agreement shall to the extent practicable conform to the provisions set forth in sub-paragraphs (a) through (e) of paragraph 2 of this Article.

## ARTICLE V

### Furnishing of Information

1. Chinese Taipei shall furnish the WTO with such information within the general scope of section 5 of Article VIII of the Articles of Agreement of the International Monetary Fund as the WTO may require in order to carry out its functions under the WTO Agreement.

2. Chinese Taipei shall be under no obligation to furnish information in such detail that the affairs of individuals or corporations are disclosed. Chinese Taipei undertakes, however, to furnish the desired information in as detailed and accurate a manner as is practicable.

## ARTICLE VI

Miscellaneous Provisions

1. For purposes of this Special Exchange Agreement, the term "Payments for current transactions" means payments which are not for the purpose of transferring capital, as defined by the International Monetary Fund.
2. The WTO shall at all times have the right to communicate its views informally to Chinese Taipei on any matter arising under this Agreement.
3. Whenever the WTO consults with the Fund on exchange matters or in other appropriate cases particularly affecting Chinese Taipei, the WTO shall take measures, as are satisfactory to the Fund, to ensure effective presentation of Chinese Taipei's case to the Fund, including, without limitation, the transmission to the Fund of any views communicated by Chinese Taipei to the WTO.
4. The Understanding on Rules and Procedures Governing the Settlement of Disputes of the WTO shall apply to disputes arising under this Agreement.
5. This Agreement shall enter into force on the date of entry into force of the Protocol of Accession of Chinese Taipei to the WTO.
- ~~6. The provisions of this Agreement, entered into pursuant to Article XV of the General Agreement 1994, shall be deemed to be included within that Article and shall constitute an integral part of the Draft Protocol of Accession of Chinese Taipei to the WTO.~~
- ~~7. This Agreement shall terminate upon the mutual agreement of Chinese Taipei and the WTO. ]~~

## ATTACHMENT A

### Price Controls List

The tariff items subject to price controls and their justification and legal basis are as follows:

1. Price Controls Mandated by Law: Electricity and Salt;
2. Price Controls to Implement Specific Policies: Oil: energy policy to stabilize oil prices as well as prices of general commodity prices (as oil is the basis input for almost all productions); Sugar and fertilizer: agricultural policy to stabilize farmers' income and production cost;
3. Price controls on other necessities: Natural gas and liquefied petroleum gas: mandated by the ~~"Law Governing Surveillance over Privately Owned Utility Companies"~~ **"Statute for Monitoring Private Enterprises Operating Public Utilities"**; price to be determined by the Public Utility Rate Commission of the Executive Yuan.

- [(i) Electricity: The legal basis for price controls was the Electricity Law;]
- (ii) Salt: The HS number is 2501. The legal basis for price control was the Statute for Salt Administration;
- (iii) Petroleum: The HS numbers are 2710.00.11, 2710.00.12, 2710.00.23, 2710.00.31 and 2710.00.33;
- (iv) Sugar and fertilizers: The HS numbers are 1701.11, 3102.10.10, 3102.21.10, 3102.30.10, 3102.70.10, 3103.10.00. The legal basis for price control of these commodities was the Table of Division of Work between the Ministry of Economic Affairs and the Executive Yuan;
- (v) Natural gas and liquefied gas: The HS numbers are 2711.21.00 and 2711.19.10. The legal basis for price control was the Statute for Monitoring Private Enterprises Operating Public Utilities.

## ATTACHMENT B

### Revised Summary of the Tobacco and Alcohol Reform Plan (January, 1998)

The following outlines Chinese Taipei's intentions for the tobacco and alcohol reform plan:

#### Tobacco and Alcohol Taxes

The TTWMB reform plan includes a classification of tobacco products and alcoholic beverages for the purposes of internal taxes (tobacco and alcohol taxes). Tobacco products are classified into cigarettes, pipe tobacco, cigars, and others. Cigarettes are subject to specific tax of x dollars per 1,000 sticks; pipe tobacco, cigars, and others are subject to specific tax of x dollars per kilogram.

