2010

AmCham Taipei

TAIWAN WHITE PAPER

AMERICAN CHAMBER OF COMMERCE IN TAIPEI

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The annual *Taiwan White Paper* is written and published by the American Chamber of Commerce in Taipei (AmCham). It includes an overall assessment of Taiwan's business climate, a review of the status of last year's priority issues, and statements of the current priority issues identified by AmCham's industry-specific committees. An additional section offers recommendations to the U.S. government.

The primary purposes of the *Taiwan White Paper* are information and advocacy. The document outlines AmCham's suggestions to the Taiwan government and public on legislative, regulatory, and enforcement issues that have a major impact on the quality of the business environment. It is also used to inform government officials, elected representatives, and other interested parties in the United States about Taiwan's business climate.

Although the *Taiwan White Paper* represents the immediate business interests of AmCham's approximately 950 members, its ultimate goal is to foster the upgrading of Taiwan's economic conditions to the benefit of both local and multinational businesses. It is also in the interest of the Taiwan public at large, as it encourages the growth of a broad spectrum of high-quality of goods and services to improve the quality of life for all Taiwan residents.

The *Taiwan White Paper* can also be found online, where PDF files may be downloaded from the Publications section of the AmCham website at www.amcham.com.tw .

Aspire to Greatnesss

RECAPTURE THE "BUZZ"

- Taiwan faces a rare opportunity to recapture the enthusiasm of multinational and domestic investors.
- The resurgence cannot be accomplished with piecemeal reform. It will need fresh thinking and a national commitment to create not merely a good business environment but a great one.
- Taiwan would bring many competitive advantages to this effort, but it also has notable shortcomings to be addressed.

NEW POST-ECFA PERSPECTIVES

- ECFA will prompt many multinational companies to take a new look at opportunities in Taiwan.
- Direct flights have already reduced the risk of Taiwan's marginalization.
- The domestic political environment has grown less turbulent after two transfers of power.

CONCRETE ACCOMPLISHMENTS

- Aside from cross-Strait relations, major progress has already been made in the areas of IPR protection, government procurement, and official corruption.

RESHAPING THE BUREAUCRACY

- A wide-ranging restructuring of the Executive Yuan, due to take place in 2012, will reduce the number of ministries and better define their responsibilities.
- The aim is to enhance government efficiency by reducing the need for cross-agency coordination.
- Another objective is to change the mindset of government employees to make them more service-oriented.
- The creation of the Taiwan Food & Drug Administration early this year was a successful example of a mini-reorganization.
- The National Communications Commission has been a less effective body, but pending legislation is designed to make it more accountable.

***WHITE PAPER* AS REFERENCE FOR REFORM**

- IPR protection: raise Taiwan's performance to be the very best in the region.
- Financial sector: restart financial reform in earnest.
- Taxation: improve Taiwan's competitiveness in terms of personal income tax rates and AMT liability for expatriates.
- Health-related industries: reward innovative drugs and medical devices, laying the foundation for a strong biotech sector.
- Infrastructure: Actively attract international players to the market; assure sufficient power supply and petrochemical feedstocks.
- Human capital: Upgrade the educational system and liberalize regulations on the entry of foreign and mainland Chinese business professionals.

STRENGTHEN TIES WITH THE U.S.

- Balance expanded cross-Strait relations with bolstered ties with the United States.
- The beef-import dispute of the past few years was mishandled by both sides.
- The two governments should work to schedule TIFA talks for the earliest possible date.

CONCLUSION

- Taiwan can make up for lack of quantity with quality, flexibility, and determination.
- AmCham pledges full support and cooperation if the government can provide visionary, steadfast leadership to propel Taiwan to new heights of accomplishment.

摘要

邁向卓越的經濟

重振經濟活力

- 台灣重振聲勢並再度贏得國內外投資人信心的罕見良機已經浮現。
- 經濟榮景並非只靠零星、小幅度的改革就可達成，必須以嶄新思維及創新方法，積極邁向「卓越」。
- 就企業經營環境而言，台灣有不少既存優勢，但仍有一些明顯缺點有待加強。

ECFA新氣象

- ECFA將吸引跨國企業以全新角度看待台灣的商機。
- 兩岸直航已降低台灣被邊緣化的風險。
- 經過兩次政權輪替，國內政局紛擾現象已逐漸消退。

近年的具體進展

- 除了兩岸關係的加溫，台灣過去幾年主要的進展包括智財權的保障的進步、提供外商公平競爭政府採購市場的平台，以及政府貪腐現象之減少。

重整行政體系

- 2012年行政院組織架構全面翻新，將整併部會層級，並明確定義各自權責。
- 組織改造重點在於加強政府效能，並減少跨部會協調的必要。
- 另一重點是改造政府的官僚思維，使他們更具有服務熱忱。
- 今年初正式成立的台灣食品藥物管理局便是一個小幅度組織調整的成功案例。
- 國家通訊傳播委員會則被認為效力不彰，但立法院未來將考慮修正NCC的相關組織條例，以釐清其權責。

《白皮書》對改革的建議

- 智財權保障：提升台灣成為亞太區域內最重視專利、版權、商標權的國家。
- 金融業：加速重啟金融改革。
- 稅務：調降個人所得稅稅率，並將外籍人士從最低稅負制的適用對象排除，以提高台灣對外籍專業人士的吸引力。
- 醫療產業：鼓勵業者繼續推出新藥與新醫材，奠定本土生技產業的穩固基礎。
- 基礎建設：積極吸引外商參與政府採購市場；確保電力及石化業原料的充足供應。
- 人力資源：促進教育制度的升級，並鬆綁外籍及中國專業人士的入出境法規。

強化台美關係

- 在兩岸與台美關係的發展之間取得平衡。
- 過去幾年，美國牛肉議題造成的僵局並未獲得雙方妥善處理。
- 美國與台灣政府應該儘速恢復TIFA的定期會談。

結論

- 台灣能以品質、彈性、和決心來彌補經濟規模上的劣勢。
- 只要政府施政維持前瞻、穩健，引領台灣邁向卓越的經濟，美國商會願意全力支持與配合。

Aspire to Greatness

RECAPTURE THE "BUZZ"

Back in the 1980s and into the 1990s, the Taiwan economy enjoyed wide acclaim as one of the fast-charging "Asian Tigers." Although it has been many years since Taiwan has been the subject of similar "buzz" in the global business community, it now faces the rare opportunity to position itself for a comeback. Periods of sustained annual GDP growth of 8% or above may be just a memory for an economy of Taiwan's maturity, but Taiwan still has the chance to bring enough competitive advantages to the table to recapture the enthusiasm of multinational and domestic investors.

