

obstruct opportunities for investors, whether foreign or domestic, to engage in Build-Operate-Transfer (BOT) projects involving land transactions:

- Normally only about one month elapses from the time of announcement to the required submission date. That is insufficient time for the proper execution of a transaction that must include planning, obtaining internal approvals, reviewing underwriting, and securing financing from internal or external resources. The short period restricts the number of bidders that will participate. A recommended minimum bid preparation time of three months is suggested.
- Besides the time factor, the information available to undertake comprehensive due diligence is often inadequate. Even considering that the information needed for due diligence for a land transaction is generally relatively simple, the information provided is still quite incomplete, which further increases the time needed for informed decision-making and again restricts the bidders to a select few. It is recommended that more detail be provided in the initial release of information.
- Since information is generally not made available in English, time must be taken for translation before international investors can express any initial interest in a land transaction. Providing the information in English will help overseas-based investors explain the project more clearly to banks and other potential investors.

The recommended changes would a) allow more time for the preparation of well-thought-out bids, and b) open the competition to a larger number of qualified investors, whether domestic or international. That in turn would have a positive impact in stimulating investment in land and in development projects.

RETAIL

The Committee commends the government both for the progress in developing commercial relations with China and for its willingness to engage in open dialogue with business representatives for the sake of improving the investment climate. But concerns remain that Taiwan is not becoming more “business-friendly” quickly enough to increase its competitiveness against other Asian markets.

We support President Ma’s efforts to prevent Taiwan from being marginalized as the ASEAN-centered trade bloc expands. At the same time, Taiwan must guard against contributing to self-marginalization by adopting unique regulations that deviate from standard international practice. Our vision is that just as Taiwan previously competed with great success as an Asian Tiger in manufacturing and trade, in future it can become a retail center to rival Hong Kong or Singapore. To achieve that, the cost of doing business must be made more competitive. Regulations should be as transparent and consistent as in the leading Asian markets and should follow international standards

rather than breaking new ground. Duplicating work already done elsewhere simply puts an extra cost burden on the government – and taxpayers.

“Made in Taiwan” should be a proud label indicating quality, but “Only in Taiwan” should set off alarms when applied to government regulations or commercial restrictions.

Below are five specific issues on which more progress is urged:

Issue 1: Accelerate the review and removal of China-import restrictions.

Progress has been extremely slow in shortening the list of products prohibited from being imported from China. With the global recession reducing international investment and raising Taiwan’s unemployment rates to historic highs, it is crucial for the government to find ways to improve the business environment for both foreign and local companies. Imposing artificial import bans against a single market is unhealthy for the Taiwanese economy by distorting trade flows and frustrating business planning.

We urge the government to urgently re-evaluate the import ban on an item-by-item basis, rather than imposing a blanket policy that discourages virtually any new imports from China. Removing some products from the prohibited list would create a “win” for both domestic consumers and industry.

While we appreciate the continued efforts of the Bureau of Foreign Trade (BOFT) in hosting periodic hearings on this subject, the Committee would like to point out that very few items have been released so far. In our opinion, the process has been flawed. Government policy specifies only two reasons why made-in-China items may be excluded from this market: risk to national security (which is hardly ever a concern for commercial products) or substantial damage to local industry. But despite repeated requests by the BOFT, other government agencies have not provided economic impact assessments or other convincing rationales for bans on specific items. In addition, the BOFT, rather than taking a strong activist role on this issue, has generally deferred to other government organizations and even to local industrial associations that invariably adopt a protectionist attitude.

Below is a chart of 32 items that members of this Committee request to be opened to import from China. One of those items, raw potatoes for potato chips, deserves special mention. Local potato production cannot meet demand due to climatic conditions allowing only one crop per year. China could provide the right variety of potato, which would be much less expensive than current imports. Such imports could also be restricted to intra-company transfer for the purpose of potato-chip manufacture, thus avoiding disruption to the broader domestic market. Further, the stabilization of the potato-chip makers’ raw material supply would encourage them to increase their investment in Taiwan, leading to more employment and increased demand for local potatoes in season. In this scenario, there would be many winners and no losers.

