Chapter 5

TAIWAN

Following its application for accession to the GATT in January 1990 after 12 years later Taiwan succeeded in becoming a formal member of the WTO in January 2002. The history of Taiwan’s accession negotiations is outlined below, as well as its commitments upon accession to the WTO in each major sector (including commitments agreed in the Accession Protocol (Protocol) and the Working Party (WP) Report), and its policies and measures to be rectified.

1. History of Accession Negotiations

Application for Accession

In January 1990, the government administering the “Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu” officially applied for accession to the GATT under GATT Article 33. In September 1992, after discussions about the issue of the priority of WTO accession of China and Taiwan (see note), the GATT Council decided to establish a Working Party (WP) on the accession of Taiwan. (In December 1995, Taiwan filed a new application for admission to the WTO.)

Accession Negotiations

Bilateral negotiations with Japan on improving market access concluded in February 1997. Negotiations with the United States concluded in February 1998,
and with the EU in July 1998. Bilateral negotiations have been concluded with all 26 countries and regions requesting them except Hong Kong, which will not sign for political reasons.

Multilateral negotiations began with the first WP meeting in November 1992 and by September 2001, the WP had met a total of 11 times. Thanks to efforts by Taiwan to make improvements, the Chairman of the WP was able to state in May 1999 that there had been substantial progress in the negotiations and the Protocol and the WP Report were for all purposes complete.

However, in the informal WP meeting of July 1999, which was thought to be the final meeting of the WP, some members expressed the view that the wording in the draft WP Report treated Taiwan as a sovereign state and advocated that the Protocol and the WP Report not be adopted because of the 1992 GATT Council understanding that Taiwanese membership must come after Chinese membership. The wording of the draft WP Report was to be reviewed. Following that meeting, however, no meetings were held for some time (see note). Eventually, after progress in accession negotiations with China and after a hiatus of two years, a WP meeting was held in September 2001 in which the WP report was adopted. Later in November 2001 at the WTO Ministerial Meeting in Qatar, the accession of Taiwan was unanimously approved on 11 November, the day after approval of the accession of China. On 2 December 2001, Taiwan delivered an acceptance document to the WTO Secretariat and 30 days later on 1 January 2002 Taiwan’s accession to the WTO became effective.

On issues concerning trade and investment between China and Taiwan there previously had been debate about the policies indirectly restricting telecommunications, trade and navigation with the mainland (i.e., only indirect methods be used), as well as restrictions on investment in the mainland, including support within Taiwan for the WTO Agreement Article 13 (mutual non-application of multilateral trade agreements between particular members). Ultimately China and Taiwan achieved accession without any request for application of Article 13.

In the future, Taiwan will have to implement the liberalization commitments outlined below, which include commitments relating to its relations with China.
Note
Order of Accession to the WTO for China and Taiwan

In 1992, the GATT Council established a WP to consider Taiwan’s accession to GATT based on the following statement by the Chairman.

“All contracting parties acknowledge the view that there is only one China (United Nations General Assembly’s Resolution 2758 of 25 October 1971). Many contracting parties, therefore, agree with the view of the People’s Republic of China (PRC) that Chinese Taipei, as a separate customs territory, should not accede to the GATT before the People’s Republic of China. Some contracting parties do not share this view. Taking account of all the views expressed, I have concluded that there is a consensus among contracting parties on the following terms: a) that work at WP meetings on China’s accession be expedited; b) that a WP on Taiwan’s accession be established; and, c) that the Council should give full consideration to all views expressed, in particular that the Council should examine the Chinese WP Report and adopt the Protocol for the People’s Republic of China before examining and adopting the Protocol on Chinese Taipei.”

Accession negotiations were conducted against this historical background.

