

## TAIWAN

### TRADE SUMMARY

The U.S. trade deficit with Taiwan was \$13.8 billion in 2002, a decrease of \$1.4 billion from 2001. U.S. goods exports in 2002 were \$18.4 billion, up 1.5 percent from the previous year. Corresponding U.S. imports from Taiwan were \$32.2 billion, down 3.5 percent. Taiwan is currently the 9<sup>th</sup> largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Taiwan were \$4.6 billion in 2001 (latest data available), and U.S. imports were \$3.5 billion.

The stock of U.S. foreign direct investment (FDI) in Taiwan in 2001 was \$8.8 billion, up from \$7.8 billion in 2000. U.S. FDI in Taiwan is concentrated largely in manufacturing, finance and wholesale sectors.

Taiwan acceded to the World Trade Organization (WTO) on January 1, 2002. As part of the extensive negotiations on its WTO accession, Taiwan agreed to address most of the trade barriers described in this section.

### IMPORT POLICIES

#### Tariffs

In November 2001, the Legislative Yuan (LY) passed a comprehensive tariff schedule revision based on the results of Taiwan's bilateral and multilateral negotiations in connection with its accession to the WTO. Approximately 4,500 tariffs were reduced as of January 1, 2002, the date Taiwan became a WTO member. Taiwan's average nominal tariff rate has been lowered from the pre-accession level of 8.2 percent to 7.1 percent in 2002 and will fall to 5.5 percent by 2007. However, industry continues to request that Taiwan lower tariff levels on imports of potato and citrus products.

In accordance with its WTO accession agreement, Taiwan established a tariff-rate quota (TRQ) system on small passenger cars, three categories of fish and fish products, and permitted the import of previously banned or restricted agricultural items: chicken meat, pork belly, pork offal, oriental pears, and bananas. Taiwan also lowered tariffs on these products, resulting in lower prices.

Taiwan is a participant in the Information Technology Agreement (ITA). Under the ITA, Taiwan agreed to phase out or reduce tariffs on information technology products. The majority of these reductions occurred before Taiwan's WTO accession. The remaining tariff cuts on ITA products were completed on January 1, 2002.

#### Licensing and Other Restrictions

In order to comply with its WTO commitments, Taiwan eliminated import controls on nearly 95 percent of 10,626 official import product categories as of December 2002. Currently, 509 product categories require import permits from the Board of Foreign Trade. Imports of 58 categories are "restricted", including ammunition and some agricultural products. These items can only be imported under special circumstances, and are effectively banned.

*Agricultural and Fish Products:* Prior to WTO accession, Taiwan banned or restricted imports of 42 agricultural and fish items. In January 2002, Taiwan liberalized imports of 18 of these agricultural and fish categories and implemented TRQs on an additional 24 items. TRQ's on a number of products of interest to the United States (chicken meat, pork belly and offal, and poultry offal) will be eliminated on January 1, 2005 when these imports will be fully liberalized.

*Rice:* Before Taiwan's WTO accession, imports of rice were banned. During 2002, rice imports were subject to a minimum market access (MMA) quota that covered both public- and private-sector imports. The United States raised concerns with Taiwan's late implementation of its rice import system in 2002, including cancellation of mark-up price reductions for several private sector tenders, and use of a "ceiling price" for public sector tenders. Despite these difficulties, U.S. suppliers were able to gain a majority of the rice import market during 2002. However, the United States remains concerned with Taiwan's implementation of a tariff-rate quota for rice imports in 2003 and subsequent years, as it appears more trade restrictive than the 2002 system and inconsistent with Taiwan's WTO commitments. As a result of these concerns, the United States in January 2003 formally objected at the WTO to Taiwan's proposed rice import system. Discussions

## TAIWAN

regarding alleviation of U.S. concerns continue with Taiwan officials.