We propose:

1. Adopting a transparent process in which the BOFT provides a single point of contact for participants and takes clear responsibility for the outcome.
2. Conducting an accelerated evaluation on an item-by-item or category-by category basis for the following items:

	CCC Code	Product Description
COMPLETELY BANNED ITEMS		
1	0701.90.00.00-3	Raw potato
2	1102.20.00.00-1	Corn meal
3	1005.90.00.90-5	Other maize (corn)
4	1101.00.10.00-4	Wheat flour
5	0705.11.00.00-5	Cabbage lettuce (head lettuce), fresh or chilled
6	1806.20.00.00-0	Other preparations in blocks, slabs or bars weighing more than 2 kg or in liquid, paste, powder, granular or other bulk form in containers or immediate packings, of a content exceeding 2 kg
7	1905.31.00.00-7	Sweet biscuits
8	1905.32.00.00-6	Waffles, wafers
9	1905.90.90.00-6	Biscuits (All other articles of heading no. 1905)
10	2005.20.20.00-3	Potato chips and other potato sticks, prepared or preserved otherwise than by vinegar or acetic acid, not frozen
11	1902.30-10.20-5	Instant noodles, not containing meat
12	1806.31.00.00-7	Other chocolate preparations, in block, slabs or bars, weight not exceeding 2kg, filled
13	1901.20.00.00-4	Mixes and doughs for the preparation of bakers' wares of heading 19.05
14	2103.20.00.00-8	Tomato ketchup and other tomato sauces
15	6911.10.00.00-4	Tableware and kitchenware, of porcelain or china
16	7009.91.90.00-8	Other glass mirror, unframed
17	7009.92.00.00-6	Other glass mirror, framed
18	7013.28.00.00-9	Other drinking glasses
19	7013.37.00.00-8	Other drinking glasses, other than of glass-ceramics
20	7013.99.40.00-5	Other vases, glass
21	3005.10.10.00-5	Surgical adhesive tape
PARTIALLY BANNED ITEMS		
22	1704.90.00.90-9	Sugar confectionery, not containing cocoa (Aside from white chocolate, which was excepted in 2007)
23	2309.10.00.00-2	Dog or cat food, for retail sale
24	6912.00.10.00-3	Ceramic tableware and kitchenware

25	7007.19.00.00-8	Other toughened (tempered) safety glass
26	8504.40.93.00-5	2 0 0 K V A - 8 0 0 K V A L a r g e uninterrupted power supply (without battery), 200KVA-800KVA; 11-30KVA Dual IGBT(Insulated Gate Bipolar Transistor) transformerless uninterrupted power supply
27	3005.10.90.90-9	Other adhesive dressings and other articles having an adhesive layer
28	6107.11.00.00-7	Men's or boy's underpants and briefs, knitted or crocheted, or cotton
29	6205.20.00.00-7	Men's or boy's shirts, of cotton
30	6108.21.00.00-4	Women's or girl's briefs and panties, knitted or crocheted, of cotton
31	6212.10.90.00-1	Brassieres, whether or not knitted or crocheted , of other textile materials
32	6201.13.00.00-0	Men's or boy's overcoats, rain-coats, car-coats, capes, cloaks and similar articles, of man-made fibres

We believe these items do not pose any threat to Taiwan national security or any potential damage to the Taiwanese economy. On the contrary, lifting the ban on these items will rebuild Taiwan's credibility to its WTO commitments, re-establish Taiwan's reputation for international business investment, provide a level playing field for multinational companies and thereby create long-term jobs, and business and community sustainability.

Issue 2: Adopt international norms for import labeling and standards.

Because of the economic downturn and low consumer confidence, many foreign retailers are aggressively seeking ways to maintain low prices and stimulate purchasing interest through exciting and unique imports and special discounts. But unique-to-Taiwan import requirements are creating trade barriers and extra costs. Below are just some examples of the types of problems arising from unnecessarily onerous regulations:

Labeling

Multipacks – Importers must label all multipacks, regardless of whether the retailer will divide it up for sale as single units. This adds cost. Foreign suppliers are forced either to do special extra work or give up exporting to Taiwan.

Socks – All socks must have a country-of-origin label on each pair, even when sold as a 6-pack. This is another cost and burden that suppliers encounter only when exporting to Taiwan.

Commodities – Information identifying the manufacturer

is required to be included on all Chinese labels. This is a problem because suppliers may have multiple factories producing the same product, or the suppliers may wish to keep the identity of the factory confidential. It is unreasonable to expect Taiwanese consumers to contact a foreign manufacturer regarding a product issue. Since the importer bears all legal responsibility for the product, importer information should be sufficient.