This resurgence will not come automatically, however. It will certainly not occur if Taiwan remains satisfied with piecemeal reform and incremental change. The only way to bring it about will be for political and business leaders to join forces in adopting a clear vision of how to once again turn Taiwan into an economic dynamo – and then proceed to inspire the society as a whole to strive to meet that objective, followed by a rigorous program of execution. Just as management writer Jim Collins a few years ago popularized the notion of distinguishing between good companies and great companies, the distinction can also be made between a good business environment and a great one. Taiwan needs to set its aim beyond the merely good, and prepare to make a quantum leap into the ranks of the very finest by relying on fresh thinking and imaginative approaches.

In that effort, Taiwan would have the benefit of a number of existing assets as a favorable location for doing business. These include the skills and strong work ethic of its labor pool, the resourcefulness of its entrepreneurs and management teams, its companies' manufacturing expertise and decades of international experience, and a hospitable living environment. But Taiwan has also been hindered by some notable shortcomings, such as government inefficiency and what previous editions of the White Paper termed the "regulatory morass," insufficiently robust capital markets, and a lackluster service sector. In a campaign to return Taiwan to the top ranks of investment destinations, those strengths would have to be further honed and the deficiencies corrected.

NEW POST-ECFA PERSPECTIVES

Taiwan will need to move fast to stay ahead of the rapidly improving competition, but the timing appears favorable for Taiwan to embark on such an ambitious quest to be among the best. For one, the cross-Strait economic relationship is about to enter a new stage, offering opportunities not only for Taiwan and China but also for multinational business. The current negotiations on an Economic Cooperation Framework Agreement (ECFA) are being watched carefully in many boardrooms, corporate planning departments, and research institutes around the world. Companies will be studying how they might benefit from the tariff concessions Taiwan will receive in the huge Chinese market. But even if their industries are not included on the "Early Harvest" list, they may be impressed at how ECFA serves to promote a long-term reduction in tensions across the Taiwan Strait and opens prospects for further improvements in cross-Strait business dealings.

For well over a decade, a central theme each year of AmCham Taipei's White Paper was concern that the lack of direct flights with China and other obstacles to closer cross-Strait business connections were threatening to marginalize the Taiwan economy, cutting it off from many companies' regional and global business plans. But now, even before the signing of ECFA, that risk of marginalization has been lessened through active cross-Strait engagement. Once a highly controversial idea, direct cross-Strait aviation is now routine, with the number of round-trip flights soon to reach a level of 370 per week. In addition, Chinese tourists are bringing renewed prosperity to Taiwan's travel sector, and restrictions on investment in both directions have been liberalized.

Besides the difficulties caused for so many years by inconvenient cross-Strait transportation, another drag on the Taiwan economy over much of the past decade was the turbulence of domestic politics. The peaceful transition from one-party authoritarian rule to vibrant democracy was a remarkable achievement that Taiwan deserves to take pride in. As few would deny, however, the inevitable uncertainties engendered by Taiwan's first two transfers of political power took their toll on business and consumer confidence. Although Taiwan's ruling and opposition parties continue to compete vigorously with one another as should be expected in a democratic system, the society no longer seems as consumed with politics as it was a few years ago. At this stage, one would hope, there is room in the national conversation for other important topics of discussion.

CONCRETE ACCOMPLISHMENTS

Also sparking optimism that Taiwan may be ready for an economic rebound are examples of the progress already accomplished in the past few years – some of it started while the Democratic Progressive Party was still in power and some initiated by the Kuomintang's Ma Ying-jeou administration – in areas beyond cross-Strait affairs. For most of the past decade, three of the top *White Paper* issues in addition to direct flights were rampant intellectual property rights (IPR) abuses, obstacles to fair treatment of international bidders competing for public infrastructure projects, and the prevalence of corrupting "black gold" influences on the political scene.

Although these problems have not been totally eradicated, the improvements have been substantial. By enacting tougher laws, setting up dedicated law-enforcement task forces, and in 2008 establishing a specialized IPR Court, Taiwan has done so well in tightening its IPR controls that last year it was dropped from the U.S. government's "Special 301 Watch List," the roster of countries regarded as lagging in IPR protection. In terms of providing fair access to public contracts, Taiwan last year took the step of acceding to the Government Procurement Agreement (GPA) under the World Trade Organization (WTO), which goes a long way toward ensuring a level playing field. The problem of government corruption appears to have receded as well, although – as with IPR protection and the fairness of procurement policy – continued vigilance will always be needed to make certain that past problems do not resurface.

RESHAPING THE BUREAUCRACY

The government has also begun to take action to attack the longstanding problems of bureaucratic inefficiency and of regulatory approaches that are out of step with international practices. Legislation passed early this year, for instance, calls for a sweeping overhaul of the executive branch to take effect from January 1, 2012. This restructuring – which comes after six failed attempts to pass such a law over the past quarter of a century – will downsize the bloated Executive Yuan (reducing the number of Cabinet-level departments from 37 to 29), while creating ministries with lines of responsibility more in tune with the needs of a modern society and economy. To cite a few examples, a new Ministry of Science & Technology will help stimulate government policies to promote technological innovation and the Ministry of Economic Affairs will be converted into the Ministry of Economic & Energy Affairs to better deal with the mounting challenges of energy supply and climate change.

