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Chinese Taipei's Self-assessment Report for the APEC-OECD Integrated Checklist on Regulatory Reform

An Overview

Over the past two decades, Chinese Taipei has successively adopted a variety of policy measures to pursue trade and investment liberalization and to carry out regulatory reform. In 1995, Chinese Taipei proposed the plan to develop itself into an *Asia-Pacific Regional Operations Center*. The plan was formulated for implementation in three phases, with the first phase aimed at laying a firm foundation for liberalization and internationalization (Jan. 1995 – June, 1997), the second at strengthening the regulatory framework for investment and business operations (July, 1997 – Dec. 2000), and the third for achieving full-scale economic liberalization and internationalization (Jan. 2001 – 2005).

The major government agency that is responsible for the various coordinating tasks of Chinese Taipei's regulatory reform is the Council for Economic Planning and Development (CEPD). The CEPD has been promoting initiatives such as the *Asia-Pacific Regional Operations Center Plan*, the *Knowledge-based Economy Plan*, the *Global Logistics Development Plan*, and, more recently, the *Free Trade Zones Plan*, all of which are aimed at furthering deregulations and regulatory reforms across a broad swath of economic activities and embracing the world trends of globalization, liberalization, and transformation to a knowledge-based economy.

According to the *Government Reform Guidelines* passed by the Cabinet during its 1560th meeting on January 2, 2000, the CEPD was designated to take charge of promoting regulatory reform to increase economic competitiveness and push forward with government reform at the same time. Furthermore, the *Administrative Reform Conference*, which was held on February 25-26, 2001, and had deregulation and reform as its theme, the CEPD should be responsible for regulatory reform and providing incentives for civil servants to be innovative. In addition, when it was called together by the leader of Chinese Taipei on October 25, 2001, the *Innovative Service Mechanism Group* under the *Government Reform Committee* tasked the CEPD with drafting a framework in which it was to list items in order of importance, urgency, originality, and efficiency for deregulation, the relaxing of controls, and the strengthening of the maximization of benefits. The Cabinet established the *Council of Organizational Reform* in 2002 and addressed putting together an implementation mechanism for deregulation, decentralization, corporatization, and outsourcing in order to better serve the people.

Chinese Taipei recognizes that government reform is a fundamental step in increasing economic competitiveness. Regulatory reform is part of this process. There are three core concepts: (1) deregulation, simplification of administrative procedures, active innovation, and the relaxation of controls; (2) establishment of a modern and highly efficient regulatory environment under the principles of maximizing benefits, simplifying government, and better serving the people; (3) establishment of active, energetic, and efficient administrative organizations. The mission of deregulation, control minimization and benefits maximization is a continuous process. There are several methods that are being implemented, such as: (1) establishing an outside-in mechanism; hosting conference with the European and American Chambers of Commerce on a regular basis; communication assistance and coordination among Cabinet-level government agencies to meet the needs of the society; (2) enhancing a bottom-up implementation system to replace control and investigation via a mechanism for granting awards such as the Golden Axe Awards.

Up to the present time, there are already a number of cases that have succeeded in implementing the aforementioned processes. Pushing forward with cases of deregulation was delayed due to concerns about the impact on government employees as well as issues concerning budgets and personnel arrangements. The CEPD, the staff organization of the deregulation group under the *Council of Organizational Reform*, reviewed the status of actual implementation. Moreover, in accordance with Article 10 of the *Basic Organizational Act of Central Administrative Agencies*, the

regulation that concerns adjustment to or dissolution of institutions as well as departments within institutions, the CEPD published a manual regarding deregulating administrative personnel, which could serve as a reference for administrative organizations.

In 2002, the *Innovative Service Mechanism Group* submitted a document concerning the establishment of Regulatory Impact Analysis (RIA) in the hope of effectively utilizing government resources in accordance with related economic analyses. In 2003, the CEPD, through the method of entrusted research, presented a research report entitled *A Feasibility Study on Administrative Organizations' Implementation of RIA*. In 2004, the CEPD and the Committee of Laws and Regulations (The Cabinet) entrusted another research project in order to gain a better understanding of RIA within administrative agencies.

Following Chinese Taipei's WTO accession in 2002, further deregulation has been carried out in areas that had not been fully liberalized, such as financial services, transportation, investment, and flow of personnel, while a number of import tariffs have been lowered and non-tariff barriers removed. Moreover, to demonstrate Chinese Taipei's determination to open up its market and enhance the operating efficiency of state-owned enterprises, the timetable for the privatization of state-owned enterprises has been advanced.

Chinese Taipei recognizes that regulatory reform is one of the important elements in the promotion of open and competitive market. We have been striving to further the goals of trade liberalization and facilitation and made significant progress in terms of regulatory reforms. Meanwhile, we fully support the need to develop the *APEC-OECD Integrated Checklist on Regulatory Reform* for the self-assessment on regulatory, competition, and market openness policies so that member economies may use it as a guiding tool to evaluate their respective regulatory regimes. By producing a synergy of the three policy areas--regulatory, competition, and market openness policies, the essence and tenets of the OECD and APEC Principles are fully incorporated in the Integrated Checklist, which successfully highlights the importance of regulatory quality, competition, and the avoidance of unnecessary economic distortions. In the future, it is essential to have a feasible action plan that would take individual member economy's domestic context into account and enhance member economies' capabilities in carrying out necessary reforms via various capacity building programs as well as international cooperation in certain aspects.

CEPD has initiated studies on establishing a mechanism for Regulatory Impacts Analysis (RIA), to assess the feasibility of employing the RIA mechanism to review existing regulations or newly enacted laws. It is hoped that this may provide a systematic method to adopt while conducting regulatory reforms. For the first phase, the study on the operational experiences of the various OECD countries, including the US, UK, Canada, South Korea, and Australia, has already been completed, with a report thereon issued at the end of 2003. At the end of February 2004, CEPD has completed the second-phase task of empirical analysis, within which one best-practice case study with regards to the "Commodity Inspection Act" of the Bureau of Standards, Metrology and Inspection, MOEA was conducted.

More recently, Chinese Taipei has held a *Forum on the APEC-OECD Integrated Checklist on Regulatory Reform* (June 27, 2006), within which two OECD experts (Dr. Rolf Alter and Dr. Josef Konvitz) were invited to meet with its high-ranking government officials to gain further support for its self-assessment exercise and to help disseminate the essence and basic tenets of the Checklist. In the meantime, via an award-granting mechanism (i.e. the Golden Axe Awards), several trainings for civil servants of various government agencies have also been conducted in preparation for this undertaking. This report is to act as the final product for such a self-assessment activity. Also, an oral presentation in an APEC-OECD joint roundtable discussion on structural reform within the EC2 meeting is to be delivered.

Chinese Taipei's Answers to the APEC-OECD Integrated Checklist on Regulatory Reform

A: Horizontal Criteria Concerning Regulatory Reform

A1: To what extent is there an integrated policy for regulatory reform that sets out principles dealing with regulatory, competition and market openness policies?

Answer:

According to the *Government Reform Guidelines* passed by the Cabinet during its 1560th meeting on January 2, 2000, the CEPD was designated to take charge of promoting regulatory reform to increase economic competitiveness and push forward with government reform at the same time. Furthermore, the *Administrative Reform Conference*, which was held on February 25-26, 2001, and had deregulation and reform as its theme, the CEPD should be responsible for regulatory reform and providing incentives for civil servants to be innovative.

In addition, the *Innovative Service Mechanism Group* under the *Government Reform Committee*, being called together by the leader of Chinese Taipei on October 25, 2001, also tasked the CEPD with drafting a framework in which it was to list items in order of importance, urgency, originality, and efficiency for deregulation, the relaxing of controls, and the strengthening of the maximization of benefits. The Cabinet established the *Council of Organizational Reform* in 2002 and addressed putting together an implementation mechanism for deregulation, decentralization, corporatization, and outsourcing in order to better serve the people.

A2: How strongly do political leaders and senior officials express support for regulatory reform to both the public and officials, including the explicit fostering of competition and open markets? How is this support translated in practice into reform and how have businesspeople, consumers and other interested groups reacted to these actions and to the reforms in concrete terms?

Answer:

As demonstrated in the answer of the preceding question, the leader of Chinese Taipei and the Cabinet have both initiated the mandate in this regards.

A3: What are the accountability mechanisms that assure the effective implementation of regulatory, competition and market openness policies?

Answer:

In respect to the regulatory policies, CEPD has been mandated to work with the Committee of Laws and Regulations (The Cabinet), the Research, Development, and Evaluation Commission (The Cabinet), along with the Ministry of Justice. The Fair Trade Commission is the competition authority in charge of the competition laws. Regarding market openness policies, Ministry of Economic Affairs (MOEA) and Ministry of Finance are in charge of the policy formulation.

A4: To what extent do regulation, competition and market openness policies avoid discrimination between like goods, services, or service suppliers in like circumstances, whether foreign or domestic? If elements of discrimination exist, what is their rationale? What consideration has been given to eliminating or minimizing them?

Answer:

Article 17 of the *Statute for Investment by Foreign Nationals*, states: "Except as otherwise provided for in other laws, the enterprise in which the investor has invested hereunder shall be

accorded the same rights and obligations to which an enterprise operated by local Chinese [Taipei] nationals is entitled."

Furthermore, Chinese Taipei's participation in APEC's Non-Binding Investment Principles and OECD's recent Policy Framework for Investment can act as an opportunity to review whether domestic investment-related laws and regulations conform to the principle of non-discriminatory treatment and whether they have a negative impact on investment.

A5: To what extent has regulatory reform, including policies dealing with regulatory quality, competition and market openness, been encouraged and coordinated at all levels of government (e.g., Federal, state, local, supranational)?

Answer:

Chinese Taipei follows the rule of law, and how overarching control is concerns the restriction of people's basic rights. Such control must have its basis in law and the content and procedures in same must meet requirements, and be under the framework of the Chinese Taipei's Basic Law, institutional laws of all levels of governments, and individual measures and regulations, and come into being through a coordinated effort. Quality regulations, as part of regulatory reform, can accord with the explanations mentioned above to go one step further:

1. Requirements regarding the content of the scale of regulations: According to Article 23 of Chinese Taipei's Basic Law, which states that limits to people's basic rights should be restricted by law, and the content of related laws should be clearly delineated. If such a law authorizes the making of rules and regulations, it should tally with the principle of clear authorization. Objectives, content, and scope of authorization should be concrete and definite. In addition, objectives and methods used to limit people's basic rights should tally with the principle of proportionality. They should have a legitimate objective, use only those methods necessary, and restrictions should be of a suitable nature.

