

TAIWAN

In 1997, the United States' trade deficit with Taiwan reached \$12.2 billion, up \$738 million from 1996. U.S. exports in 1997 were \$20.4 billion, up 10.7% from the previous year. U.S. imports from Taiwan were \$32.6 billion, up 9.1 percent. Taiwan is currently the 7th largest trading partner of the United States.

The stock of U.S. foreign direct investment (FDI) in Taiwan in 1996 was \$4.5 billion, an increase of 7.1 percent from 1995. U.S. FDI in Taiwan is concentrated largely in the manufacturing, banking, and wholesale sectors.

Overview

During the past year, significant progress was made with Taiwan on market access issues involving computers, telecommunications, government procurement, and the protection of intellectual property in some areas such as sound recordings.

Bilateral negotiations have just been completed in the context of Taiwan's negotiations to accede to the World Trade Organization (WTO). In these WTO-related talks, significant progress has been made to open or expand Taiwan's market for U.S. agricultural products, services (especially construction and financial services), beer, wine and spirits, automobiles, and a wide range of other U.S. products. Significant trade issues remain, however, as described in the following paragraphs.

IMPORT POLICIES

Tariffs

Many agricultural tariffs were cut as part of Taiwan's 1995 unilateral tariff reductions. U.S. exporters nevertheless consider that many of the tariff reductions were not deep enough to have real commercial effect, and that the present tariff structure on these items, as well as other agricultural tariffs, continue to be a significant barrier to exports. Some examples include: fresh fruits (40-50 percent tariff), processed vegetables, including vegetable juices (35-40 percent), and sunflower seeds and oil (21-24 percent). Many of these tariffs will be lowered in the context of the WTO bilateral agreement.

In addition, U.S. agricultural exporters continue to report instances in which the customs authorities on Taiwan have reclassified import items to lines with higher tariffs, often after years of trade history. This practice is most prominent in agricultural commodities, such as mixed feed stuffs, tallow and grease, and intermediate ingredients. Such a practice negates some of Taiwan's tariff cuts.

In 1997, Taiwan authorities proposed legislation that will cut tariffs on 1,130 items. It is expected that the legislation will pass and go into effect in 1998. The proposed cuts include many items of concern to the United States, such as buses, agricultural products, fruits and vegetables, and camera film.

Under the Information Technology Agreement (ITA), Taiwan has also agreed to phase out tariffs on 289

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information technology products. The first tranche of ITA-related cuts was implemented on a temporary basis on July 1, 1997 under Administrative Order. A second tranche went into effect on January 1, 1998. While the vast majority of tariffs on these products will be phased out by the year 2000, for some products reductions will not be completed until 2002. The Administrative order will have to be renewed annually until Taiwan enacts permanent reductions in connection with accession to the WTO.

Licensing and Other Restrictions

Taiwan has greatly reduced the number of items requiring import licenses. The share of import categories exempt from control was increased from 34 to 85 percent with the introduction of a "negative list" in July 1994 and its expansion in 1995, at present, there are 878 categories that require approval from the relevant authorities in order to clear customs. Another 287 require pro-forma notarization from local banks or import permits from the board of foreign trade (BOFT).

Taiwan restricts the importation of 264 items, which may not be imported without special permission from the Taiwan authorities. Included in this category are agricultural items that can only be imported pending the agricultural authorities' prior approval. This amounts to a *de facto* ban on imports of many of these products since import approval is normally not granted. Quarantine requirements also block imports of certain plant and animal products. Items under *de facto* bans include chicken (fresh and frozen), certain cuts of pork, peanuts, and adzuki beans. Rice and rice products are considered to be exceptional items requiring approval from Taiwan's provincial food bureau. Imports of animal offal (beef, pork, and poultry), sugar, and selected dairy products are banned. Taiwan has agreed to remove these bans upon accession to the WTO. Some market access for U.S. products in this group will be provided in the interim.