*Tobacco and Alcohol Products:* A new tobacco and alcohol management and tax system went into effect on January 1, 2002. In place of the previous tax on imports administered by the former monopoly authority, the Taiwan Tobacco and Wine Monopoly Bureau (TTWMB), Taiwan has agreed to impose an excise tax and to eliminate tariffs on imports of most spirits. In March 2003, Taiwan's Ministry of Finance (MOF) submitted for review draft amendments to lower taxes on salt-added cooking wine. Taiwan also liberalized private alcohol production upon its accession to the WTO and will liberalize private cigarette manufacturing by 2004. TTWMB became a state-owned corporation, Taiwan Tobacco and Liquor Corporation (TTLC), in July 2002 and will be fully privatized by July 2004.

*Wood Products:* Taiwan is in the midst of revising building codes and drafting standards for wood use in construction. While Taiwan publicly pursues a "Green Building" program, U.S. wood products companies have raised concerns that drafts of building codes and standards are highly restrictive and do not encourage wood use in construction. Very restrictive fire protection and structural requirements will unnecessarily raise the cost of wood construction significantly beyond that of other materials.

*Automobiles and Motorcycles:* Local content requirements in the automobile and motorcycle industries were lifted as part of Taiwan's WTO accession. The importation of motorcycles with engines larger than 150 cc was liberalized in July 2002 as part of Taiwan's WTO commitments. Although Taiwan has agreed to set emissions standards for motorcycles over 700 cc in line with international standards, the U.S. motorcycle industry continues to consult with Taiwan authorities on announced changes in emission standards and test procedures. In addition, the U.S. motorcycle industry remains concerned with Taiwan's tariffs and other taxes on large motorcycles as well as Taiwan's restrictions on motorcycle access to highways.

### STANDARDS, TESTING, LABELING AND CERTIFICATION

*Industrial and Home Appliance Products:* Industrial and home appliance products (such as

air-conditioning and refrigeration equipment) are subject to testing requirements before clearing customs. Tests on each shipment include "batch-by-batch inspection" (BBI) and "registration of product certification" (RPC). The current BBI will be available for use by manufacturers or importers until December 31, 2003. Starting on January 1, 2004, Taiwan will adopt a dual-track approach, which allows the manufacturers or importers to choose the RPC scheme or a BBI inspection with Type Approval. For those products subject to the ISO 9000 quality management system, an alternative factory inspection module will be introduced. The manufacturers or importers may choose the module most appropriate to them when applying for registration under the RPC Scheme. U.S. industry expects these requirements will still unnecessarily raise costs for manufacturers, who already have well-established, recognized quality control procedures, by forcing them to apply for the ISO certification or a factory inspection.

*Sanitary and Phytosanitary Measures:* As a member of the WTO, Taiwan must abide by the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (including notification of SPS measures). In 1999, Taiwan agreed to accept meat and poultry imports from plants approved by the USDA Food Safety Inspection Service. In 1999 and 2000, Taiwan agreed to accept Codex Alimentarius standards and, in some cases, U.S. pesticide residue standards for imported fruits and vegetables.

*Beverage Alcohol Products:* On December 31, 2001, immediately before its WTO accession, Taiwan implemented new regulations requiring ingredient labeling for beverage alcohol products. Although this new regulation would impact international trade, the United States was not informed by Taiwan in advance of implementation. As a result, bilateral meetings were conducted in October 2002 to discuss this requirement. During the meeting, officials from Taiwan's Ministry of Finance (MOF) stated that a review of these regulations would occur in January 2003 and enforcement would not begin until July 2003. MOF has submitted a draft amendment for legislative approval to eliminate major ingredient labeling requirements for beverage alcohol products.

*Bioengineered Foods:* Taiwan authorities generally have taken a cautious approach to

## TAIWAN

trade in bioengineered foods as embodied by the Department of Health's (DOH) February 2000 regulatory decisions. Risk assessment documentation on bioengineered corn and soybeans were required to be submitted to DOH before April 30, 2002, and mandatory labeling on certain corn and soybean food commenced in 2003. Mandatory labeling on all foods with over 5 percent bioengineered content will be required in 2005. No disruptions to trade have resulted from Taiwan's regulations.