2. Commitments Accompanying Accession

(1) Overview

Per capita GNP in Taiwan currently exceeds $10,000. In acceding to the WTO, there were no special measures in the WTO Agreement for developing countries or countries in transition to market economies adopted for Taiwan, and Taiwan agreed in principle from the time of accession to observe fully as a developed country most favored nation status (MFN) and obligations on national treatment equal to Taiwan nationals and companies (except where explicitly excluded in GATS commitments). Taiwan has proceeded to create the necessary systems and institutions for accession.

For instance, Taiwan established a ministerial level task force, which has actively promoted the revision and the creation of domestic laws for its accession.
Part I Chapter 5 Taiwan

By 31 October 2001 Taiwan had legislated the following 14 laws (including amendments):

i) Patent Law: to conform to the TRIPS Agreement;
ii) Copyright Law: to conform to the TRIPS Agreement;
iii) Optical Disk Administrative Regulation: measures to protect intellectual property rights against counterfeiting, etc.;
iv) Accountants Law: opening of participation in accounting tests and employment in the profession to foreigners;
v) Private Airline Law: deregulation of foreigners as directors of air cargo operators and opening of market to foreign operators;
vi) Commercial Port Law: elimination of commercial port construction charge and introduction of commercial port service charge;
vii) Construction Law: opening up permission to establish construction businesses to foreign operators;
viii) Attorney’s Law: opening market to foreign attorneys with a certain level of qualification;
ix) Movie Film Law: reduction of surcharges on foreign films and market opening for foreign films;
x) Cargo Tax Regulation: reduction of the import cargo tax for bicycles, etc., and elimination of local contents rule;
x) Customs Import Tax Regulation: 32 percent reduction of the average import customs rate and protective measures of sensitive items such as agricultural goods;
xii) Food Management Law: opening of export and import business for food suppliers;
xiii) Regulation on Tests for Professionals and Technicians: opening of tests for professionals and technicians to foreigners; and
xiv) Veterinarians Law: opening up certification of veterinarians and employment in the profession to foreigners

In addition, Taiwan’s amendment to the Trade Law removed the Article 6, Clause 4 provision covering temporary suspension of exports and imports, which
had been regarded as an “anti-Japan” measure. Amendments to the Business Tax Law eliminated discriminatory domestic taxes on imported alcoholic beverages and tobacco products, and improved the system by making taxation on foreign and domestic products non-discriminatory.

(2) Commitments in Major Sectors and Implementation Status

Tariffs

In 2001, the simple average of tariff rates in Taiwan for all products was 8.2 percent. The breakdown for industrial products was 6.03 percent (of which the tariff rate of 83 percent of industrial products was less than 10 percent), and for agricultural products 20.02 percent (of which the tariff rate for some 40 or so products ranged from 40 to 50 percent). On accession, Taiwan made tariff offers on approximately 8,200 items and after a transitional period (until 2004 for most items and until 2011 for some items such as automobiles and parts), committed to lowering the average on tariff offer items to 5.5 percent (4.15 percent for industrial products and 12.86 percent for agricultural products). Japan expects that the lowering of tariffs based on the tariff offer schedule will be implemented as a matter of course. In the area of industrial products we also hope that there will be a further lowering of rates for items where the final tariff offer rate is comparatively high, such as special purpose vehicles (maximum 30 percent), freight vehicles (maximum 25 percent), and ordinary and small passenger vehicles (17.5 percent), as well as a reduction in the transitional period for automobiles and parts.

Non-tariff Measures (Quantitative Restrictions on Passenger Vehicles, etc.)

Taiwan had prohibited imports of ordinary passenger cars and small commercial vehicles from Japan, the Republic of Korea, Australia, and countries in the immediate region (although quantitative restrictions have not been applied on such imports from the United States and the EU). Taiwan’s bilateral agreement with Korea in December 1996 and with Japan in February 1997, led it to partly lift the import prohibition on assembled automobile imports as a pre-accession measure. Taiwan has decided to eliminate these measures upon
accession and introduce a tariff rate quota system (to be expanded 20 percent each year). Taiwan is committed to completely liberalizing the automobile market by 2011.