Alcohol products are classified into brewed alcoholic beverages (including beer and other brewed alcoholic beverages), distilled alcohol beverages (including whisky, brandy, rum, gin, and vodka), reprocessed alcohol beverages, rice wine ("Mi Chiu"), cooking wine, other alcoholic beverages, and alcohol. The alcohol products are to be taxed as follows:

#### A. Brewed Alcoholic Beverages

##### I. Beer: specific tax of x dollars per litre.

##### (a) Other Brewed Alcoholic Beverages:

specific tax of x dollars per litre per degree of alcohol content.

#### B. Distilled Alcoholic Beverages (including, among others, whisky, brandy, rum, gin, vodka):

specific tax of x dollars per litre.

#### C. Reprocessed Alcoholic Beverages

specific tax of x dollars per litre of alcohol contents exceeding specific 20 per cent by volume,  
specific tax of x dollars per litre per degree of alcohol contents less than 20 per cent by volume

D. Rice Wine ("Mi Chiu")

specific tax of x dollars per litre.

E. Cooking Wine:

specific tax of x dollars per litre.

F. Other Alcoholic Beverages:

specific tax of x dollars per litre per degree of alcohol content.

G. Alcohol:

specific tax of x dollars per litre.

The reform of the TTWMB will ensure the levy of tobacco and alcohol tax in a transparent and non-discriminatory manner with equal treatment accorded to imported and domestic products. The setting of the rates of tariffs and taxes has taken into account the current monopoly tax level, Uruguay Round "zero for zero" offers, and the practices of comparable economies of the WTO members. The tariff rates will be incorporated into Chinese Taipei's market access schedules.

Administration of Tobacco and Alcohol Products

This section covers the various aspects of the administration of tobacco and alcohol products with the implementation of the reform plan.

The planting and purchase of tobacco leaves are to be arranged between the manufacturers and tobacco farmers by contracts. Production of cigarettes will not be open to the private sector within three years after the reform.

In terms of the production of alcohol products, the manufacturing of machinery and equipment for alcohol and tobacco production, printing of trademarks, and packaging paper are not regulated in the



Tobacco and Alcohol Administration Law. Production of alcohol products will be open to the private sector in stages within three years after the implementation of the new system.

Chinese Taipei plans to liberalize production/manufacture of wine within one year after the implementation of the new system; liberalization of spirits and beer production will be effected two years after the implementation of the new system. It is the intention of Chinese Taipei to attain full liberalization within three years.

Any person wishing to engage in the production of alcohol and tobacco products will be required to meet certain qualifications. First of all, permits from the authority will be required. To do so, the applicant must fulfil requirements including, minimum capital, organization form (companies limited by shares only), acquiring a factory license, and no record of criminal offence or tax default.

After the implementation of the new system, tobacco and alcohol manufacturers legally established will be permitted to import alcohol and tobacco products in bulk for repackaging, provided, however, such manufacturers shall have authorization from the original manufacturers of the imported products and shall be able to produce the relevant certificates of origin.

In addition, tobacco and alcohol manufacturers may contract out or accept contract manufacturing, subject to the approval of the competent authority.

In the importation and wholesale of alcohol and tobacco products, a license is required for an importer and a wholesaler of the products; the license bearer can not have prior record of tax default or criminal offence within a prescribed time. Chinese Taipei has incorporated services related to the distribution of tobacco and alcohol products in its draft schedule of specific commitments on trade in services.

The legal and regulatory framework for production and distribution of alcohol and tobacco products will not impose particular restriction on foreign firms engaging in related commercial activities. The time table and rules for liberalizing the production/manufacture of particular tobacco and alcohol products will apply equally to foreign as well as domestic private firms.