In addition to these restrictions on agricultural items, the Council of Agriculture also implements what amounts to a *de facto* ban on the importation of fishing boats (including sport fishing boats), which has frustrated the export efforts of several U.S. firms. For some products where licenses are required, the importer may be required first to obtain the authorization of numerous agencies such as Taiwan's Department of Health (DOH) for medical equipment, the Council of Agriculture for certain fertilizers, and the Department of Environmental Protection for waste and scrap copper, aluminum, lead, and zinc. Often these additional approvals and documentary requirements add to the administrative burdens of importing the products into Taiwan or make importation effectively impossible for small exporters without the appropriate connections with the relevant authorities.

Medical Devices and Pharmaceuticals

Other than WTO accession issues, medical devices and pharmaceuticals have been one of the most contentious trade issues between the United States and Taiwan over the last two years. Taiwan has declared both the medical device and pharmaceutical sectors as areas warranting priority for development. Favorable measures have been introduced by Taiwan agencies to promote growth and technological development in these areas.

Medical Devices:

The Taiwan market has been an important one for the U.S. medical device industry. Taiwan is the third largest emerging market in Asia for U.S. medical device industry exports. At present, the U.S. medical device industry exports approximately \$150 million worth of product to Taiwan and commands a 40 percent market share.

Discriminatory practices now threaten about two-thirds of U.S. exports, and prospects for substantial growth.

Because Taiwan maintains a national health insurance system with universal coverage, it acts effectively as the exclusive buyer for all medical device products used in Taiwan. As the sole effective buyer, Taiwan authorities can (and do) set prices for all medical devices.

On September 30, 1996, the United States and Taiwan concluded an agreement on medical device pricing with specific measures to be achieved regarding national treatment, transparency, openness, predictability, and functionality. Taiwan has thus far not taken adequate measures to establish differentiated pricing for devices based on the relative value to technology (the “functionality” measure). Significant differences exist between the functionality of imported products and those made in Taiwan.

In December 1997, Taiwan’s National Health Insurance Bureau (NHIB) introduced a diagnostic-related group case payment system for medical device products. This system assigns “generic” pricing, counter to the principle of creating value-based pricing for devices as stated in the agreement. This unexpected change in reimbursement systems was accompanied by drastic price cuts for foreign manufactured orthopedic products to levels nearly identical to those for domestically produced orthopedic products, thus eliminating the distinction between products based on quality and relative value.

The change to generic rather than quality pricing for medical devices threatens to reduce dramatically the market for advanced foreign medical device products, at the same time that it provides ample profits to local Taiwan companies for development of more advanced medical devices. USTR is requesting that Taiwan adopt special measures that will recognize the value of the technology embodied in U.S. and other foreign medical devices -- especially in orthopedic knee and hip implants.

Pharmaceuticals:

The U.S. pharmaceutical industry faces price controls similar to those encountered by U.S. medical device manufacturers. Under Taiwan’s pricing system, producers of “generic” pharmaceuticals are reimbursed at a set percentage of the price set for a proprietary drug. This system discriminates against patented and brand-name pharmaceuticals that are typically imported, by, providing a higher rate of return on “generic” products that are produced in Taiwan. Since Taiwan producers do not have to pay for research, development and testing (but are entitled to a high price), they can offer “unofficial” discounts on their products. Although Taiwan authorities have addressed the situations in which generic producers received the same price as producers of patented pharmaceuticals, price differentials between products remain narrow.

Taiwan's Ministry of Health requires registration materials which are duplicative and onerous. The Ministry will also not grant foreign pharmaceutical companies regulatory approval to manufacture or market more than one brand of a drug with the same active ingredient and dosage form. Lastly, for all but new chemical entities, pharmaceutical companies are still not allowed to import drugs which are produced using multi-site sourcing. Regulatory burdens imposed by the Ministry on pharmaceuticals, however, have been significantly reduced over the last year.

LACK OF INTELLECTUAL PROPERTY PROTECTION

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Although Taiwan has enacted laws designed to improve intellectual property protection, enforcement of those laws remains problematic. Export of pirated products is a growing problem as Customs authorities in the United States and other countries have seized shipments of pirated CDs, CD-ROMs and other material. In 1997, U.S. Customs seizures of pirated products from Taiwan increased five-fold so that the value of seized pirated product from Taiwan was the second largest after China. We have also received more complaints about the export of infringing components for video games to mainland China for assembly and export.