*Medical Devices:* Registration and approval procedures for medical device imports are complex and time-consuming, and have been the subject of long-standing complaints by U.S. firms. The registration process requires redundant testing, and foreign manufacturers must re-register new products even though they are based on previously approved devices. In addition, it is unclear when local clinical trials are required for the review process or whether industry is allowed to provide additional input in response to questions posed by DOH officials reviewing the clinical trial submissions. The adoption of the U.S. Food and Drug Administration's (FDA) medical device classification system in June 2000 was welcomed by industry. However, Taiwan's implementation of this system will require re-registration of previously approved products. It is unclear whether DOH will agree to accept an FDA-issued Certificate for Foreign Export, which would alleviate delays in the approval process. Taiwan has identified both the medical device and pharmaceutical sectors as priorities for local development, resulting in Taiwan's agencies favoring the interests of local companies over foreign firms.

*Pharmaceuticals:* Taiwan's pharmaceutical registration process slows market entry for new drugs that have already been approved in other industrial countries and imposes unnecessary costs on drugs that have already been approved in Taiwan. In May 2001, the DOH announced a requirement for firms to submit voluminous amounts of proprietary manufacturing data as part of the registration and approval process for both new drugs and those already on the market. The amount of such "validation" data requested by Taiwan far exceeds international norms. In response to concerns raised by the United States and its industry, the DOH has postponed implementation of this requirement. In December 2002, the United States and Taiwan

exchanged letters in which Taiwan affirmed its commitment to adhere to international practices as applied in advanced economies, and agreed that firms can demonstrate validation status by either undergoing DOH inspection or providing documentary evidence. The United States is working with Taiwan and industry to ensure the agreement is implemented fully and expeditiously.

Taiwan uses various methods to lower assigned prices on innovative drugs. Methods include the use of "reference pricing," assigning a lower price when a drug is approved for an additional use, and lowering assigned prices arbitrarily. Significant differences exist between the functionality and quality of imported products and those made in Taiwan, yet Taiwan continues to restrict consumer choice and limit U.S. market access through disproportionate reimbursement of domestically manufactured drugs. To address outstanding concerns of foreign pharmaceutical firms, Taiwan's Bureau of National Health Insurance is considering a "reward for innovation" for patented pharmaceuticals while lowering off-patent drug prices, expected in March 2003. In addition, Taiwan began in July 2002 a "global budget" system in which hospitals receive lump sums for discretionary spending. Global budgeting could lead hospitals to increase their requests for illegal discounts on pharmaceuticals as budget pressures grow and could also discourage hospital use of innovative medicines.

### GOVERNMENT PROCUREMENT

Taiwan committed to accede to the WTO Agreement on Government Procurement (GPA) as part of its WTO accession. While Taiwan has applied for accession to the GPA, it has not yet completed the accession process due to PRC opposition. To prepare for accession, Taiwan implemented a new Government Procurement Law (GPL) in mid-1999. This was an important first step toward establishing a transparent and predictable environment for Taiwan's multi-billion dollar market for public procurement projects. In August 2001, Taiwan and the United States signed a Memorandum of Understanding on Government Procurement. The MOU ensures that Taiwan will be able to implement GPA procedural commitments. A number of these commitments were implemented immediately. Taiwan agreed to establish new procedures providing for

## TAIWAN

independent review of complaints that arise during the tendering process, to encourage its procuring entities to make use of mediation procedures, and to cooperate fully when such procedures are invoked. However, Taiwan officials have continued to incorporate provisions in its public procurement tenders that are not consistent with the GPA and have attempted to justify these provisions by stating that Taiwan has not yet acceded to the GPA. Further, the lack of transparency in the government procurement process as well as the review process for complaints remains a serious issue. U.S. participation in Taiwan government procurement continues to decline as a result of these practices. The United States continues to monitor the government procurement environment.