Labelling requirement with respect to tobacco and alcohol products is stipulated under the Tobacco and Alcohol Administration Law. All alcohol products will be required to be labelled with the warning "excessive drinking endangers health."

Product inspection will be governed by the standards established by the health authority and administered by that authority accordingly.

Advertising and promotion for tobacco products are subject to the Tobacco Hazards Prevention Act (promulgated 19 March 1997). Chinese Taipei has to a large extent lifted restrictions and allowed advertising of beer, wine and other alcohol beverages on radio and TV in specified time period of the day. After implementation of the Tobacco and Alcohol Administration Law, advertising of alcohol products in all media will be permitted, subject however to regulation in relation to the content and timing of the advertising. All advertising regulation will be consistent with the principle of national treatment. The advertisement shall not contain contents which run counter to public order and good moral, and public interest; encourage and promote drinking; cause harm to adolescents, pregnant women's mental or physical well-beings; include forged, exaggerated, or false facts or misleading contents; and any other situations prohibited by the central competent authority through public notice.

Trading order will be maintained according to the Fair Trade Law and other relevant laws and regulations.

#### Contraband

Chinese Taipei has incorporated penal provisions into the draft Tobacco and Alcohol Administration Law to serve the legal basis for enhanced efforts to protect against smuggled and counterfeit products. The alcohol and tobacco administration agency will be given the authority to carry out inspection on the business operations of manufacturers and traders. Inspection and interception of contraband will be subject to the Alcohol and Tobacco Administration Law (draft), Alcohol and Tobacco Tax Law (draft), Statute for Anti-smuggling Law and Statute for Interception by the Customs, and other relevant laws and regulation. Under the new administration system, contraband and counterfeit products will be destroyed or otherwise disposed of, taking into account the international practices.

Any violation of the Tobacco and Alcohol Administration Law will be subject to administrative or criminal penalties, depending on the type or seriousness of the violation.

## ATTACHMENT C

### Agriculture Liberalization Plan

#### 1. ANNEX 5 to the Agreement on Agriculture:

Serial Numbers	Product	Current Import Regulation	Current Rate	Minimum Access (Percentage of Domestic Consumption)		Out-of-Quota Tariff Rate	
				<del>1st. Year</del> <b>Year 1</b>	<del>8th. Year</del> <b>2000</b>	<del>1st. Year</del> <b>Year 1</b>	<del>8th. Year</del> <b>2000</b>
1	Rice and Rice Products	<del>---</del> <b>import controlled</b>	0% 17% 20% 30% 40% 45% 50%	Annex 5 Formula	Annex 5 Formula	Annex 5 Formula	Annex 5 Formula

#### 2. TARIFF RATE QUOTA (TRQ):

Serial Numbers	Product	Current Import Regulation	Current Rate	Quota (Percentage of Domestic Consumption)		Out-of-Quota Tariff Rate (Percentage of Tariff Equivalent)	
				Year 1	<del>Year 6</del> <b>2006</b>	Year 1	<del>Year 6</del> <b>2006</b>
1	Peanuts	import ban or consent letter	50% 40% 35% 30% 15% 10% 5%	4%	8%	100%	85%

Serial Numbers	Product	Current Import Regulation	Current Rate	Quota (Percentage of Domestic Consumption)		Out-of-Quota Tariff Rate (Percentage of Tariff Equivalent)	
				Year 1	<del>Year 6</del> 2006	Year 1	<del>Year 6</del> 2006
2	Fresh Pears (excl. European Pears)	import ban	50%	4%	8%	100%	85%
3	Sugar	consent letter	25% 35%	26%	41%	90%	76%
4	Dry Garlic Bulbs	import ban	40% 45%	4.2%	8%	80%	68%
5	Betel Nuts	import ban	35%	4%	8%	100%	85%
6	Meat of Fowls	import ban	40% 20%	4%	8%	100%	85%
7	Liquid Milk*	import ban	20% 32.5% 35% 40%	4.5%	9%	80%	68%
8	Animal Offal	import ban	35% 50%	4%	8%	100%	85%
9	Mackerel	import ban	50% NT\$14/KG or 45% 42.5% 40% 37.5% NT\$11/KG or 37.5% 37.5%	15%	25%	100%	85%
10	Red Beans	import ban	20% 40% 45%	13%	21%	80%	68%
11	Dry Shiitake (Forest Mushroom)	import ban	50% or NT\$221/KG	4%	10%	80%	68%