2. Requirements for those procedures concerning regulations: Relevant procedures should be approved by the Parliament, and laws promulgated by the leader of Chinese Taipei should primarily be those that the Cabinet has given consideration to. To ensure the quality of draft laws, the Cabinet set up the *Guidelines for Bills Submitted by Cabinet Agencies for Review*, which sets up strict requirements regarding drafting bills. Regarding regulations, besides the *Administrative Procedure Act*, which established the procedure of requiring hearings and advance notice in Chinese Taipei, to ensure the quality of legal regulation, the Cabinet issued the *Guidelines on Central Administrative Agencies' Legal Matters*. This regulation is applicable to bills.

3. The cooperative relationship between all levels of governments: To realize the safeguarding of the autonomy of local governments spoken about in the Chinese Taipei's Basic Law, Chinese Taipei promulgated the *Local Government Act* to standardize the division of powers between the all levels of governments. Based on this, all levels of the governments act within the scope of their own authority. Regarding local autonomous laws and regulations, the government has a clear supervisory mechanism to ensure that laws are unified and harmonious. Judicial Yuan Interpretation No. 550 states that all levels of the governments should consult each other before establishing related policies and laws to ensure cooperation and guarantee the rights of local government to participate in the legislative process.

A6: Are the policies, laws, regulations, practices, procedures and decision making transparent, consistent, comprehensible and accessible to users both inside and outside government, and to domestic as well as foreign parties? And is effectiveness regularly assessed?

Answer:

In order to make policies and regulations transparent, Chinese Taipei created the *Cabinet Guidelines on Legal Matters* in 1977 (These were revised and became the *Guidelines on Central Administrative Agencies' Legal Matters* in 2004), which is still in use at present. These demand that there be a mechanism for transparency in the promulgation and revision of laws and regulations.

In order to ensure the consistency of policies and regulations, the Cabinet set up the *Guidelines for Bills Submitted by Cabinet Agencies for Review* and requested that each agency should decide on a policy objective when they render bills, then consult with relevant agencies and local autonomous bodies, otherwise such bills will be sent back to the agency that originally sent them.

According to *J.Y. Interpretations No. 538 and No. 539*, when the creation, amendment, or repeal of any law or regulation occurs, such an act should take into consideration the protection of standard beliefs and benefits. Fair remedial measures or transition acts should also be adopted. Following best-practice principles, regulations should only come into effect after some certain period of time, usually via setting a certain date. This can allow for better comprehension and compliance with the act, and ensure people's rights and interests. Articles 20 and 21 of the *Central Regulation Standard Act* give examples of how various types of regulation should be amended and repealed. The Cabinet also cooperates with important government agencies on implementing a set of regulations for review and revision and often a mechanism is provided within regulations themselves for them to be reviewed on a regular basis in line with best-practice principles.

The procedure to amend regulations, as well as bills treated as above, should have a procedure for seeking the public's opinion prior to being sent to the Cabinet for consideration. When creating regulations according to the *Administrative Procedure Act* and guidelines issued by the Cabinet, government agencies must ex officio hold a hearing. As well, an announcement should be made in the Cabinet Gazette concerning the regulation, and the period in which the announcement is run must not be less than 7 days. Should members of the public render opinions on the proposed regulation, they must do so to the proper authority for its reference. This will reduce the chance of criticism after the regulation is promulgated. People or groups could also submit regulation drafts to the relevant authority for its consideration.

In order to let those who participate at home and abroad understand matters concerning the policies and regulations of Chinese Taipei, the Cabinet has established the *Guidelines for Chinese-English Translation of Laws and Regulations* and the *Guidelines Concerning Computer Disposal Operating Standards of Laws and Regulations* to establish a database of Chinese Taipei laws and regulations and have all laws and regulations translated into English. The Cabinet has also set up an electronic government website in English to let people come to understand the actions of the government of Chinese Taipei. In addition to this website being convenient for people to share and utilize government information, it also ensures the right of the people to know and encourages people to understand, trust, and conduct oversight of public affairs. The government has also promoted public participation by enacting regulations like the *Freedom of Government Information Act* and the *Administrative Procedure Act* (hereafter referred to as "this Act").

With regard to announcing regulations, starting from January 1, 2005, the Cabinet has issued an integrated gazette, the *Cabinet Gazette*, which is published daily (except for holidays) (paper and electronic versions are issued simultaneously. The website is: *http://gazette.nat.gov.tw/*). This was done in accordance with the *Freedom of Government Information Act* and other laws and regulations, which state that the Cabinet should publish information in a bulletin in addition to the official bulletin (e.g. the official gazettes concerning government procurement or patents) of each agency under the Cabinet. Laws and regulations should be published in the *Cabinet Gazette* when they are issued so

that the public may have a convenient channel from which to become acquainted with the workings of their government.

In 1999, the Cabinet asked the Ministry of Justice to set up the *Laws and Regulations Database of the Chinese Taipei* (website: *http://law.moj.gov.tw/*). Laws, regulations, and government agency directives all can be found at this website. From 2004, to come into line with the promotion of bilingualism, agencies under the Cabinet have selected the most important directives for placement on this website such that foreigners may easily find them. Directives made by local governments have also been asked to submit items of importance for publication on the website.

If any of the above-mentioned public information concerning an individual, legal person, or group is incorrect, then that party should apply for corrections or for supplementary information to be added in accordance with the *Freedom of Government Information Act*. Affected parties may also seek administrative redress.

A7: Are the reform of regulation, the establishment of appropriate regulatory authorities, and the introduction of competition coherent in timing and sequencing?

Answer:

Due to legislative give-and-take negotiations, the timing of legislation that carried out various regulatory reforms is incoherent and, at times, hard to predict. As a result, it is difficult to arrange proper transitional measures. Political and economic contingencies also make efforts for regulatory reform (in particular, deregulation, privatization or outsourcing) very difficult in consistency.

A8: To what extent are there effective inter-ministerial mechanisms for managing and coordinating regulatory reform and integrating competition and market openness considerations into regulatory management systems?

Answer:

The CEPD was designated to take charge of promoting regulatory reform to increase competitiveness and, at the same time, push forward with government reform, according to the *Government Reform Guidelines* passed by the Cabinet during its 1560th meeting on January 2, 2000. In addition, the *Innovative Service Mechanism Group* under the *Government Reform Committee*, which was called together by the leader of Chinese Taipei on October 25, 2001, also tasked the CEPD with drafting a framework in which it was to list items in order of importance, urgency, originality, and efficiency for deregulation, the relaxing of controls, and the strengthening of the maximization of benefits. In 2002, the Cabinet established the *Council of Organizational Reform* and addressed putting together an implementation mechanism for deregulation, decentralization, corporatization, and outsourcing in order to better serve the people. Nowadays, CEPD has been mandated to work with the Committee of Laws and Regulations (The Cabinet), the Research, Development, and Evaluation Commission (The Cabinet), along with the Ministry of Justice in respect to the regulatory policies. The Fair Trade Commission is the competition authority in charge of the competition laws. Regarding market openness policies, Ministry of Economic Affairs (MOEA) and Ministry of Finance are in charge of the policy formulation.

A9: Do the authorities responsible for the quality of regulation and the openness of markets to foreign firms and the competition authorities have adequate human and technical resources, to fulfill their responsibilities in a timely manner?

Answer:

Yes, by and large relevant competent authorities for those matters have adequate human and technical resources.

A10: Are there training and capacity building programs for rule-makers and regulators to ensure that they are aware of high quality regulatory, competition and market openness considerations?

Answer:

As per the Central Regulation Standard Act, Administrative Procedure Act, Guidelines on Central Administrative Agencies' Legal Matters, Guidelines for Bills Submitted by Cabinet Agencies for Review, and relevant Cabinet interpretations, the promulgation and amendment of regulations should follow the above-mentioned regulatory procedures and progress on this should be reviewed. Moreover, the Committee of Laws and Regulations under the Cabinet hosts a two-month long training program for regulators every year. The program is designed to train regulators' professional regulatory abilities and to ensure the quality of the procedure for enacting laws.

To increase rule-makers and regulator's professional knowledge, increase their willingness to serve others, and communicate and deal with concepts of the legal profession, the Ministry of Justice Training Institute for Judges and Prosecutors under the Cabinet has held professional training programs for rule-makers since 1982. Trainees are those people who have passed the Higher Civil Service Examination in the category of General Administrative Affairs (Legal Affairs Group) and rule-makers along with regulators from within the Cabinet and other relevant government agencies. The training program consists of research on specific legal topics and administrative regulations, stresses both theory and practice, and is conducted via means of lectures and discussions. As of 2006, 27 training programs have been held.

A11: Does the legal framework have in place or strive to establish credible mechanisms to ensure the fundamental due process rights of persons subject to the law, in particular concerning the appeal system?

Answer:

Article 16 of Chinese Taipei's Basic Law expressly states that people have the right to engage in litigation. In accordance with this, people's basic rights have been standardized. Chinese Taipei established basic rights to protect its people and carried out the remedial procedure of procedural justice to fulfill the requirement set by this Article. The right to engage in litigation assured in Article 16 in Chinese Taipei's Basic Law includes the comprehensive and substantial protection of rights as well as fair trial proceedings. Judicial Yuan Interpretation No. 396 details the legal principle "where there is a right, there is a remedy." The core of the right to engage in litigation is people's right to appeal to the court for remedy. This right may not be proscribed and should provide people comprehensive rights protection. *J.Y. Interpretation No. 418* states that the right to engage in litigation not only protects the people's right to access to the court in form, but also in substance so as to increase the effectiveness of rights protection. Moreover, *J.Y. Interpretation No. 512* states that the purpose of the right to engage in litigation is to ensure that people file a plea in accordance with the law and that the right to fair trial proceedings is protected.

In order to realize the purposes of Article 16 of Chinese Taipei's Basic Law, Chinese Taipei has established various remedial procedures for legal action such as civil suits, criminal proceedings, and administrative proceedings according to the nature of the matter contested with regard to the existing laws. Substantive civil, criminal, and procedural laws have been in effect in Chinese Taipei for some time, and are designed to protect people's basic procedural justice rights through the establishment of a tree-tier court and prosecution system. Concerning remedies, since the passage of amendments in 1998 and the promulgation of related regulations in 2000, procedural protection over 1st level petitions and 2nd level administrative proceedings has been assured. According to the *Basic Law Procedure Hearing Act of the Judicial Yuan* and related laws and regulations, after going through the above remedial procedure, people should request that the Judicial Yuan make a ruling as to whether existing regulations conflict with Chinese Taipei's Basic Law.

B. Regulatory Policy

B1: To what extent are capacities created that ensure consistent and coherent application of principles of quality regulation?

Answer:

The Basic Law of Chinese Taipei has a chapter dealing with the protection of people's basic rights, and expressly delineates a hierarchy of Basic Law-laws-ordinance, which, if one were to conflict with another, would have an invalid result. In order to unify the basic principles of the legal process, the *Central Regulation Standard Act* was enacted.