Import Standards

Sunglasses/Toys – Although Taiwan’s Chinese National Standard (CNS) requirements were modeled after EU standards, Taiwan will not accept test reports from major foreign laboratories, creating additional burdens for importers. The Bureau of Standards, Metrology and Inspection (BSMI) regards the situation as unavoidable in the absence of reciprocal recognition programs with other countries. We argue that such political complications should not justify trade barriers.

Dietary Supplements – Differing perceptions regarding dietary supplements have become trade barriers. For example, melatonin, used to treat sleeping disorders in the United States since 1993, is prohibited. Ginkgo biloba, a memory and concentration enhancer, and milk thistle, an herbal remedy used to protect the liver against toxicity, are dietary supplements in the United States but here are prescription drugs. Coenzyme Q10 is an antioxidant which the United States controls at 200mg/day, whereas Taiwan limits it to 30mg/day.

Lighting – Since 2002, the BSMI has required all lighting products to comply with the CNS 14335 standard prior to import. Although the Taiwan standard is adapted from International Standard IEC60598-1, test reports issued by foreign labs are not recognized by BSMI, thereby adding unnecessary testing costs that are transferred to the consumer.

While we understand the importance of the government’s gatekeeper role in assuring product safety, the above examples result in barriers to trade, extra costs to Taiwan consumers, and limitations on product variety. We recommend revising the labeling and import criteria to ensure that Taiwan is fully in line with international practice, instead of creating a Taiwan-only standard.

Issue 3: Stimulate trade by adjusting tariffs.

Although Taiwan’s tariffs vary significantly depending on the product category, in some cases they are much higher than those of our ASEAN neighbors, making them quite prohibitive. Tariff levels across food categories range from 5% to 30%. The lower end includes infant food, food ingredients, and high-protein foods – categories that are dynamic and competitive, providing Taiwanese consumers with the widest possible range and quality choices at the best prices. At the other end of the spectrum, with restrictive tariff levels of over 10-20%, are foods in capsule form, biscuits, filled chocolate

and some other categories. Such high tariffs limit consumer choice and stifle industry innovation. We urge the government to undertake a review of tariff rates that are out of line with those prevailing in the region, and to revise them accordingly in the interest of enhancing Taiwan’s market competitiveness and to stimulate trade.

Issue 4: Reform cosmetics regulations to follow international practice.

By 2010, the Asia Pacific region, in which Taiwan is a major market, will account for about 40% of the global trade in cosmetics. Taiwan, however, urgently needs to review its regulations governing cosmetics to harmonize them more closely with international practice. The current regulatory provisions established by the Department of Health (DOH), for example, seem to focus more on efficacy than on safety and quality. For example, the requirements for pre-market registration for medicated cosmetics products and pre-broadcast advertising approval for all cosmetics, as well as the required documentation of Certificate of Free Sales (CFS), all are unrelated to product safety. Cosmetics are not subject to such pre-market approval in most leading markets around the world, including the United States, European Union, and the ASEAN countries. The regulators in those areas set strict rules on safety and quality, and they subject products to testing if they have any doubts about whether the products meet those regulations. A similar principle is followed for cosmetics advertisements; pre-broadcast approvals are not conducted as that would hinder companies’ ability to communicate relevant and necessary information to consumers.

The DOH is accustomed to checking for efficacy in the case of pharmaceuticals, where it is important to verify the effectiveness in treating disease. But consumers buy cosmetics in order to feel and look better, and will not purchase the product a second time if they are not satisfied with its feel and smell. Efficacy is a subjective matter of individual perception and taste, and should be left to the consumer to judge.

In addition, there is a safety tolerance for most chemicals, even if they are prohibited from direct use on the body, and for technically unavoidable reasons they may be present in trace levels in finished products. This fact is recognized and accepted in the United States, the European Union, and Japan. But unlike the EU Cosmetic Directive, for example, Taiwan’s cosmetic regulations do not take such provisions into account, leaving the door open to cases of consumer concern or panic that would not occur elsewhere.

The Committee recommends revamping the current cosmetics regulations by benchmarking them against the most scientifically based regulatory regimes – for example, those of the EU and ASEAN. Such reform would be an opportunity to eliminate the pre-market registration requirement for medicated cosmetics, waive pre-broadcast approval for advertising and the CFS requirements, and clearly state that the presence of ingredients on the negative list is banned when they are found beyond unavoidable traces.

Issue 5: Adopt Good Governance principles (4 Cs).

