

agencies to include foreign companies within the coverage of the bidding whenever feasible.

## RETAIL

The establishment of a Taiwan Food and Drug Administration (TFDA), which began operations on January 1 this year as an agency under the Department of Health (DOH), constitutes an important step forward. For members of this Committee dealing with food and cosmetics products, creation of the TFDA brings the promise of a regulatory authority that can address both industry and consumer concerns with heightened professionalism. We have been happy to hear from member companies that the initial interaction with the TFDA has been highly positive.

We are also pleased that the fledgling TFDA has been in contact with the U.S. FDA to learn from its American counterpart's long experience. We encourage the two organizations to engage in continuing dialogue to help forge a close and cooperative relationship for the benefit of industry in both countries. Through that communication, the Committee hopes, Taiwan will also be more apt to align its regulations and procedures to international standards.

As noted in the paper below, the prevalence of "Taiwan-unique" approaches has been a serious hindrance to multinational companies operating in this market. We believe that the TFDA will improve harmonization with international practices regarding food and cosmetics safety. For other retail sectors, we similarly urge the relevant government agencies to increase their efforts to harmonize Taiwanese regulations with those of other major countries. As stated in last year's *White Paper*, "Made in Taiwan" should be a proud label indicating quality, but the "Only in Taiwan" practice is a sign that this country's regulations are out of step with the rest of the world. Such a discrepancy inevitably adds cost for importers, manufacturers, retailers, and ultimately consumers, and is thus not in the best interests of any party.

### Issue 1: Bring regulatory approaches in line with international practices.

Taiwan has all too frequently adopted its own approach to product regulation rather than following generally accepted international norms (where they exist) or at least referencing the practices in use in the world's major markets. Employing "Taiwan-unique" standards imposes a huge managerial and cost burden on manufacturers and retailers, who must find ways to comply with a separate set of rules for a market of only limited size. When the result is to discourage companies from bringing certain products to market here, the main loser is the Taiwan consumer, whose freedom of choice has been constricted.

Below we would like to point out some specific areas needing attention:

**1. Melamine levels.** Following the melamine scare of 2008, the Codex Alimentarius Commission (the body

established by the United Nations' Food and Agriculture Organization and the World Health Organization to set internationally recognized standards and codes of practices for food products) assigned a task force to propose maximum limits for melamine in food. The task force recently submitted its draft proposal setting maximum limits of:

Infant Formula: 1 mg/kg  
Other Foods: 2.5 mg/kg

In Taiwan, current Department of Health guidelines on the maximum allowable levels of melamine are:

- 0.05 mg/kg in milk powder related categories.
- Below 0.05 mg/kg for some controlled food items (whether or not containing dairy ingredients).
- 2.5 mg/kg for some other compound foods.

The current 0.05 mg/kg limit in Taiwan has caused very long import lead times and highly cumbersome customs clearance processes for certain categories. Assuming that Codex accepts the draft proposal, as is expected, the Committee urges the Taiwan government to adopt the same requirements so that Taiwan is fully aligned with international practices.

- 2. Sanitary standards.** Taiwan's sanitary standards for food items often do not match those in effect in other countries. With regard to fish and fishery products, for example, the allowable heavy metal content is much lower than in most other markets. Since the level of heavy metals in wild fish cannot be controlled as they are captured in different locations, the United States does not set tolerance levels for some species. Another example is the "Standard for the Tolerance of Mycotoxins in Foods," where the tolerance level set in the United States is much higher than in Taiwan. The rationale for those differences from U.S. practice is unclear. We suggest that the newly established TFDA review and consider modifying the current domestic requirements.
- 3. Nutrition claims.** TFDA regulations state that claims on food labels must not be false, exaggerated, or imply medical benefits. But that requirement is enforced so strictly in Taiwan that even claims that are factually based may be disallowed. This problem frequently arises in the case of products with ingredients that are natural and/or nutritional – for example, rich in antioxidants. In the United States, it is permissible for labels on dark chocolate products to mention the high antioxidant level, but such claims are barred in Taiwan even if accurate. The result is to withhold useful information from the consumer and to create trade barriers for importers, who must go to the trouble and expense of relabeling.
- 4. Organic food imports.** Since January 2009, food retailers have been required to register all organic foods prior to sale in accordance with the "Imported Organic Agricultural Product and Organic Agricultural Processed Product Management Regulations." Applications must be submitted for each shipment, specifying quantities