The Cabinet enacted supplementary administrative rules, such as the *Guidelines on Central Administrative Agencies' Legal Matters*, and the *Guidelines for Bills Submitted by Cabinet Agencies for Review*, so as to ensure that each institution follows the correct procedure, avoids conflict, and to ensure the consistency and coherence of the enactment of and compliance with laws.

From the perspective of organizational design, the establishment of a specialized agency for the review of laws or regulatory reform is a method to maintain consistency and coherence. Chinese Taipei established legal units and a legal counselor works to manage relevant legal affairs within each government agency and local government. The Cabinet also established the Committee of Laws and Regulations for the purpose of assisting and providing advice to the Leader of the Cabinet and Ministers without Portfolio in the process of reviewing bills in accordance with the Basic Law of Chinese Taipei and relevant laws and regulations, and the *Guidelines for Bills Submitted by Cabinet Agencies for Review*. The Committee of Laws and Regulations (The Cabinet) hosts meetings with legal units in order to avoid legal ramifications and to implement regulatory reform.

Chinese Taipei is currently in the process of government re-engineering in order to enhance its capacities in dealing with legal matters and of policy planning within Cabinet, review the Cabinet organizational design and insert the position of Chief Legal Officer (CLO) into the draft bill of the *Cabinet Organic Act*. The CLO position would be occupied by Ministers without Portfolio or government administrators as a second job, a major task of which would be handling legal planning and deliberation. The establishment of the above-mentioned administrative organization is the highlight of regulatory reform. Staff work of legal business and the review of pleadings in each agency should be coordinated by professional legal staff. When the legal and pleading business reach a certain capacity, a specialized legal unit should be established within each agency. If one (agency) does not establish a specialized legal unit after the reform of the *Cabinet Organic Act*, it should establish a section within related subsidiary and business units for dealing with legal matters.

B2: Are the legal basis and the economic and social impacts of drafts of new regulations reviewed? What performance measurements are being envisaged for reviewing the economic and social impacts of new regulations?

Answer:

While drafting new regulations, the legal basis and the economic and social impacts should be reviewed. In other words, groups, individuals, and relevant organizations that may be influenced by new regulations should have the opportunity to express their opinions. According to Article 154 in the *Administrative Procedure Act*, when drafting up a regulation and decree, the draft should be announced publicly in government bulletins or newspapers, as a preview of the draft for the regulation and decree. When proposed regulations are published, people are allowed to express their opinions to the appropriate government agency. That agency should evaluate the impact of new regulations via various methods and compare the social impacts of different measures and alternatives to ensure that society as a whole would benefit from the regulation. By previewing draft legislation and decrees, members of the general public may express their opinions with regard to the draft in order to minimize possible later difficulties when implementing and enforcing the new regulations.

The performance of current regulations in Chinese Taipei is mainly evaluated according to the latter part of Chapter 1, Point 2 (1) of the *Guidelines on Central Administrative Agencies' Legal Matters*, which states "… as for the aspects and scope of the impact of bills, there should there be a comprehensive evaluation," and Point 3, Paragraph 4 in *Guidelines for Bills Submitted by Cabinet Agencies for Review*, which states, "there should be a comprehensive evaluation concerning the aspects and scope of the impact of bills, including impacts towards costs, benefits, and human rights, etc." According to the aforementioned requirements for enacting regulations, Chinese Taipei has comprehended fully the meaning and essence of Regulatory Impact Analysis as it exists in OECD and advanced countries.

According to the stipulation in Chapter 1 in the *Guidelines on Central Administrative Agencies' Legal Matters*, performance evaluation of regulation drafts can be divided into preparation and drafting processes, which include the review of the legal basis and the economic and social impacts. Major elements in the preparation process comprise: (1) setting a policy goal, (2) confirming feasible methods, (3) addressing details of regulation, and (4) reviewing current regulations. Major elements in the drafting process are: (1) comprehensive planning, (2) an appropriate title, (3) plain phrasing, (4) articulate legal content, and (5) an applicable designation. Furthermore, during the drafting process, it should be noted that: (1) detailed regulations should have a concrete conception that is comprehensive and mature in order to avoid failing to enforce the law. The agency involved should consult with relevant organizations if the draft concerns a relevant authority. If necessary, the agency should consult with professionals and scholars or call a seminar or hold a public hearing. The agency should seek advice from local government bodies when there is an increase in the number of staff or in spending. The agency should implement a solid evaluation concerning the aspects and scope of the impact of regulation. (2) A defined system: when enacting, amending or revoking regulations, the position of the regulation in question within the entire legal system and its relationship with other regulations should be identified in order to see whether or not other regulations should be enacted, amended, or revoked so as to avoid legal conflicts. Point 3, Subsections 3 and 4 of the *Guidelines for Bills Submitted by Cabinet Agencies for Review* concerns the measurement method for handling specific events: (1) a reasonable estimate of the number of staff and level of spending related to legal promulgation. One should consult with local government bodies if the number of staff of said bodies is to be increased by the legislation. (2) There should be a comprehensive measurement concerning the aspect and scope of legal impacts, including those on costs, benefits, and human rights.

According to Point 2 of the *Guidelines on Tax Expenditure Estimates*, the definition of tax expenditure is "to subsidize particular targets via taxation relief methods such as exemption, deduction, tax credit, tax-exempt items, tax deferment or favorable tax rate." The purpose of such methods is to meet economic and social goals. Related performance measurements are to integrate

finance, avoid great financial losses, and increase the benefit to the entire economy. Therefore, the decision to enact a law may be made after evaluating its feasibility, doing a benefit analysis, and considering the revenue lost from tax expenditure regulation.

In the current laws of Chinese Taipei, the *Small- and Medium-sized Enterprise (SME) Development Statute* stipulates clearly the requirements for performance measurement. According to the provisions of Article 12-1 of the *SME Development Statute*, governments at all levels should examine the scale of operations and the features of small and medium-sized enterprises when in the process of enacting and amending SME-related regulations such that SMEs can abide by the law. The government should regularly review SME-related regulations, evaluate SMEs' capability to adjust to them as well as the legal ramifications for SMEs, and address a report concerning the review to the Legislature within three months of year's end. The government agency concerned must carry out an evaluation of the legal ramifications for SMEs and address a report to the Legislature. The Ministry of Economic Affairs drafted the "*Mechanism for Analyzing the Adaptability of SME Regulations*," and the Committee of Laws and Regulations (The Cabinet) invited each agency to discuss the mechanism and handed down a resolution. The Cabinet ordered each organization to obey the following resolutions: (1) According to the *SME Development Statute* Article 12-1 Paragraph 1, each agency should inquire for opinions from the Ministry for Economic Affairs and ask said ministry to establish or provide a channel of communication during the process of enacting or amending SME-related regulations. (2) The evaluation items laid out in Point 3, Paragraph 4 of the *Guidelines for Bills Submitted by Cabinet Agencies for Review* states that evaluations should include those discussed in Article 12-1 *of the SME Development Statute*.

The Ministry of Justice amended Articles 17 and 19 of the *Administrative Execution Act*, which deal with detention and custody, in 2005. The Ministry of Justice checked to see whether there were effective alternative measures and analyzed the effectiveness of the draft amendment, the target and scope that may be affected, possible queries and risks, as well as costs and benefits. The purpose of such evaluation and analysis is to the ensure that amendments concerning detention, reasons for being taken into custody, and procedures that ought to be followed, as well as related administrative regulations. These were also done to realize the right of claims in public law to carry through with the protection of human rights found in the Basic Law of Chinese Taipei. Also, to create benefits for the entire society, to face global competition, and to establish a feasible mechanism for analyzing the impact of regulations, CEPD presented *A Feasibility Study on Administrative Organizations' Implementation of RIA"* in 2003 and *Research on Establishing a Mechanism for Regulatory Impact Analysis of Regulations of Administrative Organization and Empirical Study* in 2004. In 2005, CEPD, the Research, Development, and Evaluation Commission, and the Committee of Laws and Regulations (The Cabinet) presented *Regulatory Impact Analysis: A Case Study Analysis and Operational Manual* to be used for the reference of various Cabinet agencies.

B3: Are the legal basis and the economic and social impacts of existing regulations reviewed, and if so, what use is made of performance measurements?

Answer:

Due to the active character of administrative organizations, authorities should review the legal basis and the economic and social impacts of existing regulations at all times. Regulations within laws are unnecessary regarding this. The opinions of the public, businesses, and other industries may be expressed through petition or public hearings, meetings, or seminars that are hosted by administrative organizations, public opinion bodies, or other civic groups. Via the above-mentioned methods, problems such as difficulties in implementation or insufficient regulation may be reviewed by the authorities.

According to the *Guidelines on Central Administrative Agencies' Legal Matters*, each agency should post the name of the regulation established, amended, or revoked on its website and to instruct the Law and Regulations Database of Chinese Taipei to update their data. The agencies should plan the establishment, amendment, and revocation of regulations in advance and issue an announcement

concerning the regulation within 6 months of its establishment. If this is not done, the agencies should make a report and deliver an explanation to the Cabinet. Each agency should designate legal units and personnel to establish regulations and administrative regulation cases and files, and collect and compile previous amendments such that related information may be found easily.

Such that the government might protect consumers, a task it is given by the *Consumer Protection Law* Article 3 Subparagraph 1, which details measures such as maintaining the quality, safety, and sanitation of goods and services; preventing goods or services from harming the lives, bodies, health, property or other interests of consumers; and ensuring that the labeling, advertising, weights and measurements used, and rational pricing of products and services being promoted all meet legal requirements. The government shall periodically review, coordinate, and improve upon laws and regulations concerning the above matters and their enforcement.

Article 12-1 of the *SME Development Statute* states the regulatory authority shall conduct a periodic review of all laws and regulations concerning SMEs. It shall evaluate SME's ability to adapt to these laws and regulations as well as their impact on SMEs. The regulatory authority shall submit a report to the Parliament within three months of the end of each year.

Article 11 of the *Charges and Fees Act* states that the competent authorities in charge of related matters shall review the standards of charges and fees on a routine basis by considering the trend of the fluctuation of costs and expenses, changes in the consumer price index, and other factors. The forgoing routine review shall be made at least once every three years. In Article 21 of that same Act, where a municipal government, county/city government, or township government is found to be in breach of Article 7 or Article 8 by its failure to collect charges and fees due and payable, the higher authorities are, subject to actual circumstances, entitled to reduce or eliminate allowances at their discretion. The head of an agency/school shall be punished if the agency/school is found to have violated Article 7 or Article 8 by its failure to collect charges and fees due and payable, or Article 11 by its failure to make the routine review and fails to rectify the violation within the time limit set forth in the rectification notice given by the higher authority.