In the face of the global recession, the Taiwanese expect the government to take the lead in guiding them through the economic storm. There are many diverse opinions on how that should be accomplished, but everyone wishes to see “Good Government.” From a commercial and retail perspective, Good Governance encompasses the “Four Cs”: Consistency in Regulations, Efficient Two-Way Communication, a Fair Competitive Environment, and Effective Crisis Management.

Consistency in Regulations

As already shown elsewhere in this paper, many Taiwan regulations are out of step with international norms, and in some cases are internally inconsistent with other Taiwan rules. We reiterate our suggestion that Taiwan adopt international best practices rather than unique standards that add cost for government, industry, and consumers.

Pesticide Residue – An example of both variance with international practice and internal illogic are some of the limits on pesticide residue in food. The Malathion residue in wheat, for example, has an allowable limitation of 8ppm in the United States and Japan, but a limit in Taiwan of only 0.5ppm for wheat. At the same time, the limit in Taiwan on cabbage and lettuce is set at 2ppm. The rationale for that difference is difficult to understand, as the potential impact of Malathion on humans is lower from wheat than from vegetables, as wheat needs to be shelled before milling the grain into flour, but vegetables tend to be eaten with less cooking. These rules create problems for industry, as suppliers find it difficult to produce crops with a lower pesticide residue solely for Taiwan, resulting in stock outages or additional costs.

Customs Classifications – Inconsistent classifications based on the personal judgment of the Customs officer create major problems for importers. After importing the same item for three years, an importer may suddenly be informed that the customs code he has been using is incorrect and should be changed. If the duty rate of the new code is higher, Customs will also bill the difference for the past six months. In such cases, the importer will have already sold the previous shipments and will be forced to make up the difference out of pocket. New classification codes may also lead to restrictions of which the importer was unaware. The importer may then have to return or destroy goods, with massive costs.

CIPC – Another example of Taiwan not following international standards is the prohibition on the domestic use of CIPC (Chlorpropham), a chemical widely used for many years in the United States, United Kingdom, France, Australia, Japan, and China to suppress potato sprouting during storage. It has been proven to be highly effective as a sprouting inhibitor and also safe for humans. The inability to use CIPC disadvantages both industry and local farmers. Taiwan’s climate allows for only one potato crop per year, in the spring, and without CIPC, the potatoes will last only until autumn. Each autumn and winter, the local demand for potatoes is

met solely through imports. If CIPC were to be approved, the reliance on imports could be almost halved. Ironically, Taiwan regulations require that all imported potatoes be CIPC-treated, confirming that CIPC is acceptable and making the prohibition on domestic use all the more baffling.

Efficient, Two-way Communication

We strongly urge the government to set up better channels for two-way communication with the business sector, especially before undertaking regulatory reforms. Such communication would ensure that food retailers and manufacturers have sufficient lead time to prepare for changes and manage incremental costs. It would also help government understand the potential cost impact of contemplated reforms on businesses and ultimately on consumers.

A Fair, Competitive Environment

A “level playing field” has been one of the themes for international business for many years. When new regulations are implemented, it should be in a way that is consistent and fair for all businesses, whether local or international and irrespective of size or channel.

In 2007, the Environmental Protection Administration (EPA) implemented an on-line Waste Clearance Planning Report System, which was to take effect within two months of the announcement. Only some large-scale food manufacturers, processors, and Quick Service Restaurants (QSR) are currently covered by the regulation, however. To maximize the effectiveness of environmental management as well as in the interest of fairness, we encourage the EPA to gradually extend the reporting system to the remaining categories of restaurants and other sources of food service.

Similarly, regulations regarding cooking equipment, kitchens, and consumer-seating areas should follow the same requirements across commercial channels and be monitored by the DOH to ensure food hygiene, building safety, and fire prevention. As commercial channels change, in addition, the government should stay abreast of new developments. For example, as an increasing number of convenience stores and other retail formats are now offering prepared food and provide seating, the standards applied to restaurants should be extended to such locations in the interest of fairness.

Crisis Management

Among government’s many roles is that of anticipating and assessing risks to public health and safety, then communicating to the public when potential crises develop. An example is the Melamine scare in 2008, from which many lessons were learned, but which also cost retailers, importers, and local producers many millions of dollars in extra cost and lost revenue.