### EXPORT SUBSIDIES

The Taiwan Government provides incentives to industrial firms in export processing zones and to firms in designated "emerging industries." Some of these programs may have the effect of subsidizing exports. Taiwan has notified the WTO of these programs and, as part of its WTO accession, committed to amend or abolish any subsidy programs inconsistent with WTO rules. Amendments of relevant laws, such as the Statute for Establishment and Management of Economic Processing Zones and the Statute for Establishment of Scientific Industrial Parks, to eliminate improper subsidies went into effect upon Taiwan's WTO accession. The United States continues to monitor Taiwan's compliance with the commitments it undertook as part of its WTO accession, including those obligations associated with the Agreement on Subsidies and Countervailing Measures.

### INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In the face of U.S. concerns on intellectual property rights (IPR) protection, Taiwan's Intellectual Property Office has cooperated with police authorities and other agencies since 2000 to implement island-wide efforts to crack down on the counterfeiting and pirating of goods. The authorities declared 2002 to be the "action year for IPR protection." The Ministry of Economic Affairs and Ministry of Justice worked extensively with the Business Software Alliance (BSA) during the Spring of 2002 on a campaign

to press businesses and government agencies to use genuine software.

In October 2001, as part of preparation for Taiwan's accession to the WTO, the LY passed an amendment to Taiwan's Patent Law. This bill extended the term of patent protection to comply with TRIPS. We continue to work with Taiwan on its obligations to enact TRIPS-consistent protection for data exclusivity of pharmaceutical data submitted in the registration process.

A Copyright Law amendment also was approved in October of 2001. This law treats "computer programs" as literary works conferring protection for a term of the life of the author plus fifty years. Necessitated by changes in the World Intellectual Property Organization (WIPO) Treaty, the Intellectual Property Office (IPO) is preparing new draft amendments to the Copyright Law. The amendments, which will require legislative approval, define public transmission and include Internet-related provisions, such as technological protection measures and electronic copyright for the management of information. The Taiwan Government has shown its willingness to consider U.S. Government and industry comments as it prepares the new draft. The United States is monitoring developments in this area.

In response to U.S. and industry requests to protect optical media products and curtail the illegal manufacture of such goods, Taiwan passed an Optical Media Law on October 31, 2001. Manufacturers must now apply for production licenses and report any changes to the authorities. Violators face a maximum three-year jail sentence and a fine of approximately \$86,000. Licensing for new plants and for manufacturers of stampers and masters is not addressed under the legislation. The law was fully implemented effective May 2002.

Despite these efforts, IPR protection continues to be a serious and contentious issue between the United States and Taiwan. The U.S. International Intellectual Property Alliance (IIPA) estimates that Taiwan's weak IPR protections caused trade losses to the United States of \$757 million in 2002. As Taiwan prepared for its WTO accession, Taiwan amended its IPR laws to comply with the WTO Agreement on Trade-Related Aspects of

## TAIWAN

Intellectual Property Rights (TRIPS). However, continued pirating of optical media, failure to shut down counterfeit and IPR-infringing facilities, and the export of pirated and counterfeit goods overseas led the United States to ask Taiwan to further improve its enforcement and legal framework for IPR protection. In April 2002, Taiwan was placed on the U.S. Special 301 Priority Watch List for the second year in a row.

The United States also is concerned with the growing incidence of counterfeit pharmaceuticals being repackaged by counterfeiters. While the government has taken some action against the responsible criminal organizations, this represents a threat to public health and to industry.

Another area of concern is the lack of adequate protection for the packaging, configuration, and outward appearance of products, an area of IPR known as "trade dress." Despite provisions in Taiwan's Fair Trade law designed to protect unregistered marks and other packaging features, misleading copying of U.S. products by local manufacturers remains a problem.

Taiwan's judiciary continues to experience difficulties in handling technical cases, and U.S. industry has complained about long delays in court cases. Often conflicting or unclear lines of bureaucratic authority stymie IPR enforcement efforts. The fact that only prosecutors can initiate cases and bring charges also limits active enforcement. Generally, U.S. IPR holders find that court procedures themselves constitute barriers and that penalties are inadequate.