Serial Numbers	Product	Current Import Regulation	Current Rate	Quota (Percentage of Domestic Consumption)		Out-of-Quota Tariff Rate (Percentage of Tariff Equivalent)	
				Year 1	<del>Year 6</del> 2006	Year 1	<del>Year 6</del> 2006
12	Shaddocks	import ban	50%	4%	10%	70%	60%
13	Dry Longans and Longan Pulp	import ban	30%	10%	30%	80%	68%
14	Young Coconuts	quota to 3 countries only	50% or NT\$3/KG	17.6%	22%	50%	43%
15	Bananas	import ban	25%	4%	10%	70%	60%
16	Pineapples	import ban	30%	4%	10%	50%	43%
17	Mangoes	import ban	50%	4%	10%	80%	68%
18	Persimmons**	import ban	50%	4%	10%	80%	68%
19	Carangid	import ban	40% 42.5% 50%	4%	10%	80%	68%
20	Sardines	import ban	37.5% 42.5% 40% 42.5% or NT\$81/KG 50%	15%	30%	100%	85%
21	Dry Day Lilies	import ban	45%	4%	10%	80%	68%

\* Importation of sweetened condensed milk will be liberalized upon accession.

\*\* After 6 years of implementation period, a tariff-only regime will be in place with the rate reduced to 35 per cent.

3. TO BE LIBERALIZED AFTER RAISING TARIFF RATES UPON ACCESSION:

Serial Numbers	Product	Current Import Regulation	Current Rate	Accession Rate	
				Year 1	Year 6 2002
<del>1</del>	<del>Pork Bellies</del>	<del>import ban</del>	<del>15%</del>	<del>NT\$18/KG (60%)</del>	<del>NT\$15/KG (50%)</del>
<del>2</del> 1	Fresh Longans	import ban	10%	20%	17%
<del>3</del> 2	Lychees	import ban	10%	20%	17%

4. TO BE LIBERALIZED UPON ACCESSION:

Serial Number	Product	Current Import Regulation
1	Wheat Flour	Already liberalized
2	Meslin Flour	Already liberalized
3	Potatoes	Import ban
4	Oranges	Area restriction
5	Limes and Lemons	Area restriction
6	Grapefruits	Area restriction
7	Grapes	Area restriction
8	Peaches	Area restriction
9	Plums	Area restriction
10	Apples	Area restriction
11	Papayas	Import ban
12	Other Mandarins	Area restriction
13	Other Citrus Fruits	Import ban
14	Ducks, cut into pieces	Import ban
15	Whole Ducks	Area restriction
16	Turkeys, cut into pieces	Area restriction
17	Guavas	Import ban
18	Squid	Import ban

ATTACHMENT D

The Consolidated List of Commodities Subject to Import Restrictions and Commodities Entrusted to Customs for Import Examination, June 1997 Edition, has been deposited with the WTO Secretariat (Accessions Division, Room 1126)