In working out the new structure, government planners and lawmakers took note of past comments by AmCham and other business organizations, as well as the assessments Taiwan receives in the various annual surveys of international competitiveness. In those reports in recent years, Taiwan frequently scored well in such categories as "Innovation," but lost points for "Government Efficiency." As a result, a key objective of the revamping is to group related functions within the same ministry, in order to decrease the enormous time and effort that currently needs to be expended on cross-agency coordination. An editorial in AmCham's *Taiwan Business TOPICS* magazine last year noted, for example, that the drive to clean up Taiwan's rivers in the wake of disastrous Typhoon Morakot was hobbled by the fact that authority was divided among five government ministries, plus city and county jurisdictions. The restructuring plan responds to that problem by establishing a Ministry of the Environment to take overall responsibility for that and similar matters.

The Chamber was gratified to learn that the government refurbishing will not be confined to redrawing organizational charts, but will also encompass the retraining of government employees to make them more service-oriented, as well as the streamlining of numerous regulatory procedures. As AmCham has repeatedly pointed out, the outmoded mindset of many bureaucrats has long been a barrier to progress in upgrading Taiwan's economic competitiveness. In many cases it has led to regulations and procedures that are unnecessary or inconsistent, and to policies that are non-transparent and out of synch with international standards. If carried out meticulously – and we stress the importance of that 'if" – the retraining and deregulation campaign will be another important step in Taiwan's pursuit of excellence.

The positive results are already visible from one mini-reorganization launched this year –the Department of Health's establishment of a Taiwan Food & Drug Administration (TFDA) to regulate foods, pharmaceuticals, medical devices, and cosmetics. The AmCham committees in those product areas are unanimous in their praise for the new agency's willingness to communicate with industry and its desire to elevate the professionalism of its part of the

regulatory process.

In another case of reorganization, however – the formation four years ago of the National Communications Commission as an independent body to regulate the telecom and media sectors – the results have been less auspicious. The NCC has been aloof and largely directionless. Instead of providing industry with the kind of clear roadmap for development that would spur investment, it has adopted a narrow view of its duties that focuses excessively on the single area of consumer protection. Thankfully, the Legislative Yuan will be considering draft legislation that should help ameliorate the situation by making the NCC more accountable (see the Telecom & Media Committee position paper for more details).

REFERENCE FOR REFORM

Given that many of the components for reigniting Taiwan's economic engine are already in place or nearly so, what should the government authorities concentrate on in carrying Taiwan to a new level of attractiveness to investors? Since the position papers by AmCham's various committees that make up the bulk of this White Paper are based on companies' on-the-ground experience, their suggestions constitute an excellent source of reference. Here are some key points for consideration:

IPR protection. Taiwan should feel encouraged by the advances it has made in improving its IPR regime to carry that success to an even higher level, working to establish Taiwan as the premier location in the region for protection of patents, copyrights, and trademarks. Such a stellar reputation would give investors in technology-driven and other sensitive industries the confidence to locate their investments projects in Taiwan rather than rival destinations in the region. A crucial test will be whether Taiwan can stem the growing flow of smuggled goods from China – particularly the shamefully large quantities of unregistered pesticides that threaten food safety and farmers' health. In addition, better patent protection is needed in the pharmaceutical sector.

Financial sector. Well-performing financial markets are needed to keep an economy running smoothly, but in Taiwan the heavy government ownership stake in financial institutions and some overly restrictive regulatory practices have held back the financial industries' development. Even the previously stated goal of transforming Taiwan into a regional asset-management and fundraising center appears largely forgotten. AmCham hopes that the recent appointment of the former head of the Financial Supervisory Commission as Vice Premier signals determination to restart financial reform in earnest. The first step should be conceptual realization that products and services aimed at institutional and other sophisticated professional investors should not be covered by the same set of regulations as is needed to protect ordinary consumers.

Taxation. With support from both major political parties, the tax rate on corporate income was recently lowered to a level that makes Taiwan competitive with other key markets in the region. Although that change should enhance Taiwan's attractiveness for foreign direct investment, the full impact may not be felt because the rate for personal income tax remains extremely high compared with neighboring jurisdictions. In addition, expatriates residing in Taiwan are now subject to tax on worldwide income under the Alternative Minimum Tax system. Unless the personal income tax is also revised and foreign residents are exempted from the AMT provisions, high-level professional talent will be deterred from taking up assignments in Taiwan. The result would be to undermine the government's goal of inducing the best and brightest to contribute their skills to Taiwan's development.

Health-related industries. Investment and technological support from multinational companies in the pharmaceutical and medical device sectors would give a big boost to efforts to develop biotechnology as one of Taiwan's new industrial pillars. Pricing policies adopted by Taiwan's national healthcare system, however, have discouraged those companies from placing more resources in this market. Recently, productive communication has been underway between industry and the Bureau of National Health Insurance in a search to find mutually acceptable solutions. We urge continued pursuit of that objective in the interest of encouraging the launch of innovative drugs and medical devices in Taiwan, as well as laying the foundation for building a strong biotech industry.

Infrastructure. Taiwan's signing of the GPA represented a major step forward, yet GPA membership will not in itself guarantee that international firms find it attractive to seek participation here in public construction projects. Their absence from this market will deprive Taiwan of state-of-the-art technologies and management methods to help upgrade quality levels. The Infrastructure Committee paper lists a number of recommendations on how to remove impediments currently discouraging international players from taking an active interest in this market. It will also be vital to ensure that endless environmental impact assessment procedures do not deprive Taiwan of a sufficient supply of electrical power or petrochemical feedstocks.

Human capital. Given its shortage of natural resources, Taiwan is even more reliant than most other countries on the cultivation of human capital as the key to its prosperity, but some companies are already complaining about shortages of certain skills in the labor market. Taiwan must do more to develop homegrown talent by upgrading its educational system, including welcoming prestigious foreign universities to set up branches here. And it needs to attract more brainpower from abroad by liberalizing regulations on the entry of foreign (including mainland Chinese) business professionals.

STRENGTHEN TIES WITH THE U.S.