In order to have sound finances and increase benefits for the entire economy, Point 3 of the *Guidelines on Tax Expenditure Estimates*, set by the Cabinet, states that when an executive organization plans to draft regulations concerning tax expenditures, if the annual revenue losses estimation is greater than NT$50 million, the regulation should be dealt with via the aforementioned Guidelines.

Furthermore, Article 78 of Chinese Taipei's Basic Law states that the Judicial Yuan shall interpret the Basic Law and shall have the power to unify the interpretation of laws and orders. Therefore, grand justices of the Judicial Yuan may, through holding conferences, try the legal basis of current laws and of Basic Law interpretations as well as cases of the uniform interpretation of laws. According to *JY Interpretation No. 137*, when judging cases, although judges may express their opinions concerning the legal basis of the law, they may exclude the related interpretations of regulations or administrative orders, which are the responsibility of individual agencies.

In other words, where a government agency is uncertain regarding the application of the Basic Law, the legality of laws or orders, and the legality of local government laws, a grand justice of the Judicial Yuan should exercise his or her power of interpretation to announce that the regulation is or is not unlawful. If a regulation is found to be unlawful, it should be amended, repealed, or suspended according to the intent expressed in the justice's interpretation.

In conclusion, review of the legal basis and the economic and social impacts of existing regulations is established in the Basic Law of Chinese Taipei as well as regulations of each cabinet-level agency. As for the performance measurement, different standards are to be executed depending on the differences of agenda and the character of the industry. Therefore, it is impossible to enumerate in detail or to generalize upon this matter.

B4: To what extent are rules, regulatory institutions, and the regulatory management process itself transparent, clear and predictable to users both inside and outside the government?

Answer:

The *Freedom of Government Information Act* was enacted to establish the institution for the publication of government information, make it easy for people to share and have fair access to government information, protect people's right to know, further people's understanding, trust, and oversight of public affairs, and encourage public participation in democracy. Article 7, Paragraph1, Subparagraphs (1) to (10) of the *Freedom of Government Information Act* states that information shall be made available to the public as follows, with the exception of information referred to in Article 18, the making available of which to the public is restricted:

1. Treaties, diplomatic documents, laws, emergency decrees, regulations, and orders which are made in accordance with the *Central Regulation Standard Act*, and the laws and regulations of local self-governing areas.

2. The interpretary orders and discretionary standards made by government agencies for helping the lower-level government agencies or subordinates to interpret the laws consistently, find the facts, and exercise discretionary power.

3. The structures, duties, addresses, telephone numbers, fax numbers, websites, and e-mail addresses of government agencies.

4. Documents about administrative guidance.

5. Administrative plans, statistics, and research reports.

6. Budgets and audits.

7. The results of petitions and the decisions of administrative appeals.

8. Documents related to public works and procurement.

9. Subsidies that are paid or accepted.

10. Records of meetings of those agencies based on a collegiate system.

According to the Article 8 of the *Freedom of Government Information Act*, the publication of government information shall be done with consideration for available technology and choose among the following ways as appropriate:

1. Published in government registers or other publications.

2. Transmitted by telecommunications networks or by other ways to provide the public with an online search.
3. Made available for public viewing.
4. Announced via a press conference.
5. Any other possible ways by which the public can be made aware.

Article 9 states that not only citizens of Chinese Taipei, but also foreigners may request government information in accordance with this law. Moreover, an applicant who has faced an objection to his or her request to provide, correct, or supplement government information may seek administrative relief as provided for by law.

Article 46 of the *Administrative Procedure Act* states that an affected person may apply to an administrative authority for examining, transcribing, copying, or taking photographs of relevant materials or records; provided that the materials or records are necessary for claiming or protecting his or her legal rights. Article 47 of the same law states that "a government official who has contacted a party or person representing the interests thereof for any purpose other than that of the administrative procedure shall place in the file all written documents in connection with his communication with such party or person and shall make such documents open to all other parties." The law prohibits contact between the party and an affected person except for examining file application and administrative procedures.

Even though the law is different from made the information available to the public, it is a significant regulation concerning the protection of the party's human rights. The *Administrative Procedure Act* and J.Y. Interpretation Nos.525 and 529 both agreed that if a regulatory announcement to the public or methods of administrative agencies bring losses to the party due to bona fide reliance, then the government should be responsible for compensation.

The Cabinet's gazette system – *Outlines for the Gazette Publication*, the Cabinet (herein referred to as "the Outlines") to unify publication of significant regulations regarding people's rights set forth by the Cabinet and its affiliated agencies, to have a publication dedicated to presenting government information and protecting civil rights. The Gazette is published daily and the electronic version is posted on the Cabinet Gazette Online website daily, except for Saturday, Sunday, and public holidays (the Guidelines Point 2). Main points of interest include rules and regulations, administrative directives, official announcements and receipts, disciplinary actions, statements by the leader of Chinese Taipei and statements by the leader of the Cabinet, instructions given by the leader of the Cabinet, determinations, resolutions adopted during the Cabinet Yuan meetings, reprints of promulgation of treaties by the leader of Chinese Taipei, regulations, emergency decrees, etc. (the Outline, Point 4). The Cabinet Gazette provides free inquiry and download services in its electronic version. (the Outline, Point 5). Free copies are available at the Office of the Leader of Chinese Taipei, the Five Yuans, the Security Council, the Research, Development, and Evaluation Commission, as well as government publications depositories in libraries, township (city) libraries, and can also be found with authorized parties that have reported to the Cabinet based on their needs (the Outline, Point 6). The Cabinet Gazette provides information such as government policies, laws, regulations, practices, procedures, and decisions made. The effectiveness of relevant regulations and information shall be periodically reviewed and be transparent, unified, and understandable for users both in and out of government, and in Chinese Taipei and abroad.

In addition to the Cabinet Gazette, the Laws and Regulations Database of Chinese Taipei (*http://law.moj.gov.tw/*) provides the public with a convenient and prompt regulatory search method through a single Internet website to make regulations and information known to the public and establish a rule of law society. The above-mentioned website brings together regulatory information from all over Chinese Taipei, factually manages the development of regulations, and provides the public prompt, accurate, and integrated information. Its content includes the Basic Law of Chinese Taipei, laws, decrees, partial executive regulations, regulation drafts, laws and regulations in English,

judicial decisions, treaties and agreements, and cross-strait agreements. With its abundant and trustworthy information, the website of the Laws and Regulations Database of Chinese Taipei has not only made various regulatory information public, but also provides the public with a convenient and timely channel from which to search and collect the latest regulatory information.

B5: Are there effective public consultation mechanisms and procedures including prior notification open to regulated parties and other stakeholders, non-governmental organizations, the private sector, advisory bodies, accreditation bodies, standards-development organizations and other governments?

Answer:

Point 4 in the Guidelines for Bills Submitted by Cabinet Agencies for Review states that when drafting regulations, each government agency should consult with regulated parties and other stakeholders via the following procedures:

1. Collecting the opinions of the affiliated agencies, units, and personnel.
2. After opinions have been collected, each agency should consult, search, and collect regulatory content-related concerns or opinions of agencies, groups, or personnel that concern the topic at hand. When necessary, the agency should seek advice from professionals and scholars or convene a seminar or a public hearing.
3. After drafting regulations, the agency should negotiate with other related agencies or local governments. If a consensus cannot be reached, the agency should list different opinions and reasons for inadmissibility reasons in a "commentary" column.
4. Legal personnel should be involved in the drafting of regulations.

According to the drafting process rules stated in the latter part of Chapter 1, point 2 (1) in the *Guidelines on Central Administrative Agencies' Legal Matters*, the agency should seek the opinions of professionals, scholars, and relevant agencies. That is to say "when drafting regulations, if the draft concerns relevant organizations power or responsibilities, the agency should consult with relevant agencies. If necessary, the agency should consult with professionals and scholars, or call a seminar or a public hearing. The agency should seek advice from local autonomous bodies, when there is an increase of the number of members of said body or if said body's spending is affected. The agency should implement a solid evaluation concerning the aspects and scopes of the impacts of the draft regulation."

Moreover, according to the Administrative Procedure Act, the decision concerning administrative planning that relates to specified utilization of land situated in specific districts or the construction of major pieces of infrastructure, which involves persons with a plethora of interests and the powers of a multiple number of administrative authorities, may be finalized only through an open process and after the holding of a hearing. Such a planning may bring efficiency as a result of concentrated efforts and power. The Guidelines on Central Administrative Agencies' Legal Matters stipulate the necessity to seek the opinions of related agencies and other stakeholders during the process of regulation drafting. The Administrative Procedure Act also stipulates that in holding hearings for the purpose of enacting a legal order, the administrative authority shall publish daily in a government gazette and the "Law and Regulations Database of Chinese Taipei," and via a public notice.

When each agency submits its bills to the Cabinet for review, if the following deficiencies are detected in the bills, the agency will be requested to make improvements in the future:

1. Lack of communication beforehand when the bill concerns the interests of opposing interest groups.

2. Lack of a solid evaluation on the impact of bills.

3. Necessity for further deliberation due to an unclear policy purpose and a lacking of consultation with relevant agencies.

4. Lack of inquiry opinions from the legal units or discussions within the Committee of Laws and Regulations (The Cabinet) prior to regulatory submission or enactment.

B6: To what extent are clear and transparent methodologies and criteria used to analyze the regulatory impact when developing new regulations and reviewing existing regulations?

Answer:

When developing new regulations, stipulations for regulatory impact analysis are as following: Point2, Subparagraph 1 in the Guidelines on Central Administrative Agencies' Legal Matters that was mentioned in Question B2 and Point 3, subparagraph 4 in Guidelines for Bills Submitted by Cabinet Agencies for Review, individual regulation such as Article 12-1 in the SME Development Statute, Article 34 in the Budget Act, and the Environmental Impact Assessment Act, among others. Once the "Establishment of Regulatory Impact Assessment Mechanism Plan" is established by the Committee of Laws and Regulations (The Cabinet) and the CEPD, there will be a more solid and clear standard of regulatory impact assessment.

According to Article 154 in the Administrative Procedure Act, Point 2 in the Procedural Rules of the Computer Handling Regulations of Chinese Taipei and Point 4 in the Outlines of the Gazette Publication, unless the situation is so urgent that prior announcement of a legal order to the public is clearly impossible, the regulation draft should be announced beforehand. In such an announcement, the content should include the name of the authority formulating the order, the legal basis for establishing the order, full text, or the essence of the draft, the statement to the effect that any person may give the designated authority his opinions within the specified period. The prior announcement system is a significant mechanism within the regulatory impact assessment through means of exposure of information and consultation on opinions. Currently, there are three methods of inquiring about the prior announcement of a legal order:

1. Announcement in the Cabinet Gazette

2. Publication on the Law and Regulations Database of Chinese Taipei

3. (Website: http:law.moj.gov.tw/)

4. Other appropriate methods that are authorized by government agencies (Article 154, paragraph 3 in the Administrative Procedure Act) such as posting a legal order on the websites of various government agencies in order that it may be extensively read.