## ATTACHMENT E

### Summary of Law Amendments

Title of Law and Articles Amended	Background of Amendment
Foreign Trade Act Articles 6, 18, 20-1	<p><u>Article 6:</u></p> <p>The amendment is to remove previous authorization to take trade restrictive measures when encountering bilateral imbalances of trade. The new version changes the condition for taking such action to imbalance in international payments.</p>
	<p><u>Article 18:</u></p> <p>The amendment deletes the words "drastic or large" in describing the amount of increase in imports as a condition to initiate domestic safeguard action. This is to follow the use of language in the Safeguard Agreement.</p> <p>The amendment also provides a legal basis for the authority to set rules to initiate safeguard action as contemplated in the Agreement on Textiles and Clothing.</p>
	<p><u>Article 20.1:</u></p> <p>This is a new addition to the Law which is intended to provide the legal basis for the authority to regulate the pre-shipment inspection activities of firms mandated by foreign governments. It also gives binding effects of the decisions of dispute resolution panel of the WTO Preshipment Inspection Agreement on the private parties concerned, namely, the preshipment inspection company and the exporter.</p>



Title of Law and Articles Amended	Background of Amendment
The Commodity Inspection Law Articles 1, 4, 7, 8, 10, 11, 27, 28, 38	The amendment exercise is to achieve the following three objectives:  (i) to incorporate international standards in the domestic standard-setting process, so as to ensure that domestic inspection standards follow international trends, the inspection regime meets the requirements of the TBT Agreement,
	(ii) to accord national treatment to foreign products in terms of application of simplified procedures and exemption which were previously available only to domestic products,
	(iii) to accept and recognize foreign inspection certificates in order to be in line with the spirit of the TBT Agreement, particularly that calling for mutual recognition.
The Trademark Law Articles 4, 5, 23, 25, 34, 37, 61	The amendments to this Law are to achieve the following objectives:  (i) to broaden the scope of reciprocal granting of the right of priority to cover the situation where there is no formal agreement but the right of priority is granted to Chinese Taipei's owner of trademark through practice,
	(ii) to include combination of colours in the group of items that are capable of constituting a trademark so as to be consistent with Article 15 of the TRIPS Agreement,
	(iii) to extend administrative protection to well known marks by providing that no applications may be filed for registration of a trademark design which is identical with or similar to another person's well-known trademark or mark and likely to cause the public to form a mistaken belief.

Title of Law and Articles Amended	Background of Amendment
The Patent Law Articles 21, 51, 56, 57, 78, 79, 80, 82, 88, 91, 105, 109, 117, 122	The amendments to this Law are to achieve the following objectives: (i) to delete the requirement of reciprocity in respect of the granting of patents for micro-organisms, extension of patent protection terms and the granting of exclusive import rights so as to be consistent with Articles 3 and 4 of the TRIPS Agreement,
	(ii) to limit compulsory licensing in respect of semiconductor technology to public non-commercial use or to remedying anti-competitive practice, so as to be consistent with Article 31(c) of the TRIPS Agreement,
	(iii) to provide patent owners and his/her exclusive licensees the right to request destruction or other necessary disposition of the infringing goods, raw materials or instruments used, in connection with the infringement, so as to meet the requirement of Article 46 of the TRIPS Agreement which calls for giving the judicial authority to order disposition outside the channels of commerce,
	(iv) to provide for shifting the burden of proof in respect of process patents as required by Article 34 of the TRIPS Agreement,
	(v) to provide for longer term of protection for industrial design, so as to meet the minimum requirement of 10 years of the TRIPS Agreement.
Company Law Articles 373, 383	The amendment is to delete the reciprocity requirement for recognition of foreign companies and public placement of foreign companies' shares, so as to fulfil Chinese Taipei's commitments under the GATS.