While AmCham has encouraged the Taiwan government to take strategic advantage of its proximity to the giant Chinese market by fostering cross-Strait economic relations, it is risky for any country to become too dependent on a single market. As Taiwan seeks to increase its global attractiveness as a business location, it will be important to preserve sufficient balance – and the United States, still the world's largest economy and for decades Taiwan's number-one trading partner, is best-positioned to serve as that counterweight.

Unfortunately, the state of U.S.-Taiwan economic relations has been disrupted for the past several years by Taiwan's continued banning of certain cuts of American beef on health grounds, despite what the U.S. side insists is scientific evidence that they are safe to consume. As a result of that stalemate, bilateral negotiations under the Trade and Investment Framework Agreement (TIFA), normally held on an annual basis, have not been conducted for three years. Proposals for various types of bilateral agreements have also been stalled.

AmCham faults both governments for letting this impasse develop over the past several years. Washington allowed the interests of a single sector – one accounting for about 0.8% of total U.S. exports to Taiwan – to block opportunities to benefit a broad cross-spectrum of American companies. That is pointless, particularly at a time when the Obama Administration is pushing a National Export Initiative and Taiwan continues to be one of the best potential markets. In Taiwan, legislators looking to make a populist appeal – including many from the ruling party – damaged Taiwan's international credibility by overturning commitments already entered into by their executive branch.

The Chamber calls on both governments to remedy this situation by scheduling TIFA talks for the earliest possible date, and by dealing with the continuing disagreement over beef through other channels so that TIFA can concentrate on resolving other outstanding issues as well as promoting closer bilateral economic relations. (See the "Requests to Washington" section of the White Paper for more specifics).

CONCLUSION

Although the large emerging economies – particularly the BRICs (Brazil, Russia, India, and China) – have caught the world's imagination lately, Taiwan should not be daunted by its relatively small size. Big economies often face big problems, and in many ways Taiwan can make up for lack of quantity with quality, flexibility, and determination. If Taiwan can exceed rival economies in the ease of doing business, effectively promote the Six Emerging Industries that the Ma administration has identified (with an emphasis on Biotech, Tourism, and Green Energy), and leverage ECFA to expand trade relations with other countries, Taiwan's economic future should be secure.

The member companies of AmCham Taipei are dedicated to this market and believe in its potential. They pledge their full support and cooperation if the government can provide visionary, steadfast leadership to propel Taiwan to new heights of accomplishment and economic greatness.

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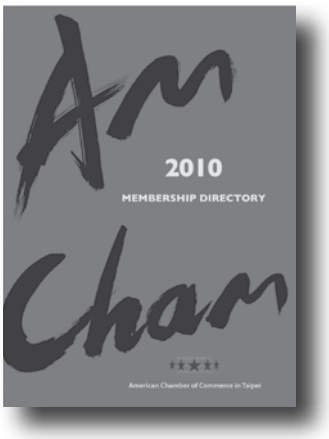

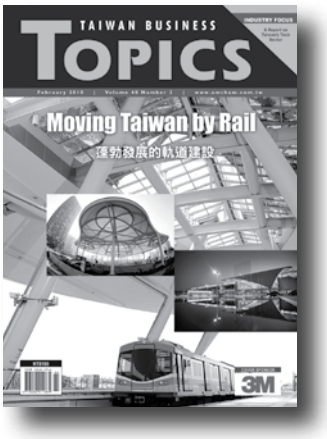

2010 TAIWAN WHITE PAPER

AmCham's annual official assessment of Taiwan's business environment, including indepth analysis of the business climate. Includes position papers from AmCham's Industry Committees. In the June 2010 issue of TOPICS.

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邁向卓越的經濟

重振經濟活力

在1980及1990年代，台灣曾是經濟快速發展的「亞洲四小龍」之一。儘管過去幾年來台灣已不再是國際經濟舞台的主角，但重振聲勢的罕見良機，目前已經浮現。台灣經濟進入成熟期後，8%以上的經濟成長率已難再現，但如能掌握足夠競爭優勢，仍有機會再度贏得國內外投資人的信心。

然而，經濟榮景不會平白從天而降；特別是如果台灣只著眼於零星、小幅度的改革，榮景勢必更為遙遠。掌握機會，必須靠政界與企業領袖齊心，擬定重振台灣經濟的明確願景及務實計畫，以引領社會團結向前。企管顧問詹姆．柯林斯（Jim Collins）幾年前曾提出一個觀念，分析為什麼有些企業只是「優秀」的公司，但有些卻能邁向「卓越」；同樣的道理，一個國家提供的商業經營環境，有些很「優秀」，但有些非常「卓越」。台灣不能滿足於「優秀」，必須以嶄新思維及創新方法，積極邁向「卓越」。

就企業經營環境而言，台灣有不少既存優勢，包括本地勞力具有一定技術水準及良好工作倫理，企業負責人及經營團隊的足智多謀，優秀的製造力且國際經驗深厚，同時對外籍人士提供友善的生活環境。不過，台灣仍有一些明顯缺點：政府效能仍有待加強（如之前的《台灣白皮書》所稱之「法規混亂」），資本市場未臻健全，且服務業動能不足。台灣若想再度成為全球投資人的新寵，就必須強化現有優勢、修正既存弱點。

ECFA新氣象

台灣必須加速改革的腳步，才能在全球的激烈競爭中脫穎而出，而現在正是個好時機。原因之一是，兩岸關係即將進入全新局面，台灣、中國及跨國企業都有機會開拓商機。兩岸協商中的《經濟合作架構協議》（ECFA）已受到全球企業的經營團隊以及商業研究機構的密切關注，大家都將仔細研究中國對台灣產品的關稅減讓，以期掌握商機。即使部分產業未納入ECFA的早期收穫清單，但業界可普遍感受到，ECFA降低兩岸對峙、強化經貿交流的好處。

過去十數年來，台北市美國商會每年的白皮書不斷呼籲，兩岸無法直航及兩岸貿易商務的諸多限制，將造成台灣的經濟邊緣化，也讓台灣難以在跨國企業的區域及全球營運計畫中扮演重要角色。現在看來，即使ECFA尚未正式簽署前，兩岸頻繁的交流已經降低了經濟邊緣化的風險。兩岸空運直航雖然引發過不小爭議，但兩岸包機現在已成定期航班，每週往返達三百七十班。同時，中國觀光客對台灣觀光產業注入新活水，兩岸投資也大幅鬆綁。