B7: How are alternatives to regulation assessed?

Answer:

When the alternatives to regulation are assessed, the general legal process shall examine and consider regarding a concrete standard for content and the necessity to adopt of various possible juridical and extrajudicial alternatives. Alternatives possibly include three patterns, i.e. the maintenance of the status quo, extrajudicial and juridical alternatives.

1. Maintenance of the status quo: The status quo usually is the standard to compare with other alternatives. The status quo should be maintained without establishing or amending existing regulations as long as alternatives are not needed.

2. Extrajudicial Alternatives:

    1. Transformation of supply and demand of goods and services through the development and advancing of techniques

    2. Return to the free market mechanism without a controlled regulatory management

    3. The industry should be self-governing through rules that are made by industry and the administrative agencies should provide administrative guidance. Or governmental enacted rules to act as supplements to those made in industry.

3. Juridical Alternatives:

    1. Establishment of implementing discretionary rules of administrative regulation to avoid a lack of flexibility in implementation.

    2. Choice of an effective date or establishment of an interim period to avoid an overwhelming regulatory impact.

    3. Design of concrete administrative means, in response to the regulation establishment purpose, to implement the regulation.

    4. Establishment of differing regulation content that can be adapted to different situations according the differences of the enterprises' scale and geographic location.

    5. Establishment of adequate economic incentives to encourage the public to follow the regulations.

    6. The direct control of behavior will be replaced by exposure of information.

B8: To what extent have measures been taken to assure compliance with and enforcement of regulations?

Answer:

The foundation of a rule-of-law country is the formation of people's concept of law. The history of the establishment of a rule-of-law country in Chinese Taipei is short. Phenomenon such as being "strict on legislation, but lenient on law enforcement" are harmful for the establishment and enforcement of people's concept of laws. However, this phenomenon has been corrected through adjustment of legislative strategy. Relative financial and administrative regulations alternate in a fast pace due to globalization. Administrative agencies, civil servants, enterprises, and people all need to spend a long time to gain a comprehensive understanding of existing regulations. Due to this "legal knowledge gap," Chinese Taipei consolidated people's concept of law through means of transparent and open governmental information and increased public awareness, in order to handle with the trend of the world.

Officially, approval and enactment of a law is merely a part of administrative policy. In order for a policy goal to be achieved, people and enterprises must obey the law and the government must enforce the law. During the process of making a decision and drafting a feasible law, its feasibility, necessity, and propriety must be taken into consideration in order to meet the expectations of the public and to ensure that people will obey the law. After the enactment of the law, the government should possess the ability to execute the law. If the law must become a set of authorized rules under special circumstances, a related explanation should be concrete and clear, in order to avoid vague and void regulations, which gradually damage the effectiveness of the entire system as well as the government. Further references are shown in J.Y. Interpretation Nos. 559, 568, 570, 600, and 602.

The establishment of the Administrative Execution Act and Administrative Penalty Act procedural mechanisms is to ensure that people obey laws and to make it easier for administrative agencies to enact laws in order to implement and show people's obligation in administrative regulations. According to the Administrative Appeal Act and the Law of Administrative Proceedings, anyone whose rights or interests have been unlawfully or improperly injured is entitled to file an administrative appeal to the independent and detached administrative appeal committee of a higher administrative agency and also bring administrative litigation to request a remedy to an administrative court at any level. Administrative agencies should be restricted by the decisions of administrative appeals and the judgment of the administrative courts.

C: Competition Policy

C1: To what extent has a policy been embraced in the jurisdiction that is directed towards promoting efficiency and eliminating or minimizing the material competition-distorting aspects of all existing and future laws, regulations, administrative practices and other institutional measures (collectively "regulations") that have an impact upon markets?

Answer:

Since Chinese Taipei Fair Trade Commission's (FTC's) establishment on January 27, 1992, it has been charged with proposing competition policy and enforcing the *Fair Trade Act*. The *Fair Trade Act* was enacted by the Parliament on February 4, 1991 and went into effect on the same date one year later. The aim of the law is to maintain trading order, protect consumers' interests, to ensure fair competition and to promote economic stability and prosperity. The competition mechanism was further strengthened after the first amendment to Article 46 of the *Fair Trade Act* in 1999. Before the 1999 amendment, Article 46 of the Fair Trade Act stated, "The provisions of this Law shall not apply to any act performed by an enterprise in accordance with other laws." With the amendment to Article 46, the *Fair Trade Act* gained status akin to that of the fundamental law. Article 46 of the *Fair Trade Act* now states, "Where there is any other law governing the conducts of enterprises in respect of competition, such other law shall govern provided that it does not conflict with the legislative purposes of this Law." Accordingly, the key point is that only when "it does not conflict with the legislative purposes of this Law", can other applicable laws have precedence. Consequently, the actions of enterprises related to competition regulation, albeit in response to or affected by specific economic policies, should still comply with the *Fair Trade Act*; only if the basis is set out expressly in other applicable laws and does not conflict with the legislative purposes of the *Fair Trade Act*, can other applicable laws have precedence.

C2: To what extent do the objectives of the competition law and policy include, and only include, promoting and protecting the competitive process and enhancing economic efficiency including consumer surplus?

Answer:

As stated in Article 1, to maintain trading order, protect consumers' interests, to ensure fair competition and to promote economic stability and prosperity are the legislative purposes of the Fair Trade Act. More to the point, ensuring fair competition is its core objective. As a tool for stabilizing and strengthening economic activity, competition can result in a better allocation of resources, improve economic efficiency and foster technological progress, all of which leads to the stability and prosperity of the overall economy.

Article 26 of the *Fair Trade Act* states, "The FTC may investigate and handle, upon complaints or *ex officio*, any violation of the provisions of this Law that harms the public interest." Thus, "consumers' interests" (consumer surplus), as referred to in the *Fair Trade Act*, should be interpreted from the standpoint of public rather than personal interest. By "ensuring fair competition", the *Fair Trade Act* enables enterprises to compete in open and free markets, which increases efficiency and

innovation, thereby indirectly nurturing a healthy environment for consumers and thus protecting consumers' interests, as enterprises compete to meet consumers' needs by ensuring better conditions in which to make transactions.

C3: To what extent does the Competition Authority or another body have ( ) a clear mandate to advocate actively in order to promote competition and efficiency throughout the economy and raise general awareness of the benefits of competition, and ( ) sufficient resources to carry out any advocacy functions included in its mandate?

Answer:

Review, analysis and reform advocacy have been among the FTC's most important functions, particularly during its 14 years of operation. The statutory foundation for the FTC to advise about the impact of other policies is a provision that calls on the FTC to co-operate with other government bodies (Article 9). There has been a sequence of regulatory review and reform programs over the years. Their titles include the *461 Review and Consultation Project* (1994), *Project for Deregulation and Promotion of Market Competition* (1996) and the *Project for Review of the Enforcement of the Green Silicon Island Vision and Promotion Strategy Regulations* (2001).

To ensure an environment of fair competition, the FTC in coordination with the Cabinet, enacted the "*Green Silicon Island Vision and Promotion Strategy*" and established a Committee for the review of its enforcement in July 2001. The FTC Commissioners provided guidance and consulted with the relevant government agencies. The conclusions and suggestions of the Committee formed the basis of the "Project for Review of the Enforcement of the 'Green Silicon Island Vision and Promotion Strategy' Regulations."

Up to the end of 2003, the Project had conducted over ten consultation meetings with relevant government agencies and comprehensively had reviewed over twenty-two kinds of laws and regulations that were detrimental to competition. In August 2003, the results were reported to the Cabinet. By the Project, a thorough review of all relevant laws and regulations had been completed or mechanisms had been established, as explained below.

1. The Ministry of Finance was the competent authority concerning the *Regulation on the Setting of Unified Rates by the Non-Life Insurance Association*, "joint insurance" and "minimum premiums" issues.

    1. The *Regulation on the Setting of Unified Rates by the Non-Life Insurance Association* contravened the spirit of free competition, and in 2003, after consultation with the FTC, the Ministry of Finance opened the way for operators to decide on the supplementary premiums for fire and car insurance on their own.

    2. The system of joint insurance could limit competition in the insurance market, but after consultation, the Ministry of Finance agreed to seek the FTC's views and to remind the operators to apply for approval of concerted actions, upon determining the likelihood of any violation of the Fair Trade Act or the Basic Law of Chinese Taipei of concerted actions during its review of joint premiums.

    3. Minimum premiums impeded competition, but effective April 2002, there is no longer a minimum premium for fire insurance.

2. The establishment of a remuneration standard could have, under the Attorney Regulation Act, been impeding competition. As a result, upon consultation with the Ministry of Justice, a consensus was reached that lawyer associations should not set remuneration standards.

3. Article 14 of the Enforcement Rules of the Motion Picture Law had originally limited the number of motion picture screening enterprises and screening sites open for the joint screening of foreign films. This Article was in conflict with WTO regulations, and after consulting with Government Information Office, in 2002 the Government Information Office announced the deletion of Article 14.

Besides, to allow the public to have correct understanding to the content of Fair Trade Act, FTC insists on the "Promotion prevails over punishment" principle for law enforcement, which adopts diversified promoting channels, continuously develops fair trade ideas to carry out the concept of law-obedience. Major activities include convening workshops and seminars, providing up-to-date enforcement information through mass media, conducting lecture programs for managerial-level employees of firms, and issuing various publications.

In terms of budget and personnel in the FTC assigned for matters related to competition advocacy, the statistics have more or less remained constant over the past few years. For 2005, the annual FTC budget was approximately NTD 20.69 million, while 12 FTC personnel were primarily charged with competition advocacy, and other personnel regularly assisted with issues related to advocacy within specific industries. An additional 75 local government personnel had responsibilities which include competition advocacy. For the purposes of comparison, the annual FTC budget was approximately NTD 21.49 million in 2004 and NTD 27.3 million in 2003. On the level of FTC staff, there were 13 in both 2004 and 2003, and as concerns additional local government personnel with responsibilities which include competition advocacy, there were 75 in both 2004 and 2003. The FTC has continued and will be sure to continue to secure the budget necessary and find the most dedicated staff to accomplish the FTC's goals to advance society's understanding of the contents and to ensure the effective enforcement of competition law.

C4: To what extent are measures taken to neutralize the advantages accruing to government business activities as a consequence of their public ownership?

Answer:

Chinese Taipei used to have a number of state-owned or state-managed enterprises, especially in public utilities, for example, in the field of electrical power, telecommunications, water and

petroleum. All have sectoral regulatory schemes and certainly do play important roles in the economic system.