and batch numbers, and products may be offered for sale only after approval has been obtained. This certification process represents an obstacle for retailers and importers because it entails considerable additional overseas and domestic paperwork, costs at least NT\$500 per application, and delays bringing goods to market by one to two weeks. To accelerate and simplify the process, we suggest that the authorities accept documentation from certification bodies in other countries as is the practice in the United States and major European countries. Alternatively, it could simplify the certification process by modeling it after the Registration of Product Certification for general imported commodities, which is a one-time procedure and achieves a similar purpose.

#### 5. *Labeling requirements:*

**Socks** – According to Taiwan labeling requirements, every pair of imported socks must have its own country-of-origin label, regardless of its retail pack size. In other words, if the socks are sold as a 6-pack or 12-pack, foreign suppliers wishing to do business with Taiwan must bear the additional labeling costs. This requirement does not add value to the consumer, but instead hinders international trade and increases the final cost to the end-user.

**Multipacks** – While it makes sense that retailers should be responsible for affixing complete labels to the packages they sell, Article 13 of the “Act Governing Food Sanitation” and the enforcement rules of the law specify that the responsible parties for prepackaged foods are actually the importers and/or manufacturers. Thus, if a small local retailer decides to break down an imported multipack into individual units for retail purposes, the labeling responsibility lies with the importer under the current law. This is contrary to international practice – and unreasonable as importers cannot prevent retail clients from splitting multipacks for resale purposes. In order to assure compliance, foreign suppliers must do additional labeling work on packages exported to Taiwan. Given the limited size of the Taiwan market, many foreign suppliers instead choose not to export these products to Taiwan.

#### 6. *Import standards.*

**Sunglasses/Toys/Lighting** – Although Taiwan’s Chinese National Standard (CNS) requirements were modeled after EU standards, Taiwan does not accept test reports from major foreign laboratories, thereby forcing importers to retest in Taiwan, adding unnecessary cost to the price paid by the consumer. The Bureau of Standards, Metrology and Inspection (BSMI) describes the situation as unavoidable in the absence of mutual recognition programs with other countries. The Committee feels strongly, however, that such political complications should not justify trade barriers.

**Dietary Supplements** – Various products that are considered as common dietary supplements in the United

States – such as melatonin, ginkgo biloba, milk thistle, saw palmetto, and Echinacea – are treated as prescription drugs in Taiwan, subjecting them to restrictive standards and requirements. In addition, the co-enzyme Q10, an antioxidant controlled at 200 mg/day in the United States, is limited in Taiwan to a daily intake of 30 mg/day. As health awareness increases in Taiwan, this difference in perception creates trade issues for local importers and retailers who are seeking to expand the market and meet public demand. We believe that consumers should be provided with more health supplement options, unless they are proven to be harmful. In the absence of a solution to this problem, these bureaucratic obstacles are inconveniencing consumers by causing higher costs and less product availability in the market.

#### **Issue 2: Accelerate the review and removal of China-import restrictions.**

Each year since this Committee submitted its first *White Paper* position paper in 2007, one of the major requests to the government has been to shorten the list of items prohibited from being imported from China. The topic has been frequently discussed since then in meetings with various government agencies, particularly the Bureau of Foreign Trade (BOFT), which has hosted periodic hearings on the subject. Unfortunately, the progress on this front has been dismayingly slow. For example, last year only four of the 32 categories cited in the 2009 *White Paper* as needing priority attention were removed from the list.

Government policy specifies only two reasons why goods from China – which like Taiwan is a member of the World Trade Organization – should be restricted from being freely imported into Taiwan. The first is risk to national security, which is hardly relevant to ordinary commercial products, and the second is substantial damage to the Taiwanese economy, which can be used as a handy excuse for protectionism if not supported with concrete data from economic impact assessments.

In our experience, the BOFT has too often abrogated its responsibility as the agency in charge of this matter. Rather than taking a decisive role, it has generally deferred to other government organizations and even to domestic business and trade associations. In fact, it has frequently advised representatives of this Committee to try to resolve outstanding issues through private discussion with those associations. Yielding crucial decision-making authority to certain narrow interests is both inappropriate and an obstacle to innovation and competitiveness.