台灣多年來經濟發展力道遲緩，部分原因固然在於兩岸無法直航，但更大的問題是國內的政治紛擾。台灣從長期一黨集權的體制和平完成政權交替，確實值得驕傲，惟多數人都會認同，台灣這兩次政權輪替所產生的不確定性，已經傷害了企業及民眾的信心。值得慶幸的是，朝野政黨的相互抗衡是民主政治的常態，但台灣社會的政治狂熱似乎已經退潮。也許，台灣社會終於可放下政治、專注討論其他重要議題。

近年的具體進展

除了兩岸關係的加溫，過去幾年台灣在其他領域亦有進展，有助於營造經濟復甦的樂觀氣氛 — 這些進展有些在民進黨執政時期已經開始，有些則在國民黨重新執政之後才開啟。近十年來，《白皮書》最關切的問題除了兩岸直航，就是智財權侵權問題的猖獗、跨國企業無法公平參與公共建設的招標、以及政壇的黑金貪腐現象。

這些問題雖然尚未完全根除，但已有重大進展。在智財權保障部分，台灣制訂更嚴格的法規、設立智財權專責查緝單位、並在2008年創設智慧財產法院；有鑑於台灣的具體成果，美國自去年起已不再將台灣列入「特別301觀察名單」，顯示台灣的智財權保障已達一定水準。就政府採購標案，台灣去年加入世貿組織（WTO）下的《政府採購協定》（GPA）後，對外商提供公平競爭政府採購市場的平台。政府的貪腐現象雖已減少，但這個問題與智財權保障和公共建設招標公平競爭的議題一樣，必須透過持續監督與觀察，才能避免弊端死灰復燃。

重整行政體系

此外，政府已開始採取行動，企圖解決官僚體系長期以來效率低落的問題，以及法規制度與國際無法接軌的現象。其例之一，台灣過去二十五年來六度推動政府改造計畫，但直到今年初才完成修法，預計2012年元旦全面翻新政府組織架構。這次的組織改造除了將現有三十七個部會整併為二十九個，並新設符合現代社會與經濟需求的部會，例如，新成立的科技部將負責擬定鼓勵科技創新的產業政策，而經濟部則將改為經濟及能源部，以因應能源供應與氣候變遷的挑戰。

政府官員及立法委員在擬定新組織架構時，除了採納美國商會與其他企業團體的建議，也考量了各項國際競爭力年度評比的結論。近年來，多數報告顯示，「創新」等領域是台灣的強項，但「政府效能」卻是弱點。因此，組織改造的一項重點在於，將功能相近的單位整併至單一部會，解決跨部會協調費時費力的問題。例如，商會《TOPICS》雜誌去年的一篇社論曾經指出：莫拉克颱風造成河川嚴重淤積，但由於河川管轄權分屬五個中央部會，再加上各地方政府，導致災後清理工作困難。新設環境資源部的目的就在解決上述問題，以統合因應類似問題。

商會樂見，政府再造不僅是重新規劃組織架構，也將改造文官、使他們更具有服務熱忱，並簡化繁瑣的行政程序。誠如商會過去不斷強調，陳舊的官僚思維只會妨礙進步，影響台灣的經濟競爭力的提升。這類的心態經常導致無益或自相矛盾的法規程序、或是不透明及脫離國際規範的政策。我們必須強調，唯有精確落實文官文化的改造及法規程序的鬆綁，才能為台灣帶來向上提升的動力。

衛生署今年初正式成立食品藥物管理局（TFDA），統整食品、藥物、醫療器材及化妝品法規管理架構。這雖然只是小幅度的組織調整，但已可顯示政府再造的正面效應。美國商會中隸屬食品藥物管理局主管範圍的委員會成員都一致讚許，TFDA與業界溝通良好，也不斷力求提升自身的專業度。

另一個組織重整的案例 —國家通訊傳播委員會（NCC），其效果遠不如TFDA。NCC雖然是統籌負責電信、媒體產業發展的獨立機關，但成立四年以來一直疏離產業、且毫無方向。NCC原該具有促進產業發展的宏觀視野，但長期以來卻只關注消費者保護的議題。幸好立法院未來將考慮修正NCC的相關組織條例，釐清NCC的權責（詳見電信及媒體委員會的建議書）。

改革的建議

台灣經濟再起飛的許多要素已經完備或接近完成，政府應該重點鎖定哪些改革目標、以強化台灣對投資人的吸引力？商會各委員會的具體建議皆來自企業的實際經驗，應具有高度參考價值。我們的重點建議包括：

智財權保障 - 台灣近年在智財權領域的進步，應該能讓台灣更具信心，持續提升保障措施，使台灣成為亞太區域內最重視專利、版權及商標權的國家。智財權的高度保障能吸引高科技導向及敏感產業將投資重點集中於台灣、而非亞洲其他競爭對手。台灣的關鍵考驗之一在於，政府能否遏止大量從中國湧入的走私產品，特別是威脅食品安全與農民健康的大量偽劣農藥。除此之外，應加強保護製藥業的專利權。

金融業 - 金融市場運作順暢，經濟才能穩健發展，但政府過度參與行庫經營，以及過於嚴苛的管制，一直限制了金融業的正常發展。建設台灣成為區域資產管理中心及資本募集重鎮，曾是政府大力推動的政策目標，但這個政策現在似乎已經被遺忘。前金管會主委陳冲近日升任行政院副院長，應代表政府的確有決心加速重啟金融改革。我們期盼政府首先接受一個概念：針對法人與專業投資人的金融產品服務，應該有一套專屬法規架構，而非與針對一般大眾的法規混為一談。