The initiative for economic liberalization and internationalization started in 1984, and in 1989, the Cabinet adopted the recommendations of the Economic Reform Council to reduce the scope of state-owned enterprises, to implement liberalization and to accelerate the opening up of domestic markets. In July 1989, the Cabinet established the *Task Force for Promoting Privatization of State-owned Enterprises* to allow steps toward the privatization of state-owned or state-managed enterprises to move forward. Its members included the Council for Economic Planning and Development, the Ministry of Finance, Ministry of Economic Affairs, the Ministry of Transportation and Communications and heads of relevant agencies of the provincial government. The chairman of the Council for Economic Planning and Development assumed the role of convener, with the Council for Economic Planning and Development, the State-owned Enterprise Commission of the Ministry of Economic Affairs and the Securities and Exchange Commission of the Ministry of Finance jointly assisting. The primary missions of the Group were to plan and coordinate issues that would encourage privatization. Most important among these were to: 1) enact a privatization advancement proposal; 2) amend or enact relevant regulations on privatization; 3) suggest ways to resolve difficulties encountered with privatization; and 4) review proposals for the enforcement of privatization policy. The Group consequently drafted the *Act of Privatization of State-owned Enterprises* which was passed by the Parliament and promulgated in June 1991. This was a milestone because, since then, not only has the privatization of state-owned enterprises gained a groundswell of support but also it has had a stronger legal basis.

According to the definition of state-owned enterprises (SOEs), as provided for in Article 3 of the *Act of Privatization of State-owned Enterprises*, the term "state-owned enterprise" shall refer to:

1. Any enterprise either solely owned by any government or jointly operated by governments at various levels;

2. Any enterprise jointly invested in and operated by the government and private individuals where the capital of the government exceeds fifty percent (50%); or

3. Any enterprise jointly invested in by the government and government-owned enterprises of the preceding two Sub-paragraphs, or by government-owned enterprises of the preceding two Sub-paragraphs, where the aggregate invested capital exceeds fifty percent (50%) of the capital of the invested enterprise.

This law stipulates that where the government does not hold over 50% of the capital, the enterprise is not state-owned, and its budget is not subject to supervision of the Parliament. The truth is that there remain many enterprises where the government, though not holding more than 50% of the capital, is still the largest shareholder and, hence, exerts substantive control over the operations.

Chinese Taipei used to count heavily on state-owned enterprises to engage in many important economic activities that involved either high commercial risk or enormous capital. However, we now prefer a competitive market coupled with little government intervention. To put it simply, government policy has come to allow and even encourage the private sector to engage in a full range of business activities, so much so in fact that a privatization initiative was undertaken to reduce inefficiency.

In the drafting stage of the *Fair Trade Act*, there was little consensus as to whether to apply competition policy to state-owned enterprises at the same time as the enactment of the Act or whether to grant them a certain transition period. Many strongly held the view that some transitional arrangements were necessary. Paragraph 2, Article 46 of the *Fair Trade Act* thus provided a five-year grace period for specific state-owned enterprises activities on the condition that it was approved by the highest administrative authority, but the conducts that were entitled to that exemption were rather few in number. Since the expiry of the transition period on Feb. 4, 1996, the state-owned enterprises

in question have been subject to the Fair Trade Act and are on equal footing with private firms. This of course means that any problems that may arise from anti-competitive actions on the part of formerly state-owned enterprises are now regulated by competition law.

C5: To what extent does the agency responsible for the administration and enforcement of the competition law (the "Competition Authority") operate autonomously, and to what extent are its human and financial resources sufficient to enable it to do its job?

Answer:

The FTC is a ministerial level agency, responsible for policy and legislation as well as enforcement. There are nine full-time Commissioners, including the chair and vice-chair. They are nominated by the leader of the Cabinet and appointed by the leader of Chinese Taipei for 3 year, renewable terms. The terms of the Commissioners are simultaneous. Commissioners meet weekly to decide important matters at the Commissioners' meeting. Action is by majority vote of a quorum of the membership, which in turn is one more than half of the total. By law, Commissioners must be well experienced in law, economics, finance, tax, accounting or management. The Commissioners "shall be beyond party affiliations", and no more than half of them may be members of the same political party.

The *Fair Trade Act* and the Organic Statute contain recitals supporting the FTC's independence. FTC actions are not to be scrutinized by the Cabinet or other agencies. The FTC's independent status may be clarified by a pending reform. The Parliament has passed a new government organic law providing for five agencies to be outside the Cabinet reporting structure. Appeals from FTC decisions would be taken directly to the Administrative Court, rather than an appeals committee responsible to the Cabinet. The FTC chairman would no longer participate in Cabinet meetings. Commissioner appointments would be subject to consent by the legislature. The Commission would probably shrink, to 5-7 members, and terms would be staggered rather than consecutive.

The FTC is divided into two levels: the Commissioners' Meeting and the operations and administrative agencies. The Commissioners' Meeting is the highest policy-making body, and decisions are made by majority vote of the nine full-time Commissioners.

The operations departments include the First Department, Second Department, Third Department, Department of Planning and the Department of Legal Affairs, while the administrative departments include the Secretarial Office, Personnel Office, Accounting Office, Statistics Office and the Anti-corruption Office. The Competition Policy Information and Research Center was established on 27 January 1997 to provide expert consultation and training services in competition policy. Since July 1999, personnel have been assigned to the Cabinet Southern Region Associated Services Center to expand FTC services to southern residents of Chinese Taipei. In addition, various task forces have been established in a timely manner to resolve specific issues, help develop projects and initiatives and to enforce competition law and policy.

Most staff members of the FTC have majored in law, economics or both. Among the total employees, 215, as of the end of 2005, 29.03% have background in law, 19.82% have a background in economics and 51.15% have a background in various other fields, such as business administration, information technology, human resources and accounting.

The FTC's annual budget is subject to Parliamentary review and approval. The budget expenditure was NT$348,665,000 in 2005. Due to the tightening of fiscal policy, the annual budget over the past years slightly decreases annually. Therefore, the FTC sets its priorities on operations based on the fair trade implementation plan, and budgets are determined and appropriately allocated.

C6: To what extent is there the role of enforcement decision makers transparent, especially when there are multiple government bodies involved in decision making, for example, regarding who the decision maker was, factors taken into account by such a decision maker, and their relative weighting?

Answer:

Before the 1999 amendment, Paragraph 1, Article 46 of the Fair Trade Act originally read, "The provisions of this Law shall not apply to any act performed by an enterprise in accordance with other laws." To be sure, the application of this provision resulted in varying degrees of uncertainty and confusion vis-á-vis the division of powers among the regulatory authorities in charge of individual sectors and the FTC. However, since its revision, Article 46 now states, "Where there is any other law governing the conducts of enterprises in respect of competition, such other law shall govern; provided that it does not conflict with the legislative purposes of this Law." Accordingly, for other laws to have precedence over the *Fair Trade Act*, the current provision requires the precondition that "it does not conflict with the legislative purposes of this Law", rather than the mere existence of the sectoral regulatory authority and the other relevant laws. The rationale behind the current Article 46 for the application of the *Fair Trade Act* is function-based (for example, public interest, complementary measures for industry development) and concerns whether there is conflict with the *Fair Trade Act*. In other words, the *Fair Trade Act* still applies when other laws "conflict with the legislative purposes" of the *Fair Trade Act.*

One fundamental objective of the current Article 46 is to direct each sector to a competition-based system. Yet it cannot be ignored that in the interest of industry policy, governments sometimes need to structurally regulate specific industries at certain stages by means of specific laws. Therefore, it might be said that in light of the amendment to Article 46, it is difficult to achieve Chinese Taipei's industry goals. However, in Chinese Taipei, such issues, or potential conflicts, are generally easily resolved through consultation with other authorities, as provided for in Paragraph 2, Article 9 of the Fair Trade Act. Undeniably, this enables competition policy and industry policy to complement each other and, thus, promote the stability and development of the overall economy.

C7: To what extent is there a transparent policy and practice that address the relationship between the Competition Authority and sectoral regulatory authorities?

Answer:

Article 46 of the *Fair Trade Act* indicates the relationship between the Act itself and sector-specific regulations, and the Act took smoother way to set regulatory reforms. Before 1999, Article 46 set out the principle that if there was a "conflict" between the *Fair Trade Act* and other laws, then the *Fair Trade Act* would not apply. That was to say, where an enterprise engaged in activities prohibited under the Act, as long as these activities could be conducted under the regulation of other sector-specific laws and under the supervision of the government agency, such activities could have been exempted from application of the *Fair Trade Act.* However, it also set a five-year sunset period for related agencies to adjust their regulations and supervisions, and FTC put a lot of efforts in introducing "the concept of competition" to these agencies and industries. In February 1999, Article

46 was revised and affirmed the status of the *Fair Trade Act* as the fundamental economic law that serves as the basis for harmonizing competition and industrial policies. Now, other laws governing any enterprise's activities should avoid conflicting with the legislative purposes of the *Fair Trade Act*.

C8: To what extent does the competition law contain provisions to deter effectively and prevent hard-core cartel conduct, abuses of dominant position or unlawful monopolistic conduct, and contain provisions to address anticompetitive mergers effectively? To what extent does the broader competition policy strive to ensure that this type of conduct is not facilitated by government regulation?

Answer:

1. Hard-core cartel conduct

Article 14 of the Fair Trade Act prohibits enterprises from partaking in concerted actions, unless the concerted action that meets certain requirements is beneficial to the economy as a whole and in the interests of the public at large. In those cases, the parties may apply to the FTC for approval. The term "concerted action," as defined in Article 7 of the Fair Trade Act, means the conduct of any enterprise, by means of contract, agreement or any other form of mutual understanding, with any other competing enterprise, to jointly determine the price of goods or services or to limit the terms of quantity, technology, products, facilities, trading counterparts or trading territory with respect to such goods and services, etc., and thereby restrict each other's business activities. This aside, it further qualifies "concerted action" as being limited to horizontal concerted action at the same production and/or marketing stage which would affect the market function of production, trade in goods or supply and demand for services. Also, the term "any other form of mutual understanding", as referred to here, means other than by contract or agreement, a meeting of minds whether legally binding or not which would, in effect, lead to joint actions. That is, hard-core cartel conduct is prohibited by Article 14 of the Fair Trade Act.

2. Abuses of dominant position or unlawful monopolistic conduct

A monopolistic enterprise as used in the Fair Trade Act means any enterprise that faces no competition or has a dominant position to enable it to exclude competition in a relevant market. Two or more enterprises shall be deemed monopolistic enterprises if they do not in fact engage in price competition with each other and they, as a whole, have the same status as the enterprise defined in the provisions of paragraph 1, Article 5 of the *Fair Trade Act*.

Article 10 of the *Fair Trade Act* prohibits monopolistic enterprises from engaging in the following acts:

1. Directly or indirectly preventing any other enterprises from competing by unfair means;
2. Improperly setting, maintaining or changing the price for goods or the remuneration for services;
3. Making a trading counterpart give preferential treatment without justification; or
4. Otherwise abusing its market power.