The import ban on motorcycles over 150cc will be eliminated six months after accession and the ban on diesel engine automobiles will be eliminated two years after accession. Import restrictions on leisure boats will be switched to an automatic import licensing system.

There will also be a transition to a tariff rate quota system for agricultural products such as specific fruits (peaches, lemons, grapes, oranges, apples, coconuts), duck and turkey meat, etc., that had been subject to similar discriminatory import bans.

**Foreign Currency Exchange Policy**

Taiwan is committed to implementing no foreign exchange management of ordinary transactions.

Since Taiwan does not belong to the IMF, it will enter into a special exchange agreement with the WTO under GATT Article 15 Clause 6.

**Registration System for Importers and Exporters**

Foreign companies exporting and importing into Taiwan must have a presence and be registered in Taiwan. Although Taiwan will continue this system after accession, it will not impose minimum investment or similar requirements at the time of registration and it will administer the system in conformity with the Import Licensing Procedures Agreement and the WTO Agreement.

**Trade in Services**

Amendments to the Foreign Investment Ordinance in October 1997 have opened a wide area of services previously subject to investment restrictions, such as distribution, finance, securities, insurance, and real estate. In the distribution sector in particular Taiwan has committed to imposing no restrictions on the provision of services through foreign companies based in Taiwan. In its schedule of service commitments, Taiwan has committed to further liberalization in finance, transportation, audio visual services and telecommunications.
Furthermore, upon accession Taiwan has committed to establishing an inquiry point on all information relating the above commitments and the WTO agreement to achieve even greater transparency.

**Industrial Subsidies**

It has been noted that Taiwan has a large number of various industrial subsidies, including red-light subsidies prohibited under the Subsidies Agreement. Upon accession Taiwan will take steps to conform to the WTO Agreement by notifying the WTO of the various subsidies and, in principle, abolishing those subsidies prohibited under the Agreement. For instance, in accordance with Article 28 of the Subsidies Agreement, Taiwan has committed to eliminating within three years subsidies to automobile and motorcycle producers which use domestic parts.

**TBT and SPS**

Taiwan has committed to applying fully the provisions of the TBT and SPS Agreements from the date of its accession without a transitional period.

In addition, Taiwan has committed to implementing emission and noise standards for motorcycles over 700cc in line with international standards, and also using international standards for diesel engine pollution, all of which had been contentious issues in the past.

**TRIM**

Upon accession Taiwan has committed to observing the TRIM Agreement and addressing issues thought to be in violation of the Agreement, such as the local content requirement which has been applied to the production of automobiles (40 percent) and motorcycles (90 percent) and the requirement for coal importers to purchase domestic coal.

Based on the above commitments, Taiwan has allowed the Regulation on Execution of the Plan for Local Production of Machinery and Electrical Appliances to lapse from 1 January 2002. This regulation had stipulated the local content requirement for automobiles and motorcycles.
Trade-related Aspects of Intellectual Property Rights (TRIPS)

(a) Status of Improvements to Taiwan’s Legal System

In Taiwan intellectual property protection is governed substantively by the Copyright Law, Trademark Law, and Patent Law (including discovery patents, new application patents, and design patents), Seeds and Seedling Law, Integrated Circuit Design Protection Law, Trade Secrets Law, and Fair Trade Law, and procedurally by the Criminal Code, Criminal Litigation Law, Customs Law, and Trade Law. The intellectual property protection system has continually been improved in Taiwan as the country has move towards accession to the WTO and legislated related laws from 1994 through 2001, which bring the system in line with the TRIPS Agreement.

Based on these efforts, Taiwan has committed to fully apply the provisions of the TRIPS Agreement from the date of WTO accession without a transition period. On the issue of enforcement, which had been considered a problem by member countries in the past, Taiwan has pointed to remedial measures it has taken including stiffer fines for violators, suspensions of violators’ businesses under the Fair Trade Law of February 1999, and the training of judges and other officials. Taiwan has also established a task force comprised of officials from related ministries to formulate an action plan on enforcement.