Title of Law and Articles Amended	Background of Amendment
Customs Law Articles 3-1, 4-3, 4-4, 11-1, 12, 12-4, 12-5, 12-6, 27, 27-1, 46-1, 46-2, 47-2, 51	This set of amendments is to achieve the following objectives: (i) to provide a legal basis for application of tariff-quotas negotiated by Chinese Taipei as substitution measures for existing restrictions,
	(ii) to provide for a duty of secrecy on customs personnel in respect of information submitted for assessment of import duties, so as to meet the requirement of Article 10 of the Agreement on Customs Valuation,
	(iii) to provide a legal basis for the establishment of the rules of origin and the authority to require the submission of the certificates of origin,
	(iv) to revise the customs valuation rules according to the Agreement on Customs Valuation,
	(v) to delete the provisions that limit the drawback of import duties to imports of machinery by certain high-tech or important companies whose products are solely for export,
	(vi) to revise the provision relating to determination of normal value for purposes of anti-dumping administration so as to make it consistent with Article 2 of the Anti-dumping Agreement.
Statute for Commodity Tax Articles 3, 5, 13, 14, 15, 17, 18, 32	The amendments are to achieve the following objectives: (i) to delete rules relating to tobacco and alcohol products as this part of the Law will be replaced by the new Tobacco and Alcohol Tax Law, a separate body of law,
	(ii) to delete allowance for deduction of 12 per cent promotion expenses in the calculation of tax base, when goods are not circulated through exclusive distributors, as a reflection of Chinese Taipei's accession commitment,

Title of Law and Articles Amended	Background of Amendment
	(iii) to exclude harbour construction dues from the tax base for commodity tax.
Business Tax Law Articles 16, 20	The amendments are to exclude harbour construction dues from the tax base of the business tax and to require that the business tax base shall include tobacco and alcohol tax as provided in the new Tobacco and Alcohol Tax Law.
The Securities and Exchange Law Articles 54, 95, 128	Article 54: This amendment is to delete the requirement that the certain business personnel of securities firms be Chinese Taipei residents.
	Article 95: This amendment is to delete the limitation that only one stock exchange can be established in one geographical area,
	Article 63: This amendment is to delete the limitation that only Chinese Taipei residents can be shareholders of a stock exchange in company form.
The Certified Public Accountants Law Article 47	The amendment is to delete the reciprocity requirement for foreigners to take the examination and be qualified as certified public accountants in Chinese Taipei.
Commercial Port Law Article 7	The amendment is to subject goods, circulated internally through international commercial ports, to the levy of the harbour construction dues in order to be consistent with the principle of national treatment. The amendment also makes clear that the revenue of harbour construction dues shall be used exclusively for the development of commercial harbours so as to ensure the levy to be consistent with Article VIII of the GATT 1994 which regulates the levy of service fees.
Highway Law Article 35	<del>The amendment is to provide legislative mandate to the administrative authority for the opening of the markets for rental services of passenger cars, freight trucking and container trucking as a reflection of Chinese Taipei's commitment under the GATS.</del>

Title of Law and Articles Amended	Background of Amendment
Lawyers' Law Articles 20.1, 42, 45, 46, 47.1 to 47.14, 48, 49, 50, 50.1	This set of amendments is directed: (i) to provide a statutory basis for allowing Chinese Taipei lawyers to hire foreigners to work as consultants or legal assistants,
	(ii) to delete the reciprocity requirement for foreigners to take the bar examination and become qualified to practice Chinese Taipei law,
	(iii) to provide the statutory basis and qualification standards for allowing foreign lawyers to practice the laws of their home countries and international law in Chinese Taipei.
Architects' Law Article 54	The amendment is to delete the reciprocity requirement for foreigners to take the architects' examination and become qualified to practice in Chinese Taipei.
Statute Governing Privileges and Immunities of the Foreign Missions and their Personnel in Chinese Taipei Article 7-1	This addition to the Law is to extend privileges and immunities to WTO related personnel for purposes of Article 8 of the Marrakesh Agreement Establishing the World Trade Organization.
Law of Pharmaceutical Affairs Article 53	This amendment is to lift the restriction on and provide rules for regulating repackaging of imported pharmaceutical products.
Law Governing Food Sanitation Article 17	The amendment is to provide the labelling of food products with an option to use the date of manufacture or the expiry date as a code for product identification.
The Publication Law Article 8	This amendment is to delete reciprocity requirements in the granting of publishing rights to foreign nationals.
Central Bank Act Article 23	The amendment is to replace current limitation on foreign liabilities of banks operating in Chinese Taipei with reserve requirements.
Banking Law Article 42	This amendment is to compliment the amendment of Article 23 of the Central Bank Act in respect of the authority in the setting of the deposit reserve ratio and reserves for other liabilities