In Chinese Taipei's own experience, most monopolistic enterprises were statutory monopolies which contributed significantly to Chinese Taipei's early economic development. Since mid-1980s, huge trade surplus caused serious macroeconomic unbalance. To solve emerging issues like trade conflicts and inflation and to avoid possible consequence bringing by over savings and insufficient public investment, Chinese Taipei decided to turn its economic policy to a pro-competition one and adopted a series of economic reform to bring its economy more market-oriented. A series of economic

reforms to open up its previously closed markets to domestic as well as foreign competition to boost up a new phase of economic growth.

3. Merger

As defined in Article 6 of the Fair Trade Act, the term “merger” refers to a situation where:

1. An enterprise and another enterprise are merged into one;

2. An enterprise holds or acquires the shares or capital contributions of another enterprise to the extent of more than one-third of the total voting shares or total capital of such other enterprise;

3. An enterprise is assigned by or leases from another enterprise the whole or the major part of the business or properties of such other enterprise;

4. An enterprise operates jointly with another enterprise on a regular basis or is entrusted by another enterprise to operate the latter's business; or

5. An enterprise directly or indirectly controls the business operations or the appointment or discharge of personnel of another enterprise.

In 2002, the Fair Trade Act was amended, and the merger control regime was adjusted. The new system has adopted a notification system to replace the previous application system.

For any merger that falls within any of the following circumstances, a notification shall be made to the FTC prior to the realization of the merger:

1. As a result of the merger the enterprise(s) will have one-third of the market share;

2. One of the enterprises in the merger has one-fourth of the market share; or

3. Sales for the preceding fiscal year of one of the enterprises in the merger exceeds the threshold amount publicly announced by the competent authority.

The sales amount threshold refers to the total sales or operating revenues of an enterprise. For financial enterprises, the amount may be announced separately, but for non-financial enterprises, it is announced by the FTC. The amount announced at present are as follows: (1) where an enterprise in a merger is a non-financial one, its sales for the preceding fiscal year exceed NTD 10 billion, and the enterprise it merges with has a sales amount exceeding NTD 1 billion; and (2) where an enterprise in a merger is a financial enterprise, its sales for the preceding fiscal year exceed NTD 20 billion, and the enterprise it merges with has a sales amount exceeding NTD 1 billion.

As long as the merging parties do not receive notice from the FTC within the 30-day waiting period, they are free to realize the notified mergers. Should the FTC feel there is a need for further investigation, there could be another 30 days for the FTC to proceed, but a written decision on the proposed merger must be released by the FTC.

If a merger is pursued without prior notification, regardless of the FTC’s decision to allow or prohibit such merger, or if the merger fails to perform the undertakings required by the FTC, the FTC may prohibit such merger, and if so, it may prescribe a period for such enterprise(s) to split, to dispose of all or a part of their shares, to transfer a part of their operations, to remove certain persons from position, or make any other necessary disposition. For enterprise(s) violating the disposition made by the FTC in the above case, the FTC may order the dissolution of such enterprise(s) or the suspension or termination of their operations.

According to Article 12 of the *Fair Trade Act*, the FTC may not prohibit any merger filed if the overall economic benefits of the merger outweigh the disadvantages resulting from the competition restraints that this would cause. The major factors to be taken into account in assessing the "overall economic benefit" are the scale economy effect, technological efficacy and other factors such as the degree to which the costs of production and selling prices decrease following the merger, the welfare benefits from conglomerate integration and whether one of the enterprises involved in the merger is about to fail. In certain cases, to obtain full information to facilitate the decision-making process, the FTC requests that the relevant regulators provide a detailed description of the market, the industrial policy in place and a forecast and the expectations of the post-merger market.

C9: To what extent does the competition law apply broadly to all activities in the economy, including both goods and services, as well as to both public and private activities, except for those excluded?

Answer:

According to Article 2 of the *Fair Trade Act*, "Enterprise" is a defined term that determines the scope of the law's application. It refers to a company, partnership, sole proprietor, trade association, or in general "any other person or organization engaging in transactions through the provision of goods or services." The first part of the definition, based on form, sweeps in conventional forms of commercial business operation. The specific mention of "trade associations" ensures that these common occasions for misconduct do not escape coverage because of technicalities. The second part of the definition, based more on function, could extend coverage to some government commercial operations if they can be treated as an organization or a legal person.

C10: To what extent does the competition law provide for effective investigative powers and sanctions to detect, investigate, punish and deter anti-competitive behavior?

Answer:

The procedure for handling cases of the *Fair Trade Act* is a two-stage procedure: the first is acceptance of the case and investigation, and the second is deliberation and resolution.

1. Acceptance of the Case and Investigation Procedures

Article 26 of the *Fair Trade Act* states, "The FTC may investigate and handle, upon complaints or *ex officio*, any violation of the provisions of this Law that harms the public interest." The commencement of the FTC disposition is upon complaints or *ex officio*. The complainant need not meet any eligibility requirements and can be a consumer or an enterprise. Regardless, the complainant must provide a detailed and substantive content, present relevant evidence along with her/his true name and address as prerequisites for acceptance by the FTC. However, if the complaint involves the greater public interest, the FTC may investigate *ex officio*.

Once the complaint is accepted, an investigation is initiated during which, according to Article 27 of the Fair Trade Act, the FTC may proceed in accordance with the following procedures:

1. to notify the parties and any related third party that they must appear to make statements;

2. to notify relevant agencies, organizations, enterprises, or individuals that they must submit books and records, documents, and any other necessary materials or exhibits;

3. to dispatch personnel for any necessary on-site inspection of the office, place of business or other locations of the relevant organization or enterprises.

Upon finding substantive evidence and reasonable suspicion that the respondent has violated the *Fair Trade Act*, a proposal is drafted pursuant to administrative procedures and submitted for deliberation at the Commissioners' Meeting. Furthermore, Article 43 of the *Fair Trade Act* states, "Shall any person subject to any investigation conducted by the FTC pursuant to the provisions of Article 27 refuse the investigation without justification or refuse to appear to respond or to render relevant materials, such as books and records, documents or exhibits, by the set time limit, an administrative penalty of not less than NTD 20,000 and not more than NTD 200,000 shall be assessed upon it. Shall such person continue to refuse without justification upon another notice, the *Fair Trade Act* may continue to issue notices of investigation, and may assess successively thereupon an administrative penalty of not less than NTD 50,000 and not more than NTD 500,000, each time until it accepts the investigation, appears to respond or renders relevant materials, like books and records, documents, or exhibits."

2. Deliberation and Resolution

The FTC employs a collegiate system, and its resolutions can only be passed with over half of all Commissioners in attendance and an affirmative vote from over half of those in attendance. The complainant and respondent usually do not need to attend the Commissioners' Meetings, but the FTC can invite the complainant or respondent to sit in and provide further explanation.

C11: To what extent do firms and individuals have access to (i) the Competition Authority to become apprised of the case against them and to make their views known, and (ii) to the relevant court(s) or tribunal(s) to appeal decisions of the Competition Authority or seek compensation for damages suffered as a result of conduct contrary to the domestic competition law?

Answer:

To ensure firms and individuals have access to the Competition Authority to become apprised of the case against them and to make their views known, the FTC has enacted relevant rules for the procedures of investigation:

1. Statements

Subparagraph 1, Article 27 provides for the notification of parties and any related third party to appear and make statements, and except under urgent circumstances, the notice must be served no later than 48 hours prior to the date when the appearance is required (Article 31 of the Enforcement Rules to the *Fair Trade Act*), and after the appearance and the making of statements, a written record of the statements must be produced and signed by the notified person (Article 33 of the *Enforcement Rules to the Fair Trade Act*). More detailed rules are provided in the *Guidelines for Statements Made by the Notified Person*.

2. Consultation Meetings

By holding meetings at which it can consult with other government entities, organizations, academicians, experts, trade associations and related trading counterparts, the FTC is able to gather valuable insight and understanding as well as most useful reference material.

3. Public Hearings

As required by the newly revised Administrative Procedure Act (Dec. 28, 2001), the *Guidelines for Public Hearings Held by the Fair Trade Commission* as promulgated in December 2002 and was amended in July 2005. This provides the solid basis for holding public hearings and in cases where public hearings are held, the parties may forgo petition to the Appeal and Petition Committee and directly bring suit to the administrative court upon the FTC resolution.

Should the parties be dissatisfied with the decision of the FTC, they have the right to petition to the Appeal and Petition Committee under the Cabinet within 30 days after receiving the disposition letter or the day after the decision. If they are still dissatisfied with the decision of the Committee, they have the right to bring the suit to the administrative court within two months of the day after receiving the disposition letter.

Additionally, the option of civil relief is granted in the *Fair Trade Act*. Article 30 states, "if any enterprise violates any of the provisions of the *Fair Trade Act* and thereby infringes upon the rights and interests of another, the injured may demand the removal of such infringement; if there is a likelihood of infringement, prevention may also be claimed." Thus, this proactive right provides the injured a timely means for relief in the process of investigation or litigation. Article 31 also states, "Any enterprise that violates any of the provisions of this Law and thereby infringes upon the rights and interests of another shall be liable for the damages arising from." Article 32 states, "In response to the request of the person being injured as referred to in the preceding article, a court may, taking into consideration the nature of the infringement, award damages more than the actual damages if the violation is intentional; provided that no award shall exceed three times the amount of damages that is proven. Where the infringing person gains from its act of infringement, the injured may request to assess the damages exclusively based on the monetary gain of such infringing person." This further allows the injured to seek compensation ex post facto.

C12: In the absence of a competition law, to what extent is there an effective framework or mechanism for deterring and addressing private anti-competitive conduct?

Answer:

Chinese Taipei has competition law.

D: Market Openness Policies

D1: To what extent are there mechanisms in regulatory decision making to foster awareness of trade and investment implications?

Answer:

Chinese Taipei's investment regime is highly liberalized and transparent, and embraces earnestly the goal of trade facilitation. As of 2005, 99% of our manufacturing industries and 95% of our service industries were fully open to foreign investment; the remainder is restricted or prohibited to foreign investment only due to the need to safeguard security and maintain public order. The Ministry of Economic Affairs has compiled information on all specific industrial sectors for which such restrictions or prohibitions, coming from the various competent government authorities, are in place and has promulgated them under the title *Negative List for Foreign Investment by Overseas Chinese and Foreign Nationals*, for the convenience of foreign nationals planning to invest in Chinese Taipei. To ensure that Chinese Taipei's investment regime is even more in line with the principles of liberalization, trade facilitation, and transparency and, at the same time, to ensure that foreign investors and domestic businesses can compete fairly, the various competent government authorities for the respective industrial sectors continue to review and revise the relevant laws and regulations so as to make the investment environment much more attractive to both foreign and domestic enterprises.