稅務 - 在跨黨派支持下，政府日前調降營利事業所得稅至17%，縮小台灣與亞太其他國家的稅率差距。營所稅調降固然有利爭取國外直接投資，但整體影響並不大，因為台灣的個人綜合所得稅稅率仍遠高於鄰近國家。此外，派駐台灣的外籍人士之海外所得現在必須納入最低稅負申報。除非政府調降個人所得稅稅率，並將外籍人士從最低稅負制的適用對象排除，多數高階外籍專業人士恐怕都不會願意接下外派台灣的職位。其結果是，政府引進專業優秀人才的目標將大打折扣。

醫療產業 - 製藥與醫療器材跨國企業的投資與技術，理應有助台灣發展六大新興產業中的生技產業；但健保給付價格過低，卻影響業者擴大投資的意願。最近，業者與衛生署健保局已展開密切討論，希望找出雙方都能接受的解決方案；商會希望政府持續與業界溝通，以鼓勵業者繼續推出新藥與新醫材，奠定本土生技產業的穩固基礎。

基礎建設 - 台灣加入《政府採購協定》（GPA）是重要的一步，但這並不保證國際廠商對參與台灣的公共建設將會興趣大增。若缺乏國際廠商的參與，台灣將難以取得提升公共工程品質最需要的先進技術與管理方式。基礎建設委員會今年針對如何解決外商參與台灣政府採購市場的障礙，提出多項建言。此外，如何確保冗長的環評過程不至於阻礙台灣電力及石化業原料的充足供應，將是另一個重要課題。

人力資源 - 台灣欠缺天然資源，因而比其他國家更仰賴人力資源，以確保國家發展，但有些企業已經對台灣人才欠缺部分關鍵技能提出警語。要強化本地人才的培育，政府必須促進教育制度的升級，包括鼓勵國外知名大學來台開設分校，同時也必須進一步鬆綁外籍專業人士（包括中國籍）的入出境法規，才能吸引海外專業人才來台工作。

強化台美關係

商會樂見台灣充分利用地緣優勢、強化兩岸經貿關係，但任何國家都不該過於依賴單一市場。當台灣努力強化自身競爭力的同時，保有一定程度的平衡亦格外重要；美國既是全球最大經濟體、又是台灣長期以來的最大貿易夥伴，是扮演平衡角色的最佳選擇。

令人遺憾的是，美台經貿關係在過去幾年一直受到美國牛肉問題的干擾，台灣以健康風險為由禁止特定部位的美國牛肉進口，無視於美方提出科學研究證實美牛安全無虞。由於牛肉議題造成的僵局，美台《貿易暨投資架構協定》（TIFA）的年度會談，已經停擺三年；其他雙邊協定的討論也同樣停滯。

商會認為，對於這個僵局在過去幾年無法解決，美台政府都有責任。美國牛肉出口值僅佔美國對台灣總出口金額的0.8%，但美國政府卻讓單一產業的利益凌駕其他多種產業；歐巴馬政府既然力推「國家出口計畫」，台灣又是美國商品的最佳出口對象，這種作法實在毫無道理。在台灣方面，朝野立委都以選情為重—包括多位執政黨立委，但推翻行政部門對他國的承諾，卻已經傷害台灣的國際信譽。

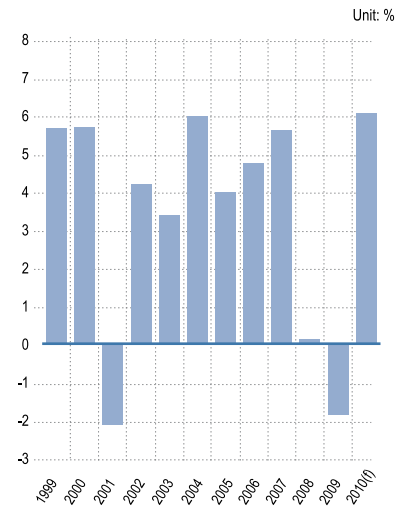
商會呼籲美國與台灣政府，應該儘速恢復TIFA的定期會談，並且透過其他管道解決牛肉爭議，讓TIFA談判處理更重要的議題、強化雙邊經貿關係。（相關細節詳見「對美國政府的建議」章節。）

結論

雖然全球目光最近都集中在大型新興市場，特別是「金磚四國」 — 巴西、俄羅斯、印度、中國，但台灣不必因經濟規模較小而氣餒。大型經濟體有其盤根錯節的問題，台灣卻能以品質、彈性與決心來彌補經濟規模上的劣勢。如果台灣政府能持續改革以增加在台經商的容易度、有效推動馬政府的六大新興產業計畫（特別是生技、觀光及綠能產業）、並利用ECFA的優勢擴展與其他國家的經貿關係，相信台灣一定能超越競爭對手，打造經濟榮景。

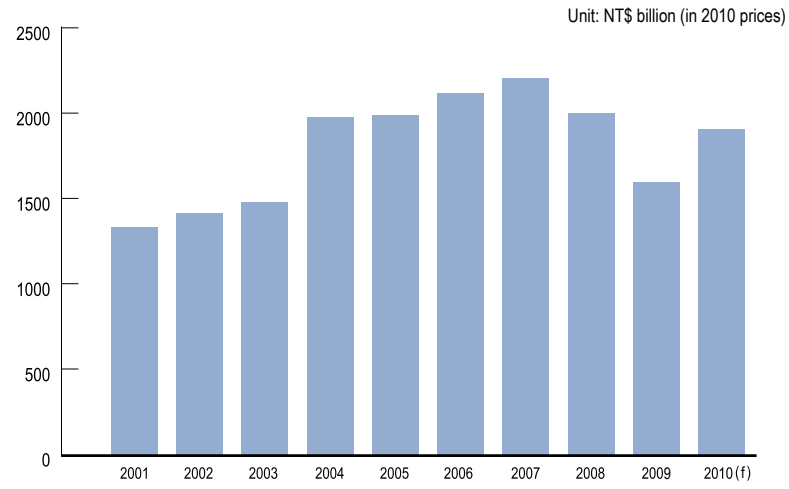
商會的會員企業長期深耕台灣，也相信台灣的潛力。只要政府施政維持前瞻、穩健，引領台灣邁向卓越的經濟，商會會員願意全力支持與配合。