Title of Law and Articles Amended	Background of Amendment
<p>Copyright Law</p> <p>- Amended 104 articles</p>	<p>The amendments to this Law are to achieve the following objectives:</p> <p>1) <del>To strengthen protection of public performances, broadcasts and communications by extending coverage of the Law to be consistent with Article 11(1)(ii) of the Berne Convention and Article 14(1) of TRIPS;</del></p> <p>2) <del>To extend protection of public display to include re-productions of previously unreleased artistic pieces and/or photographic works;</del></p> <p>3) <del>To restore market mechanism by abolishing compulsory floor price setting;</del></p> <p>4) <del>To eliminate practices inconsistent with international treaties, such as preferential treatment on local copyrights;</del></p> <p>5) <del>To extend protection to include compulsory licensing on translated texts, to be consistent with the Berne Convention.</del></p>

Title of Law and Articles Amended	Background of Amendment
	<ol style="list-style-type: none"> <li>1) To amend the definitions for public broadcast and public performance;</li> <li>2) To include explicit protection for performances;</li> <li>3) To revise the provisions regarding the ownership of works created in the course of employment or under commission. These revisions are aimed at reducing tension which have existed between the employers and employees under the old law;</li> <li>4) To revise the provisions regarding the moral right of integrity in order to accommodate the use and circulation of works;</li> <li>5) To expand the subject matter of works protected by the public display rights;</li> <li>6) To delete provisions mandating the competent authority to set the minimum prices for the transfer of economic rights of works and the royalties for the use of such works. This change is made because that market mechanism should be allowed to determine these prices;</li> <li>7) To delete provisions concerning compulsory licenses for translations in accordance with TRIPS and the Berne Convention;</li> <li>8) To amend provisions regarding compulsory mechanical licensing for musical works. This is based on the ideal of promoting the circulation of musical works;</li> <li>9) To abolish the copyright registration system;</li> <li>10) To afford a life plus 50 years or 50 years term of retroactive protection for works not protected prior to Chinese Taipei's accession to the WTO.</li> </ol>

Title of Law and Articles Amended	Background of Amendment
<p>Copyright Intermediary Organization Act</p> <p>- New legislation of 46 articles</p>	<p><del>The amendments to this Law</del> are new legislation is to promote and to facilitate the use of copyrighted works by the general public through well-established professional copyright intermediary organizations, following examples from international practices.</p>
<p>Statute for Establishment and Management of Export Processing Zone</p> <p>- Amended 30 articles</p>	<p>The amendments to this Statute are to promote international trade by means of the following:</p> <p>6) To replace the original policy objective of export- oriented by international trade promotion;</p> <p>7) To expand the scope and depth of business within the zone, including trade information services, R&amp;D and technical services;</p> <p>8) To encourage investments by the elimination of restrictions on establishing businesses within the zone;</p> <p>9) To increase administrative efficiency within the zone by simplifying the customs clearance process, consistent with the Negative List provided by Article 11 of the Foreign Trade Act.</p>



