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Global Forum on Competition

COMPETITION, STATE AIDS AND SUBSIDIES

Contribution from Chinese Taipei

-- Session I --

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COMPETITION, STATE AIDS AND SUBSIDIES

-- Chinese Taipei --

1. Introduction

1. There is no general state aids policy in Chinese Taipei. However, competent authorities set regulations for various government subsidies. The majority of government subsidies are for the promotion of agriculture and fisheries, the development of mass transportation, industry, outlying islands or remote areas, and trading business, or the protection of the victims of national disasters.

2. In preparing the present submission, the Fair Trade Commission (hereinafter “the FTC”) consulted with various government agencies responsible for government subsidies, including the Bureau of Energy, the Industrial Development Bureau, and the State-Owned Enterprise Commission which are under the Ministry of the Economic Affairs, as well as the Council of Agriculture. This submission will focus on issues related to the use of government subsidies and legal restrictions, as well as outline some cases of subsidies handled by the FTC for illustration.

2. The use of government subsidies in Chinese Taipei

3. Since Chinese Taipei joined the WTO in 2002, measures for related industrial subsidies have complied with the WTO regulations and the WTO has been regularly notified pursuant to the WTO Agreement on Subsidies and Countervailing Measures. A number of examples of the subsidy measures, preferential loans, and tax exemptions for agriculture, fisheries, and industry in Chinese Taipei are explained as follows.

2.1 Agriculture: Companies in the Pingtung agricultural biotechnology park

4. Biotechnology companies moving into the Pingtung Agricultural Biotechnology Park may apply for subsidies to offset the costs of the following activities:

- The planning or development of technology that may be vital, innovative, integrative, common, or fundamental to the agricultural biotechnology industry;
- The planning, development, or establishment of a service platform, system, or model that helps the marketing, distribution, application, or value-added service of the agricultural biotechnology industry;
- The planning, development, or establishment of innovative business models or procedures that promote knowledge creation, circulation, or value-added to the technological development of the agricultural biotechnology industry; and
- Other research or development activities that create specific knowledge capital, redefine the value of the agricultural biotechnology industry, or improve the industrial capacity for innovation.

5. The subsidy to be granted is not to exceed 50 percent of the budget for research and development in the applicant's proposal. In addition, the total subsidy allocated for each proposal is not to exceed one million New Taiwan Dollars (NTD).

6. Preferential loans at below-market rates: Companies moving into the agricultural biotechnology park may apply for preferential loans with an annual interest rate of 2%. Since January 15, 2009, the interest rate has been reduced to 1.5%. A total of NTD 146.03 million in loans has been approved. The amount of the interest subsidies is NTD 2.19 million (based on the interest rate level of 3% in financial markets).

2.2 Fisheries

2.2.1 Fishing vessels buy-back

7. Due to severe overfishing worldwide, the UN has been urgently calling on nations to reduce their fishing capacities. Chinese Taipei implements a "fishing vessels buy-back programme" to alleviate pressures on the dwindling fishery resources and ensure their sustainability. The beneficiaries are owners of all varieties of fishing vessels with valid fishing licenses, including recreational fishing vessels.

8. Funds expended on buying back 90 fishing vessels and 262 fishing rafts in 2007 totalled NTD 485.53 million; funds spent on buying back 127 fishing vessels and 333 fishing rafts in 2008 totalled NTD 741.314 million.

2.2.2 Fishing vessels marine insurance grants

9. To insure fishing vessels against marine disasters, Chinese Taipei provides grants to cover part of the costs of insurance for fishing vessels in case of damage at sea. The budget for this part totalled NTD 78.4 million in 2007 and NTD 83.5 million in 2008.

2.2.3 Fishing vessels reduction programme

10. Due to severe overfishing worldwide, the UN has been urgently calling on nations to reduce their fishing capacities. Chinese Taipei implements a "government compensation for fishing vessels reduction programme" to alleviate pressures on the dwindling fishery resources and ensure their sustainability.

11. The beneficiaries are owners of big-eye tuna long-line fishing vessels with valid fishing licenses and ultra-low temperature freezing equipment. They have been compensated with NTD 30,000 for each gross ton. Funds spent on reducing 23 fishing vessels in 2007 totalled NTD 451.26 million.

2.3 Industry

2.3.1 Tax credit for investment in a disadvantaged region

12. With the overall objective of achieving balanced economic growth within Chinese Taipei, the aim of the tax credit programme is to encourage investment in disadvantaged geographical regions.

13. Any company incorporated under the Company Law, which makes an investment in a region with scant natural resources or with slow development, may gain credits of up to 20 percent of the total amount of its investment against the corporate income tax levied in the then current year, provided it meets the threshold of capital or the threshold number of employees. If the amount of corporate income tax levied in that year is less than the tax credit, the balance of the tax credit may be applied against the corporate income tax levied in the ensuing four years.