GRAPH 1: ECONOMIC GROWTH RATE



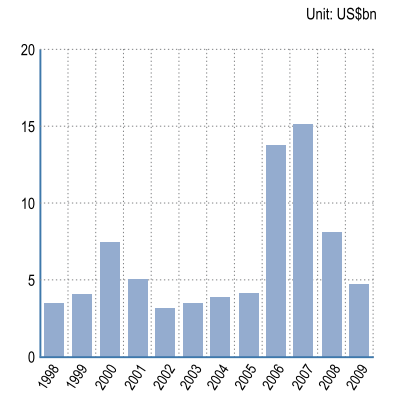
Source: Directorate General of Budget, Accounting & Statistics (DGBAS)
Note: f=forecast

GRAPH 2: GROSS PRIVATE DOMESTIC INVESTMENT



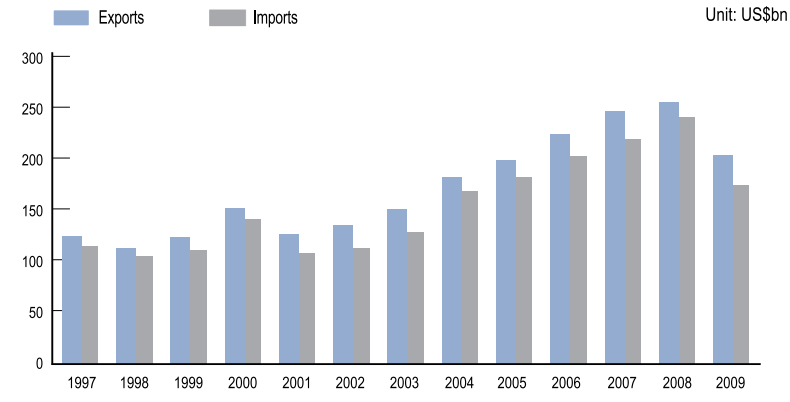
Source: National Statistics, R.O.C.

GRAPH 3: FOREIGN DIRECT INVESTMENT



Source: Ministry of Economic Affairs (MOEA)

GRAPH 4: TOTAL FOREIGN TRADE



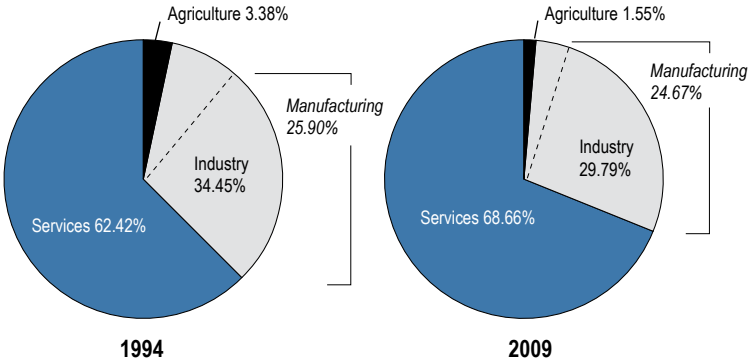
Source: Ministry of Economic Affairs (MOEA)

GRAPH 5: KEY ECONOMIC INDICATORS

	2008	2009
Gross National Product	US$413 bn	US$379 bn
Per Capita GNP	US$17,941	US$16,969
Gross National Savings	28.65%	28.12%
Unemployment	4.14%	5.85%
Inflation (CPI)	3.53%	-0.87%
Foreign Exchange Reserves	US$291 bn	US$348 bn

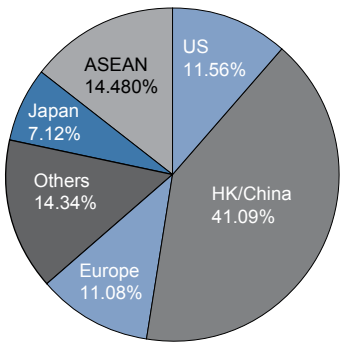
Sources DGBAS, Central Bank

GRAPH 6: COMPONENTS OF GDP



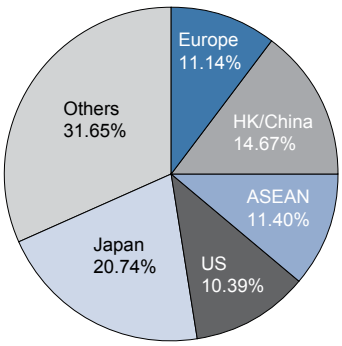
Source: Directorate General of Budget, Accounting & Statistics (DGBAS)

GRAPH 7: 2009 EXPORTS BY REGION



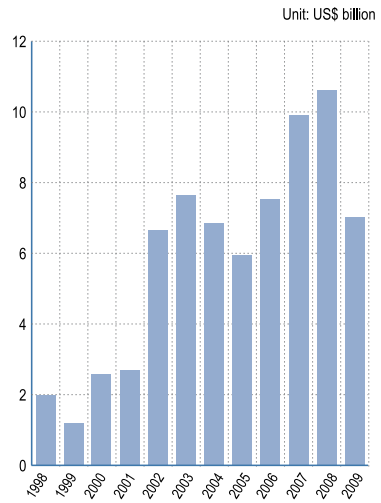
Source: Ministry of Economic Affairs (MOEA)

GRAPH 8: 2009 IMPORTS BY REGION



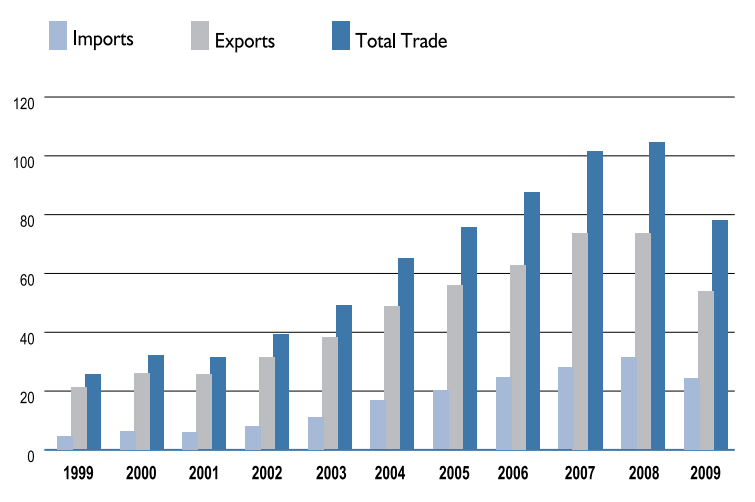
Source: Ministry of Economic Affairs (MOEA)