### SERVICES BARRIERS

#### Financial Services

Taiwan's liberalization of its financial markets has been more rapid than the timetable set in its February 1998 bilateral WTO accession agreement with the United States. In January 2001, the Securities and Futures Exchange Commission (SFEC) lifted the restriction on employment of foreigners by domestic Taiwan securities firms. Also in January 2001, the SFEC removed the 50-percent foreign ownership limit on listed companies. Although each qualified foreign institutional investor (QFII) is still subject to a limit on portfolio investment, the SFEC raised the limit in October

2001 from \$2 billion to \$3 billion. In May 2001, the SFEC relaxed qualification requirements for QFII's so that all active foreign portfolio investors (including banks, insurance companies, securities firms, and pension fund management companies) became eligible to trade in securities in Taiwan. For QFII's, restrictions on capital flows have been removed. However, foreign individual investors are still subject to some limits on their portfolio investments and restrictions on their capital flows.

Taiwan is attempting to fulfill its May 1997 commitment to liberalize insurance premium rates and policy clauses. In November 2001, the Department of Insurance (DOI) permitted life insurance companies to sell investment-linked products. The DOI began to allow life insurance companies to set their own premium rates on January 2002 if the companies had their own actuaries to determine such rates.

The DOI adopted a three-stage premium rate liberalization program for non-life insurance. Effective January 1, 2002, insurance firms were allowed to set premium rates for large face-value fire insurance policies and fire insurance policies sold to multinational corporations. The target date for total liberalization is January 2008, but the liberalization date for an individual insurance firm can be advanced if it has a good credit reputation and its capital adequacy ratio reaches 300 percent.

The DOI adopted a transparent approval procedure for insurance policies in January 2001. Prior approval is not required for products whose policy clauses are identical or very similar to existing products of other companies. New products are subject to prior approval, but the DOI's reviewing time may not exceed 90 days after it receives an application. If the DOI does not respond to an application within 90 days, the non-response becomes a *de facto* approval by the DOI.

#### Legal Services

Following Taiwan's accession to the WTO, foreign lawyers are permitted to practice law in Taiwan either by setting up individual practices (single lawyer) or entering into partnerships with local counterparts. In order to practice domestic

## TAIWAN

law, foreign lawyers must pass the local bar examination and use the Chinese language while before the courts or submitting written briefs. If the foreigner does not meet these qualifications, local lawyers working for or in cooperation with the foreign lawyer may represent the foreign lawyer's interests on domestic law issues. When practicing international or foreign law, foreign lawyers do not need to pass the language or bar examinations and are not required to hire or partner with local lawyers.

### Films

On January 1, 2002, Taiwan lifted import limits on foreign films. A special fee levied on imported films was removed, as was a limit on the number of theaters showing the same foreign film simultaneously in a municipality. A limitation of three screens in a multi-screen theater showing a single title was also eliminated.

### Telecommunications Services

Taiwan issued licenses to three new fixed-line telecommunications companies during 2000. U.S. companies were initially very interested in this market. However, Taiwan's requirement that new entrants invest \$1.2 billion in facilities dissuaded U.S. and most other foreign telecommunications companies from seeking licenses at the time. Similarly, U.S. industry believes that Taiwan's current regulations contain paid-in capital requirements that should be reduced or eliminated. Taiwan has developed new criteria regarding the issuance of new licenses, including those for domestic long-distance and international services, expected to be issued in September 2003. According to the Directorate General of Telecommunications' (DGT) draft on new criteria regarding the issuance of new fixed-line licenses, DGT proposes to lower fixed-line capital and line facility requirements. However, opposition from existing fixed line firms against easing existing requirements led to a delay. DGT later plans to issue licenses not only for long-distance and international services but also for comprehensive networks and city call services. Capital requirements for comprehensive network services, city-call services and long-distance/or international services under the current proposal would be NT\$16 billion, NT\$12 billion and NT\$2 billion, respectively. Requirements for comprehensive fixed-line licensees will be

400,000 lines, but 60,000 lines will be sufficient for opening services.