14. The threshold capital refers to the total amount used in procuring brand-new machinery, equipment and buildings which adds up to NTD 25 million. The term “minimum number of employees” refers to the monthly average of the number of newly-employed employees in a full year, amounting to fifty persons or more.

2.3.2 Specific and urgent financing and loans intended for working capital needed during periods of economic crisis and recession, and for recovery plans from damage caused by major natural disasters

15. According to Article 2 of the “Standards for Identifying a Small and Medium-Sized Enterprise”, an SME is a company or commercial enterprise registered in accordance with the law with capital or operating revenue below the following thresholds:

- For enterprises engaged in manufacturing, construction, mining or excavating, a paid-in capital of less than NTD 80 million;
- For enterprises engaged in other economic activities such as agriculture, logging, fishing, the raising of livestock, utilities, commerce, transport, warehousing, communications, finance, insurance, real estate, commercial, social or individual services, an annual operating revenue of less than NTD 100 million.

16. Qualified SMEs in circumstances meeting the following conditions are entitled to apply for financing and loans:

- Urgent financing is provided for the provision of working capital during periods of significant financial crisis, recession and major natural disasters;
- The loans are provided for helping enterprises restructure during periods of economic crisis and recession, replacing machinery and purchasing new automated equipment.

2.3.3 Duty and tax exemptions for high-technology industries

17. In order to stimulate the research and innovation of industrial technology and to promote the development of advanced technology in Chinese Taipei, the “Science-based Industrial Park” (the Park) has been established by introducing sophisticated industries and personnel with advanced technological backgrounds into a designated zone.

18. A park enterprise refers to a science-based industry and to an enterprise approved and established in the Park that is able to provide services in respect of operational, management or technical support to science-based industries.

19. All Park enterprises are entitled to the following exemptions:

- Customs duties, commodity tax, and business tax on imported machinery and equipment, raw materials, commodities, fuel, and semi-finished products; and
- Commodity tax and business tax on exported goods or labour services.

20. According to Section 2, paragraph 1, Article 3 of the Commodity Tax Statute and Article 7 of the Value-added and Non Value-added Law, exports can be exempted from commodity tax and the business tax rate on exported goods is zero. These tax treatments are not specific to enterprises located in the Park, as they are generally available for exported goods, regardless of whether or not the manufacturers

are located in the Park. The total amount of business tax exemptions for all imports was NTD 42,298 million and NTD 34,045 million in 2007 and 2008, respectively.

2.3.4 Subsidies for the establishment and operation of petroleum facilities in mountain and offshore areas

21. According to Article 36 of the Petroleum Administration Act, the Petroleum Fund will be used for some purposes, such as subsidising the setting up of petroleum facilities in mountain and offshore areas as well as transportation outlays, and offering price subsidies. The policy objective is to maintain oil supplies from reserves located in mountain and offshore island areas.

22. Building contractors and/or operators of petroleum facilities in mountain and offshore island areas are entitled to apply for the following subsidies:

- Subsidy for the establishment of petroleum facilities in mountain and offshore island areas;
- Subsidy for the cost of maintaining petroleum facilities in mountain and offshore island areas;
- Subsidy to offset the cost of shipping petroleum or Liquefied Petroleum Gas to mountain and offshore island areas;
- Subsidy for extra personnel costs in the operation of petroleum facilities in mountain or offshore island areas.

23. The total amount of such subsidies was NTD 199 million and NTD 245 million in 2007 and 2008, respectively.

2.4 Fund granted for promoting the development of industrial technology

24. According to the Regulations of Subsidisation for Encouraging Enterprise R&D Activities, any company established according to the Company Law with sound financial standing and a Research and Development Department that has made significant achievements in the past, and which is currently staffed by competent specialists, may apply for this fund to offset the costs of the following activities:

- The planning or development of industrial technologies that may be aptly characterised as vital, innovative or integrative;
- Development of innovative or integrative manufacturing technology by small and medium-sized businesses;
- Development of innovative IT application systems;
- Development of innovative business models based on strategic services-oriented research;
- Cooperation with major national technology-related policies and the creation of an environment conducive to the development of technology and industry within civilian business enterprises.

25. The assistance funds to be granted shall not exceed 50 percent of the total amount of the following expenses:

- Costs incurred for full-time and/or part-time research personnel;

- Costs of consumable instruments and raw materials;
- Costs for the use and maintenance of R&D equipment;
- Costs for technology transfer; and
- Domestic and overseas travel expenses.

26. The total amount of the grants in the fiscal year 2007-2008 was NTD 6,571 million.

3. Legal restrictions and subsidies

27. The FTC does not exert control on state aids in Chinese Taipei. In case a government agent grants subsidies for necessary policy consideration, the nature of the subsidies can be a public law matter or a private economic activity. However, the FTC will properly intervene if relevant trading activities derived from subsidies affect market competition in violation of the provisions of the Fair Trade Act.