In addition, owners of U.S. patents and trademarks have experienced difficulty in obtaining and enforcing rights in Taiwan. The general lack of transparency and predictability in the system for obtaining trademarks is a continuing problem. In addition, we are concerned that Taiwan authorities are either permitting or acquiescing in abuses of Taiwan's patent law which impede or prevent foreign right owners from enforcing their patent rights.

Standards, Testing, Labeling, and Certification

Industrial products (such as air-conditioning and refrigeration equipment) are required to undergo testing to verify energy efficiency and capacity before clearing customs. Recent efforts to enforce compliance of some imported products with Taiwan standards have resulted in long delays at customs for some U.S. products entering the market, as testing facilities are inadequate and testing procedures slow and inefficient.

The most prevalent restrictive standards and testing requirements exist for agricultural goods. Taiwan's lack of an internationally based set of pesticide tolerance levels for imported fruits and vegetables sometimes impedes trade in these products. In addition, imported agricultural goods are routinely tested while domestic products are not as closely monitored or tested. Similarly, stringent microbiological and chemical residue testing of imported food products, such as turkey, pork, and game meat, limits imports. On a related issue, Taiwan often fails to notify its trading partners of changes in sanitary and phytosanitary (SPS) import regulations, despite pledges to abide by international norms as embodied in the WTO Agreement on Application of SPS Measures. Standards on preservatives for soft drinks preclude the import of certain beverages.

Registration procedures for imports of pharmaceuticals, medical devices, and cosmetics are both complex and time consuming, and have been the subject of a number of complaints by U.S. firms. Foreign medical device manufacturers must also re-register second or third generation versions of previously approved products, and the Taiwan Ministry of Health also requires the registration of individual products instead of entire product lines. Pharmaceutical companies claim that clinical trial requirements in Taiwan for drugs that have been approved in other major markets add 2-3 years to the approval time. All of these requirements limit U.S. firms' access to Taiwan's market.

In 1997, the Taiwan authorities promulgated new electromagnetic compatibility (EMC) standards for computer and other electronic goods. Bilateral discussions led to a grace period prior to implementation of the new rules. The grace period allowed affected U. S. firms to comply without a disruption of U.S. computer exports to Taiwan.

GOVERNMENT PROCUREMENT

U.S. and foreign construction companies have encountered very substantial problems in performing government

contracts in Taiwan. These problems are severe enough to be considered trade barriers.

The most common pattern of difficulty consists of frequent and unreasonable change orders introduced during performance of the contract. Performance bonds are forfeited and contracts canceled when foreign construction companies are unwilling to accommodate substantially increased costs within the originally agreed payment. Lack of timely and effective arbitration procedures prevent satisfactory resolution of contract disputes. Some major international contractors will no longer undertake significant contracts in Taiwan.

U.S. industry has also been hindered in bidding on major projects by nontransparent procurement procedures, which include the use of invisible ceiling prices on bid tenders and unlimited potential damages and contingent liability requirements which are inconsistent with international practices. Other problems include: expensive bond requirements, short lead times on major tenders, non-transparent and lengthy warranty provisions, unclear payment schedules, and pre-qualification requirements which limit experience to similar projects in Taiwan and disqualify related overseas experience. Additional limitations include a requirement that foreign firms have a local construction license or else establish a local subsidiary in order to bid on public projects. Possible exceptions to current laws involve construction services requiring new technology or cases where foreign firms provide consulting and other services.

In connection with its accession to the WTO, Taiwan has agreed to join the Agreement on Government Procurement (GPA). Adherence to the GPA's procedures should improve the transparency of the bid process on major government procurement contracts. In addition, Taiwan has agreed to new dispute settlement procedures on major government contracts. Legislation establishing new procurement rules and a new dispute settlement system, operated by the Taiwan authorities, is now pending in the Legislative Yuan.