The opening of fixed-line services notwithstanding, the existing fixed-line operators are reportedly having serious difficulties negotiating reasonable interconnection arrangements at technically feasible points in the network of the dominant carrier, Chunghwa Telecom (CHT). These companies are concerned with the slow response of the regulator to resolve these difficulties. For instance, Taiwan's Ministry of Transportation and Communications (MOTC) did not declare local loop unbundling as a "bottleneck" as suggested by the DGT. This would have forced CHT to provide equal access services and to agree to facilities-sharing requests from other telecommunications suppliers. Three fixed-line operators are still negotiating with CHT to resolve these issues. The United States continues to monitor Taiwan's progress in the telecommunications sector.

Taiwan's telecommunications regulatory body, the DGT and formerly state-owned monopoly, ChungHwa Telecom are under the purview of the MOTC, creating a potential conflict of interest. DGT should be granted the full authority, independence, and resources to effectively resolve inter-carrier disputes, enforce policies and mediate construction approvals for new and incumbent operators.

During 2001, several companies landed fiber-optic submarine cables in Taiwan. Taiwan permitted direct sale of their capacity to the four existing fixed-line license holders and other telecom businesses, including Internet Service Providers, on February 2002. While international submarine cable firms are permitted to build their own backhaul facilities, or links from the cable landing site to network providers, they are limited to only one gateway.

### INVESTMENT BARRIERS

Taiwan continues to relax investment restrictions in a host of areas, but foreign investment remains prohibited in key industries such as agriculture, broadcasting, power, and liquor and cigarette production. Foreign investors in the telecommunications sector were subject to a 60 percent ownership limit, including a 20 percent limit on direct foreign investment, but Taiwan relaxed this restriction in

## TAIWAN

2002 by raising the foreign ownership limit on direct foreign investment from 20 percent to 49 percent while keeping the 60 percent total cap. In February 2003, Taiwan lifted its ban on foreign investment in liquor production, though prior approval is required. Liquor and cigarette production will be fully liberalized by 2004. Foreign ownership in airlines is limited to 33 percent. The 50 percent foreign ownership limit on air cargo forwarders and air cargo terminals was eliminated when Taiwan became a WTO member. Foreign ownership is limited to 50 percent in the independent power sector. The electricity transmission and distribution markets are reserved for the Taiwan Power Company, which also has a *de facto* monopoly over electricity generation. With passage of the Petroleum Enterprise Management Law in late September 2001, imports of gasoline and liquid natural gas (LNG) were opened to the private sector in January 2002.

### ANTICOMPETITIVE PRACTICES

In the cable TV market, U.S. program providers contend that the island's two dominant multi-system operators (MSOs) frequently collude to inhibit fair competition. Control by the two MSOs of upstream program distribution deterred U.S. program providers from negotiating reasonable program fees. Additionally, cable distribution companies routinely violate agreements and local regulations by masking advertisements supplied by program providers and substituting their own local advertisements. Taiwan regulators have done little to prevent collusion and unfair trade practices, preferring to support local company interests. The existing Cable TV Law allows the conglomerates to further control the market.

### Corruption

Corruption reportedly is most pervasive in the areas of environmental and waste management, public advertising, and government procurement, particularly in local-level construction tenders. The authorities generally investigate allegations of corruption and take action to penalize corrupt officials. Since its inauguration in May 2000, the Chen Shui-bian Administration has stepped up anti-corruption efforts, indicting legislators, city and county officials and former and current bank heads. Several Cabinet-level officials have been indicted and forced to step down in connection

with past scandals. To strengthen the anti-corruption efforts, the Chen Shui-bian Administration plans to inaugurate an independent anti-corruption office. It has pledged to adopt a transparent system for public projects at the local level. While the anti-corruption effort has not yet led to systemic changes, it has improved the business environment for U.S. firms.

### ELECTRONIC COMMERCE

Taiwan's approach to e-commerce and related issues is still evolving. A law protecting personal on-line data was approved in 2001. A positive development is the Electronic Signature Law, passed by the Legislative Yuan in late October 2001. This law adopts the principles of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce and recognizes the legal validity of electronic contracts, records, and signatures. Still under discussion is a proposal to assess duties for software sold and downloaded over the Internet. If implemented, such a policy would appear to run counter to the Doha Declaration that WTO Members would maintain their current practice of not imposing customs duties on electronic transmissions.