(b) Areas to be Rectified

In general, Taiwan has made steady progress in improving the intellectual property legal system to bring it in conformity with the TRIPS Agreement, although there are still some areas which need to be rectified.

Aside from creating and strengthening systems, administrative improvements, such as greater surveillance, are needed to combat the distribution of illegal products such as counterfeit and pirated goods.

The following sections outline which further remedies are desired. Japan needs to monitor Taiwan’s future efforts and how Taiwan discloses the status quo through means such as the WTO review of its statutes. If improvements are not evident, Japan will need to consider seeking remedies through WTO conflict resolution procedures.
i) Defects of the “application to sell” provision arising from the patent holder’s exclusive rights.

Clause 1, Article 28 of the TRIPS Agreement stipulates in regard to patents on things or processes that, “the patent holder should have exclusive rights to prevent third parties from applying to produce, use, or sell, or selling, or importing for these purposes, without obtaining the agreement of the patent holder.”

Article 56 of the Taiwan Patent Law only stipulates that a patent holder who has received a patent over a thing has, “exclusive rights to prevent manufacture, sale, use, or import for these purposes.” This is in conflict with Article 28 of the TRIPS Agreement since it does not include exclusive rights for the patent holder over “applications to sell” patents on things.

ii) Non-criminal penalties on infringements of discovery patents.

Although Taiwan’s Patent Law was amended in 1994, 1997, and 2000 with the intention of conforming it to the provisions of TRIPS, criminal penalties on infringements of discovery patents have been gradually lightened during that time. The final amendment in October 2001 makes discovery patent infringements no longer subject to penalty (imprisonment or fines).

Article 61 of the TRIPS Agreement stipulates that criminal procedures and penalties should be established for trademark and copyright infringements. Some of the measures taken by Taiwan do not violate this article of the TRIPS Agreement. It is impermissible, however, that Taiwan should reduce the degree of patent protection after accession negotiations were concluded. Japan seeks an early reinstatement of penalties for discovery patent infringements in order to ensure proper and full protection of these rights.

iii) Stronger protection of intellectual property rights through control of counterfeit and pirated products.

Despite various efforts undertaken by Taiwan, as noted above, Japanese company representatives have been very clear in their demands for greater control to protect them from damage they are suffering from counterfeit and pirated
products such pirated films, music and software. While Japan welcomes the fact that, in regard to pirated products, its copyrights will be able to receive automatic legal protection through amendments to the Copyright Law on Taiwan’s accession to the WTO, Japan notes its copyrights, which were protected prior to the amendments to the law, had suffered serious damage due to pirated products. Japan therefore seeks stronger systems, as well as greater efficacy of action in areas such as uncovering illegal products and punishment of violators. Japan looks forward to specific measures to redress these issues at the earliest possible date and improvements that will dispel the concerns of rights holders.

**Deregulation of Government Procurement**

In June 1994, Taiwan announced that it intended to join the Government Procurement Agreement and commenced negotiations with the individual countries. In May 1999, Taiwan enacted a new Government Procurement Law, which was amended to conform to the Agreement. The enactment of the new Government Procurement Law has led to the elimination of the offset practices under the Industrial Cooperation Programs (ICPs), which had been noted not to be in conformity to the Agreement.

**Agricultural Policies**

Upon accession to the WTO, Taiwan has committed to eliminating all quantitative restrictions on agricultural products and bind all tariffs applied on imports of agricultural products (or move to a tariff rate quota system for agricultural products, such as certain fruits, beans, meats and poultry, which had been subject to discriminatory important bans). Upon accession rice will move to a tariff rate quota system and the ban on imported rice will be abolished. In addition, old rice, which previously had been for export, will be able to be exported by domestic rice agents.

Export subsidies will be abolished and the total volume of domestic subsidies is to be reduced by 2002 to conform to the Agriculture Agreement.