Imposing artificial import bans against a single market is unsound for the following reasons:

- 1) It departs from WTO principles, adversely affecting Taiwan’s reputation and credibility as a free economy.
- 2) Consumers must pay higher prices for access to a lesser variety of products.
- 3) The willingness of multinational corporations to invest in

Taiwan is diminished.

- 4) Coddled by protectionism, some local industries become less able to compete on the global market.
- 5) The competitive challenge is from products worldwide, not just from China.

At a time when the Taiwan government is moving ahead to negotiate an Economic Cooperation Framework Agreement (ECFA) with China, the time would seem ripe to thoroughly rethink the approach toward the import ban. We propose that the government:

1. Adopt a transparent process in which the BOFT takes clear responsibility for the outcome.
2. Conduct an accelerated evaluation on an item-by-item or category-by-category basis, with particular emphasis on the products in the chart below:

	CCC Code	Completely Banned Products
1	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
2	1806.31.00.00-7	Other chocolate preparations, in blocks, slabs or bars, weighing not exceeding 2 kg, filled
3	1901.20.00.00-4	Mixes and doughs for the preparation of bakers' wares of heading 19.05
4	1902.30.10.20-5	Instant noodles, not containing meat
5	1905.31.00.00-7	Sweet biscuits
6	1905.32.00.00-6	Waffles and wafers
7	1905.90.90.00-6	Other articles of heading 19.05 [Biscuits]
8	2005.20.20.00-3	Potato chips and other potato sticks, prepared or preserved otherwise than by vinegar or acetic acid, not frozen
9	2103.20.00.00-8	Tomato ketchup and other tomato sauces
10	2208.90.60.00-4	Korn [distilled alcoholic beverage made from grain]
11	3005.10.10.00-5	Surgical adhesive tape
12	7009.91.90.00-8	Other glass mirrors, unframed
13	7009.92.00.00-6	Other glass mirrors, framed
14	7013.37.00.00-8	Other drinking glasses, other than of glass/ceramics
15	7013.99.40.00-5	Other vases, glass
16	6302.21.00.00.8	Other bed linen, printed, of cotton
17	6302.22.00.00.7	Other bed linen, printed, of man-made fibers

	CCC Code	Partially Banned Products
1	1704.90.00.90-9	Other sugar confectionery (including white chocolate), not containing cocoa
2	2309.10.00.00-2	Dog or cat food, put up for retail sale
3	3005.10.90.90-9	Other adhesive dressings and other articles having an adhesive layer
4	6101.20.00.00-2	Men's or boys' overcoats, car-coats, capes, cloaks, anoraks (including ski-jackets), wind-cheaters, wind-jackets and similar articles, knitted or crocheted, of cotton
5	6105.20.00.00-8	Men's or boys' shirts, knitted or crocheted, of man-made fibers
6	6106.20.00.00-7	Women's or girls' blouses, shirts and shirt blouses, knitted or crocheted, of man-made fibers
7	6107.11.00.00-7	Men's or boys' underpants and briefs, knitted or crocheted, of cotton
8	6108.21.00.00-4	Women's or girls' briefs and panties, knitted or crocheted, of cotton
9	6115.95.00.00.6	Stockings, socks and other hosiery, knitted or crocheted, of cotton
10	6201.13.00.00-0	Men's or boys' overcoats, raincoats, car-coats, capes, cloaks and similar articles, of man-made fibers
11	6202.92.00.00-3	Women's or girls' anoraks (including ski-jackets), wind-cheaters, wind-jackets and similar articles, other than those of heading 62.03, of cotton
12	6205.20.00.00-7	Men's or boys' shirts, of cotton
13	6205.30.00.00-5	Men's or boys' shirts, of man-made fibers
14	6206.40.00.00-2	Women's or girls' blouses, shirts and shirt-blouses, of man-made fibers
15	6212.10.90.00-1	Brassieres, whether or not knitted or crocheted, of other textile materials
16	7007.19.00.00-8	Other toughened (tempered) safety glass
17	7013.99.90.00-4	Other glassware
18	6914.90.90.90.6	Other articles of ceramic (articles of porcelain or china are classified in 6914.10.90)
19	6914.10.90.00.2	Other articles of porcelain or china

In our assessment, importing these items from China would not pose any threat to Taiwan national security or any potential damage to the domestic economy. On the contrary, lifting the ban on these items would rebuild Taiwan's credibility to its WTO commitments and buttress Taiwan's reputation as an attractive location for investment, spurring long-term job creation and business expansion. If a decision is made to retain these items on the banned list, we would expect that decision to be accompanied by concrete economic assessments supporting that determination.