In future crises, the relevant government agencies should aim to achieve more coherent and effective communication with all industries and to provide timely, accurate, and complete information to consumers at an early stage. Also

needed is a management system that recognizes commercial reality as well as consumer needs, while balancing political and media pressure. Not an easy assignment, but one that will win government widespread respect if carried out effectively.

TAX

As the tax environment is one of the vital factors in attracting foreign investment and building Taiwan's economic competitiveness, the Committee urges continued governmental efforts to undertake tax reforms to help improve the investment climate. The Committee appreciates the government's willingness over the past year to listen to the voice of the foreign business community and to help resolve issues as they arise. The Ministry of Finance (MOF), for example, issued several useful rulings to clarify the tax issues arising from M&A transactions.

In this position paper, the Committee would like to raise the following specific issues that require the immediate attention of the MOF. Some of them are new; others were raised in past years but are not yet resolved. We hope the MOF will address them in the months ahead. The Committee looks forward to continued cooperation with the MOF to foster a tax system that is more in line with international tax practice and makes Taiwan an even more attractive and competitive business environment.

Issue 1: Clarify the scope of Taiwan-source income and allow offshore businesses to file tax returns for their Taiwan-source "other income."

The Committee addressed this issue in the 2008 *White Paper*. Under current Taiwan tax practice, the scope of Taiwan-source income is very broad, classifying payments made to offshore entities as Taiwan-source "other income" even if those payments relate to services performed entirely offshore. The Committee urges the MOF to clarify the scope of Taiwan-source income by providing a precise and clear interpretation with no gray areas, so as to facilitate tax compliance. Transfer-pricing payments made by Taiwan entities with full documentation supporting the arm's-length basis of the transactions should not be considered Taiwan-source income, nor should they be subject to Taiwan income tax. Moreover, besides the 20% withholding tax mechanism, we suggest that a Taiwan tax reporting/filing system be available for offshore entities if they choose to use it. In this way, offshore businesses that are considered to have Taiwan-source "other income" or "business profits" can have the opportunity to claim their business costs/expenses on the tax return, with only the profits subject to Taiwan income tax. The Committee understands that the Tax Agency outsourced a study of this matter, which agrees with our position that if the offshore business is considered to have business profits in Taiwan, it can file a tax return and claim costs/expenses. We would urge the MOF to adopt this suggestion and provide a timeframe for its implementation.

Issue 2: Solve the interpretation gap between government agencies.

For a long time, various government agencies have held inconsistent opinions on tax issues, leading to continuing difficulties in resolving tax disputes. Following are some examples:

1. *Differing interpretations of "standard software" between the MOF and the tax office.* According to the Income Tax Act (ITA), revenue from licensing software should be treated as Taiwan-source income. When the licensor is a foreign company without a fixed place of business or a business agent in Taiwan, the licensee should withhold 20% income tax upon paying the software licensing fee to the licensor. However, according to MOF Ruling No. 09604520730 dated April 9, 2007, revenue generated by a foreign company from licensing standard software to a Taiwan licensee should be treated as revenue from international sales, and thus the Taiwan licensee need not withhold income tax upon paying the licensing fee to the foreign licensor. This tax ruling also defines "standard software" as non-customized software that is available to customers in general and that customers may not reproduce, modify, resell, or publicly display.

When foreign licensors have filed applications seeking the tax authorities' confirmation of the applicability of that tax ruling, however, the tax office has either requested submission of a large number of supporting documents without giving a clear answer, or has disallowed the application for a tax ruling based on its own broad interpretation of the criteria. In a case where the licensee subscribed for 10,000 copies of a particular software, for example, instead of shipping 10,000 copies the foreign licensor shipped one copy and gave permission for the licensee to reproduce 9,999 copies on the licensee's premises. In another case where the foreign licensor shipped 10,000 copies of a software product to the licensee, it granted the licensee the right to reproduce the software to the extent of replacing any copies that were damaged during shipment. In both cases, the tax authorities argued that the said tax ruling should not apply because the licensee had the right to reproduce.

The definition of "standard software" in the tax ruling is clear, but the tax authorities' expansion of the interpretation has caused arguments between them and foreign licensors. The Committee urges the tax authorities to engage in full communication with the MOF on this issue.

2. *Differing interpretations between the Industrial Development Bureau (IDB) and the tax office regarding the R&D investment tax credit and royalty exemption.*

a. R&D investment credit. Despite the "examination rule" or guideline permitting the tax office to grant an investment credit for R&D activity performed, in practice the tax office takes a narrow view of the