The Department of Investment Services (DOIS) of the Ministry of Economic Affairs is the service window for foreign investors. It provides foreign investors with a full range of services and proactively visits foreign investors in Chinese Taipei to give them a better understanding with regards to domestic economic, trade, and investment laws and regulations. DOIS also addresses the operating difficulties encountered by foreign investors and strives to improve the investment environment by coordinating with the various government authorities for revision of the relevant laws and regulations.

D2: To what extent does the government promote approaches to regulation and its implementation that are trade-friendly and avoid unnecessary burdens on economic actors?

Answer:

Chinese Taipei's main policy goal concerning foreign investment is to build an investment environment that is viable and attractive internationally. Through ongoing improvements on its investment regime and the simplification of the relevant application and review procedures, our government agencies are also striving to enhance the level of convenience for foreign nationals while living or investing in Chinese Taipei.

The Ministry of Economic Affairs convenes seminars with foreign investors on a regular basis to exchange opinions with them on laws and regulations with which they are concerned, and on the possible improvements in terms of their implementation. DOIS of the Ministry of Economic Affairs also coordinates with other government agencies about making improvements being suggested by foreign investors in order to remove obstacles to trade and investment, and to help foreign-investment projects in Chinese Taipei to succeed. In addition, the American Chamber of Commerce and the European Chamber of Commerce annually publish the White Paper and the Position Papers respectively to put forward issues and problems being confronted by their members while doing businesses in Chinese Taipei. Over the years, the Center for Economic Deregulation and Innovation (CEDI Services) under the Council for Economic Planning and Development has acted as the interface between the government and those foreign business communities to coordinate the various competent government authorities to make necessary changes to its administrative procedures or to revise relevant laws and regulations so as to facilitate the business activities of those foreign business communities.

D3: To what extent are customs and border procedures designed and implemented to provide consistency, predictability, simplicity and transparency so as to avoid unnecessary burdens on the flow of goods? To what extent are migration procedures related to the temporary movement of people to supply services transparent and consistent with the market access offered?

Answer:

In order to construct a streamlining customs clearance system and to build a barrier-free trading environment, Chinese Taipei has adopted some measures such as shortening feedback time for sea cargo on-line declaration, extending hours of clearance service, broadening functions of electronic gateway of clearance, and simplifying clearance operation of air cargo. Furthermore, Chinese Taipei has implemented systems of risk-management and post-clearance audit so as to avoid unnecessary costs or burdens to traders.

1. Customs Valuation System

Chinese Taipei's Customs has implemented transaction value system since 1986. The determination of customs value of the import goods is in full compliance with the WTO Valuation Agreement（so called "Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade"）so as to stay in line with the international standards and enhance trade fairness.

2. Post –clearance Audit

In order to expedite cargo clearance while ensuring the compliance of traders, Chinese Taipei's Customs has implemented post-clearance audit since May 2002. The Post-clearance Audit measure has facilitated customs clearance and accelerated the development of trade facilitation.

3. Advance Ruling System

Chinese Taipei's Customs has implemented Advance Ruling System to unify tariff classification, enhance simplification and transparency. With the customs tariff rulings, importers may ascertain the tariff rates in advance to calculate the cost of import goods.

Chinese Taipei's commitments to the movement of natural persons, and its regulations governing the movement of natural persons who are needed to provide market services, are highly consistent and transparent. Documents and procedures needed for an entry visa to Chinese Taipei can be obtained through either Chinese Taipei's embassies, representative offices abroad or the website of the Bureau of Consular Affairs of the Ministry of Foreign Affairs (*www.boca.gov.tw/*). However, the issuance of an entry visa for natural persons is also regulated under considerations of security. At present, Chinese Taipei offers visas to four categories of natural persons wishing entry in order to provide a service: business visitors; intra-corporate transferees; natural persons employed by business entities in Chinese Taipei; and employees of a contractor outside Chinese Taipei which offers services to a business inside Chinese Taipei.

D4: To what extent has the government established effective public consultation mechanisms and procedures (including prior notification, as appropriate) and do such mechanisms allow sufficient access for all interested parties, including foreign stakeholders?

Answer:

Over the years, Chinese Taipei has established effective mechanisms to include both domestic and foreign stakeholders into the process of public consultation. The Ministry of Economic Affairs convenes seminars as well as formal or informal meetings with foreign investors (in particular, via the American Chamber of Commerce, the European Chamber of Commerce, and the Japanese Chamber of Commerce) on a regular basis to solicit opinions from them on laws and regulations with which they are concerned, and on the possible improvements in terms of their implementation. DOIS of the Ministry of Economic Affairs also coordinates with other government agencies about making improvements being suggested by foreign investors in order to remove obstacles to trade and investment, and to help foreign-investment projects in Chinese Taipei to succeed. In addition, the American Chamber of Commerce and the European Chamber of Commerce annually publish the White Paper and the Position Papers respectively to put forward issues and problems being confronted by their members while doing businesses in Chinese Taipei. Over the years, the Center for Economic Deregulation and Innovation (CEDI Services) under the Council for Economic Planning and Development has acted as the interface between the government and those foreign business communities to coordinate the various competent government authorities to make necessary changes to its administrative procedures or to revise relevant laws and regulations so as to facilitate the business activities of those foreign business communities.

D5: To what extent are government procurement processes open and transparent to potential suppliers, both domestic and foreign?

Answer:

Since the enactment of the Government Procurement Act in 1999, the government procurement system of Chinese Taipei has conformed to international norms. While conducting procurements, government entities shall follow fair and open procurement procedures. The enforcement of this Act

has created a transparent and fair government procurement regime and ensured a more effective and efficient utilization of public resources. In addition, Chinese Taipei has established the Complaint Review Board for Government Procurement (CRBGP), an impartial and independent mechanism for suppliers to seek resolution of their complaints, with a view to providing a non-discriminatory, timely, transparent, and effective bid challenge system. In the event that procuring entities are in breach of the Government Procurement Act, suppliers may use the bid challenge procedures to protect their interests. All domestic or foreign suppliers who seek resolution of their complaints through CRBGP will be treated equally.

Chinese Taipei has been promoting "the Government Procurement Electronic Plan", including "Government Procurement Information System", "Inter-entity Supply Contract System" and "Electronic ITB/RFP Document and Electronic Bidding System". The electronic invitation to tender and electronic bid retrieval system can greatly enhance efficiency and transparency of the government procurement regime.

According to the official statistics of Chinese Taipei, the proportion of government procurements that went to imported goods or was awarded to overseas bidders increased from 14.3% in 2001 to 17.8% in 2004. Also, the statistics released by the Public Construction Commission shows that approximately 85.35% of the total procurements in terms of number (150,528 out of 176,367 cases) or 83.52% of the total in terms of value (NT$813.3 billion out of NT$973.8 billion) were conducted through open tendering procedures in the year of 2005.

D6: Do regulatory requirements discriminate against or otherwise impede foreign investment and foreign ownership or foreign supply of services? If elements of discrimination exist, what is their rationale? What consideration has been given to eliminating or minimizing them, to ensure equivalent treatment with domestic investors?

Answer:

Article 17 of the *Statute for Investment by Foreign Nationals*, states: "Except as otherwise provided for in other laws, the enterprise in which the investor has invested hereunder shall be accorded the same rights and obligations to which an enterprise operated by local Chinese [Taipei] nationals is entitled." At present, there are only a very few industrial sectors for which our governing agencies apply restrictions or prohibitions on investment by foreign nationals, based on the need to maintain security and public order.

However, to ensure that Chinese Taipei's investment regime is in line with the principles of liberalization, trade facilitation, and transparency, the various agencies responsible for the relevant industrial sectors continue to review and revise the laws and regulations ex officio.

Chinese Taipei uses participation in APEC's Non-Binding Investment Principles and OECD's recent Policy Framework for Investment as an opportunity to review whether domestic investment-related laws and regulations conform to the principle of non-discriminatory treatment and whether they have a negative impact on investment. Chinese Taipei is also carrying out a gradual relaxation of restrictions on foreign investment. Chinese Taipei is now the member of WTO, and the related managements are pursuant to the WTO regulations.

D7: To what extent are harmonized international standards being used as the basis for primary and secondary domestic regulation?

Answer:

Chinese Taipei's policy on technical regulations observes the provisions of the WTO TBT Agreement by requiring that relevant standards, guides or recommendations developed by international standardizing bodies are used as a basis for technical regulations whenever they are

appropriate. The rates of harmonized international standards being used as the basis for technical regulations in sectors of electrical/electronic products, chemical products, measuring instruments are 100%, 84% and 81% respectively.

D8: To what extent are measures implemented in other countries accepted as being equivalent to domestic measures?

Answer:

Chinese Taipei has not yet implemented the concept of equivalency in practice. With this issue being taken up by the WTO TBT Committee in the recent triennial review of TBT Agreement, Chinese Taipei will participate in the discussion and explore ways of implementing the concept in its technical regulations.

The mutual recognition agreements (MRAs) that Chinese Taipei has concluded with its trading partners are mainly on the acceptance of conformity assessment results. For electrical and electronic products, Chinese Taipei has concluded MRAs with the United States, Canada, Australia, New Zealand and Singapore.

Chinese Taipei has just become a member of the APEC Engineer Framework in June 2005; therefore an APEC Engineer whose home country has a mutual recognition agreement with Chinese Taipei will be able to practice in Chinese Taipei. (A mutual recognition agreement itself is a mechanism to exempt part or all of the required qualifications for professional engineers who are interested in practicing abroad) The competent authority, the Public Construction Commission (PCC), is preparing to negotiate with members of the Framework for mutual recognition agreements. In addition, in order to allow recognized APEC Engineers to provide services in their respective practicing areas, the PCC is now studying the possibility of revising Article 46 of the Professional Engineers Act by December, 2007 and prescribing the rules regulating foreign professional engineers, which covers practicing areas, dispute settlement, and other related matters.

D9: To what extent are procedures to ensure conformity developed in a transparent manner and with due consideration as to whether they are effective, feasible and implemented in ways that do not create unnecessary barriers to the free flow of goods or provision of services?

Answer:

Conformity assessment procedures are developed by following the provisions of the TBT Agreement in terms of transparency and the use of relevant guides or recommendations issued by international standardizing bodies.

The Chinese Taipei APEC Engineer Monitoring Committee has been established by Chinese Taipei professional bodies in accordance with APEC Engineer Manual to deal with the Engineer affairs. In the future, an APEC Engineer whose home country has a mutual recognition agreement with Chinese Taipei and whose qualifications are recognized by the Chinese Taipei APEC Engineer Monitoring Committee will be able to apply for practice registration in a due procedure, subject to the mutual recognition agreement and relevant domestic regulations governing foreign professional engineers.