### Issue 3: Reform the regulatory framework for cosmetics products.

The current regulatory regime established by the Department of Health (DOH) calls for pre-market registration of medicated cosmetics for acne, skincare and hair dye; pre-broadcast advertising approval for all cosmetics, and submission of Certificates of Free Sales (CFS) for imported products (certifying that the items are sold freely in the exporting country). All of these requirements are unnecessary to ensure product safety.

Cosmetics are not subject to 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 in the advanced countries for cosmetics advertising; pre-broadcast approvals are not conducted, as that would hinder companies' ability to communicate relevant and necessary information to consumers. Although DOH has developed positive and negative claim lists, the result is that the official reviewers pay excessive attention to revising the wording, rather than examining whether the claims are supportable. We recommend that DOH host periodic meetings with industry representatives, dermatologists, and media scholars to develop clearer and more solid guidelines to reduce false or misleading advertising and better accomplish the objective of consumer protection.

Another problem faced by the industry is the Taiwan regulators' attitude toward trace levels of chemicals that are prohibited from direct use on the body. For technical reasons, it is unavoidable that certain chemicals may be present in trace levels in finished products, but the amounts are so minute as to be well within a safety tolerance. This fact is recognized and accepted in the United States, Japan, and the European Union, where it is made explicit in the EU Cosmetic Directive. But Taiwan's cosmetic regulations do not take such provisions into account, leaving the door open to cases of consumer concern or panic when reports cite the discovery of trace levels.

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 as well as the CFS requirement, and state explicitly that the prohibition of ingredients on the negative list does not apply to unavoidable trace amounts.

## TAX

Creation of a competitive and reasonable tax system, though only one factor in improving a country's investment environment, is a vital step in enabling a government to solidify a recovering economy. The Committee therefore commends the government for taking the appeals from the foreign business community into consideration over the past several years, and for acting on them to rationalize policy on a range of tax issues. To settle various longstanding tax questions, for example, the Ministry of Finance (MOF) in the past year released its "Recognition Rules of Taiwan-sourced Income" and "Assessment Rules on the Eligibility for Income Tax Treaty Benefits," milestone measures that resolved issues of concern to both domestic and foreign investors.

Several additional important issues relevant to attracting foreign investment still require attention, however, and are outlined below. The Committee would appreciate the MOF's continued efforts on those issues, and we look forward to further cooperation with the Ministry so as to create an investment environment that is more compatible with international tax practice. If these issues could be addressed in the near future, it would be highly beneficial in enhancing Taiwan's international competitiveness.

### Issue 1: Rectify imbalances in the income tax structure.

The recent decision to decrease the corporate tax rate will help boost Taiwan's attractiveness as a place for doing business by bringing that rate in line with those of other countries in the Asia-Pacific region, including Singapore's 17% rate and Hong Kong's 16.5%. The change will enable businesses to reduce their operating costs in Taiwan. But undertaking this reform without simultaneously dealing with its impact on other elements in the current income tax system has caused the continued existence of certain imbalances with serious implications for Taiwan's competitiveness. We urge the authorities to consider the following:

1. After the corporate income tax rate drops to 17%, the withholding tax rate on most types of income of foreign entities will remain at 20%, which is not a reasonable situation. We urge that the withholding tax rate on the income of foreign entities be reduced to 17% or lower;
2. Taiwan's personal income tax rate reaches up to 40% for the top bracket, considerably higher than elsewhere in the Asia-Pacific region. Such a steep individual income rate makes it difficult for Taiwan to attract and retain the high-level talent needed for robust economic growth. In addition, the large disparity between the corporate and