28. Cases concerning farmers associations and consumption cooperatives that have required the FTC's enforcement are described as follows:

3.1 *The farmers association subsidising farmers on pesticides*

29. Pursuant to Articles 4 and 40 of the Farmers Association Act, the farmers association provides farmers with subsidies on pesticide purchase, and a fund was obtained from the profits of a farmers association allocated for agricultural extension (62% of the profits). Since the conduct for subsidies on pesticide purchases provided by the farmers association was likely to impede the fair competition with pesticide wholesalers and retailers, the FTC organised a meeting entitled "The feasible scheme for subsidies on pesticides by the farmers association and other issues related to the agricultural policy involving the Fair Trade Act" to exchange views with the Council of Agriculture in November 2000. Some of the outcomes are described as follows:

- Relevant authorities will supervise the farmers associations so that they do not to sell pesticides to members at a price lower than the purchasing price;
- If the farmers association, under the statutory requirement of the Farmers Association Act, uses profits to subsidise certain materials for agricultural production, (1) in addition to pesticides, other materials may also be subsidised; (2) the beneficiaries of subsidies on pesticides are agricultural factories and plants under the Taiwan Provincial Farmers' Association, and (3) the subsidies on pesticides are mainly for pest control, not for general purposes;
- When the farmers association sells pesticides which are not produced by agricultural factories and plants under the Taiwan Provincial Farmers' Association, the selling price may not be lower than the purchasing price. Individual cases involving unfair competition will be handled by the FTC according to the Fair Trade Act;
- Regarding the ad hoc government subsidy programmes on pesticide purchase for farmers in the production-and-marketing groups, the township farmers associations shall inform the production-and-marketing group of the following: pesticides can be purchased from either the farmers association or pesticide retailers;

- The application for government subsidies by the township farmers association for pest control projects shall be strictly reviewed. Subsidies will not be granted if they are not to meet an emergency or for specific needs.

3.2 Tax exemptions are specific to consumption cooperatives, and not applicable to general retailers

30. Paragraph 2, Article 3-1 of the Cooperatives Act provides that “A cooperative other than prescribed in the above paragraph shall be restricted by the following provisions unless it is entrusted by the government or a public welfare association: ... 3. Supply cooperatives and consumption cooperatives may not provide or sell goods to anyone other than members...” Hence, cooperatives may not trade with non-members. Article 7 of the same Act states, “cooperatives may be exempted from income tax and business tax.” As a result, pursuant to Subparagraph 10, Paragraph 1, Article 8 of the Value-added and Non value-added Business Tax Act and Subparagraph 14, Paragraph 1, Article 4 of the Income Tax Act, cooperatives are entitled to tax exemptions when selling goods to members.

31. In 2000, the FTC consulted with the Ministry of the Interior and Ministry of Finance in order to facilitate fair competition between general retailers and consumption cooperatives and advise those agencies to abolish the provisions regarding income and business tax exemptions for consumption cooperatives. In the initial result, there is no consensus on this issue.

32. The position of the Ministry of the Interior responsible for the Cooperatives Act is as follows:

33. Cooperatives refer to the associations organised based on the principle of equality and mutual aid. Cooperatives are public legal entities pursuing improvement of the economic benefits and living standards of members by means of joint operations. Cooperatives and private companies are different in nature. The latter seek to pursue profits, while the former seek to encourage the self-reliance of disadvantaged groups and alleviate the government’s burden in providing assistance. Article 145 of the Constitution stipulates that cooperative enterprises shall receive encouragement and assistance from the State.

34. The deal between cooperatives and its members is an internal affair rather than an external profit-making activity; therefore, consumption cooperatives can be exempted from income tax and business tax. In addition, cooperative enterprises are beneficial to their members and can stabilise the prices of commodities, and thus the provisions for tax exemptions for cooperative enterprises shall be retained.

35. The position of the Ministry of Finance is that the provisions for such tax exemptions will be abolished and amended after the Ministry of the Interior deletes relevant regulations.

36. Recently, in response to the deregulation policy in Chinese Taipei, the Ministry of the Interior started to amend the Cooperatives Act. The objective of the draft amendments to the Cooperatives Act is to improve the competitiveness of the cooperative enterprises in the relevant markets and encourage the development of the cooperative enterprises. In taking into consideration the above items with a view to establishing the cooperatives, the amendments to the Cooperative Act did not delete the provisions of the tax exemptions, and the tax exemptions will thus even apply to non-members. As no consensus could be reached over the controversy which followed with regard to the purpose and principles of the Cooperative Act, a draft amendment for Parliamentary review was returned to the competent authority in October 2009 for redrafting. The draft amendment did not, however, adopt the FTC’s suggestions as mentioned above, and the FTC will continuously make efforts to advocate competition and will closely watch future developments concerning draft amendments to the Cooperative Act.