Title of Law and Articles Amended	Background of Amendment
<p>Tobacco and Alcohol Administration Law</p> <p>- New legislation of <del>60</del> <b>63</b> articles</p>	<p>Following the tobacco and alcohol reform plan, the new Law is to provide legislative mandate to the administrative authorities for the opening-up of the tobacco and alcohol products. The new Law aims to achieve the following:</p> <p>10) To provide a legal basis for the authorities to regulate the manufacture and the distribution of tobacco and alcohol products;</p> <p>11) To provide definitions of tobacco and alcohol products;</p> <p>12) To forestall international trade disputes by preventing the prevalence of counterfeit products and ensuring established standards are implemented and enforced in the manufacture of tobacco and alcohol products;</p> <p>13) To protect national health interests by including measures such as guidelines on labelling tobacco and alcohol products and regulations on advertisements.</p>
<p>Statute Governing the Organization of National Treasury, Ministry of Finance</p> <p>- Amended 13 articles</p>	<p>The amendments of this Statute reflect the administrative modifications made with the reform of the tobacco and alcohol monopoly. A department will be added to the current organizational structure to implement administrative requirements established in the new Tobacco and Alcohol Administration Law.</p>
<p>Tobacco and Alcohol Tax Law</p> <p>- New legislation of <del>24</del> <b>22</b> articles</p>	<p><del>The amendments to this Law are</del> new legislation is to achieve the following:</p> <p>14) To provide definitions of tobacco and alcoholic beverages;</p> <p>15) To establish a new tax system in light of the reform of the tobacco and alcohol monopoly to facilitate tax collection;</p> <p>16) To establish tax collection procedures to facilitate the enforcement of the new tax regime.</p>

Title of Law and Articles Amended	Background of Amendment
Food Management Law  - Amended 3 articles	The amendments to this Law are to minimize the price differential between domestic and imported goods. Japan's "mark-up" approach to imports of cereal, rice and processed rice products will be adopted, consistent with Article 4(2) of the WTO Agreement on Agriculture.
Statute for Agriculture Development  - Amended 25 articles	The amendments to this Statute are to achieve the following: 17) To introduce competitive pricing system by deleting "uniform pricing" for exported agricultural products, to complement the enforcement of the Fair Trade Law and open-market mechanisms; 18) To expand the Statute to include special safeguard provisions consistent with the WTO Agreement on Agriculture; 19) To introduce measures to prevent the monopolization of the market.
Government Procurement Law  - Draft legislation has 8 chapters containing 98 articles	<del>This draft Law has 8 chapters containing 98 articles. The Law aims to ensure a transparent, free and fair environment in government procurement projects, consistent with the GPA by the following:</del> <del>20) To designate a single agency — Public Construction Commission to be responsible for matters relating to government procurement;</del> <del>21) To promote transparency by publishing procurement notices in the Government Procurement Gazette;</del> <del>22) To include participation of foreign bidders base on international treaties or agreements;</del> <del>23) To extend procurement process to include open, selected and limited tenders, consistent with the GPA;</del> <del>24) To establish a committee to accept tender disputes raised by contractors or potential suppliers;</del> <del>25) To provide access to arbitration in settling contractual disputes.</del>

Title of Law and Articles Amended	Background of Amendment
<p>Statute Governing the Organization of the Public Construction Commission, Executive Yuan</p> <p>- Amended and added a total of 14 articles</p>	<p>The amendments to this Statute reflect the re-structured and expanded responsibilities of the Public Construction Commission. The changes include:</p> <p>26) To establish a committee within the Commission to handle complaints by suppliers on government procurement projects;</p> <p>27) To establish an information office within the Commission as a centralized information system on public construction and government procurement projects;</p> <p>28) To provide technical assistance and support to other government agencies in matters relating to government procurement.</p>
<p>Statute for Inspection Procedure Governing Properties by Government Agencies</p> <p>- Amended 7 articles; added 4 articles; deleted 29 articles; and maintained 1 article</p>	<p>The amended Statute is formerly know as the "Statute for Inspection Procedure Governing Construction Works and Procurement and Disposal of Properties by Government Agencies". The amendments to this Statute aim to simplify inspection procedures and to improve efficiency by clarifying the sole responsible authority for government procurement i.e. Public Construction Commission. Therefore, procedures inconsistent with the Statute are either deleted or combined with the Government Procurement Law.</p>