GRAPH 9: APPROVED INVESTMENT IN CHINA



Source: Ministry of Economic Affairs (MOEA)

GRAPH 10: CROSS-STRAIT TRADE



Source: Ministry of Economic Affairs (MOEA)

Unit: US$ billion

AMCHAM TAIPEI 2010 *TAIWAN WHITE PAPER*

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Issue 1. Take immediate action to shore up the U.S.-Taiwan economic relationship.

Another year has passed without the holding of Trade and Investment Framework Agreement (TIFA) talks between Taiwan and the United States, without any visible movement toward major bilateral agreements, and without a visit to Taiwan by a high-level U.S. government official to demonstrate Taiwan's continued importance as an economic partner. This virtually total absence of progress would be frustrating enough, but in comparison the economic relationship between Taiwan and China has continued to advance rapidly during the same time span – with the two sides poised to sign an Economic Cooperation Framework Agreement (ECFA) that will contain substantive early-harvest provisions as well as lead to an eventual comprehensive trade agreement.

As much as AmCham supports steps to improve cross-Strait economic connections, we had always envisioned those advances as occurring within the context of a continuing robust trade and investment relationship between Taiwan and the United States. Without urgent efforts to restore vitality to the Washington-Taipei relationship, the resulting imbalance will cause Taiwan to become overly dependent on its cross-Strait commercial dealings. That would be risky for Taiwan, both economically and strategically, but it would also be contrary to the economic interests of the United States. Taiwan is a small market only when juxtaposed against the giant economy across the Strait. Total U.S.-Taiwan trade came to US$57 billion in 2008, and Taiwan currently ranks as the ninth largest trading partner of the United States. Especially as the Obama Administration gears up its National Export Initiative to expand U.S. sales abroad for the sake of job creation at home, Washington should be moving aggressively to build increased opportunities in Taiwan, not risk ceding the market to competitors.

In large part, what derailed the U.S.-Taiwan economic relationship over the past several years was the dispute over Taiwan's unwillingness to fully reopen the market to U.S. beef products on food-safety grounds. In our view, both governments mishandled this sensitive issue. It was a mistake for the U.S. side to allow the minor product category of bone-in beef to hold hostage the entire U.S. trade agenda with Taiwan. On the other hand, the Legislative Yuan badly damaged Taiwan's international reputation and credibility by failing to uphold an agreement already negotiated by its executive branch, and Washington would be justified in taking action (such as an appeal to the WTO) to bring Taiwan to honor its commitments.

But beef sales should no longer be used as a reason to hold up progress on the wide range of other issues that Taiwan and the United States need to discuss in order to further their economic cooperation. And the U.S. government should take care in the future in dealing with other agricultural trade issues, which are always politically sensitive on both sides, that they are pursued intently but without disrupting the bilateral economic agenda as a whole.

Specifically, AmCham recommends the following course of action:

- Schedule TIFA talks without further delay. Although TIFA talks are supposed to be held annually, it is now three years since the last round. TIFA has been a highly effective vehicle for driving progress on key issues of crucial importance to American businesses operating in the Taiwan market. Without the momentum that TIFA provides, the pharmaceutical, medical device, telecom, and financial-services sectors of the Chamber membership, among others, have been deprived of the full support of the U.S. government that they deserve. AmCham has provided abundant materials to the Office of the U.S. Trade Representative (USTR) with our suggestions on issues to be raised through TIFA, and we would be pleased to provide any additional background information if needed.
- Move ahead with bilateral agreements as building blocks toward an eventual Free Trade Agreement. Four years ago the United States proposed that the two governments study the feasibility of signing a Bilateral Investment Agreement (BIA) and Bilateral Tax Agreement (BTA), and discussions began between the relevant U.S. and Taiwan government agencies. But these initiatives have ground to a halt out of concern in Washington over the mode of Congressional approval that would eventually be required. Normally

such agreements are considered treaties, which under the U.S. Constitution are ratified only by the Senate, but in the absence of diplomatic relations between the United States and Taiwan, it is understood that in Taiwan's case the agreements would need to be approved by both Houses of Congress. The U.S. executive branch appears unwilling to open matters to scrutiny by the House of Representatives that are not generally under its purview. AmCham still hopes that some creative solution can be found to circumvent this obstacle. But in the meantime, so as to regain momentum, we urge the U.S. government to begin negotiations with Taiwan on one or more of the various other types of major agreements that would not require Congressional approval. Agreements on Transparency, Competitiveness, or Services, for example – which could later serve as the related chapters of an FTA – would be a good place to start.

- Dispatch high-level U.S. government officials to visit Taiwan. Such visits were commonplace during the 1990s, but because of Beijing's objections a Cabinet secretary has not been to Taiwan since the Clinton administration. As a result, opportunities have been lost to signal the continued strength of the economic, cultural, and security relationship between Taiwan and the United States, despite the lack of formal diplomatic ties. In addition, such trips provide an occasion for substantive, high-level discussions on issues of mutual importance. Although the American Institute in Taiwan (AIT) is highly effective in representing U.S. interests, there is no substitute for direct communication between senior government officials in building trust and mutual understanding.
- Take steps to assure that the rise of China does not cause the relationship with Taiwan to be overlooked. China's growing importance on the international scene means that the United States is constantly seeking Beijing's cooperation on a variety of issues. The temptation thus frequently arises to put off a given decision regarding Taiwan because it may be a "bad time" in terms of relations with China. The reality, however, is that there will hardly ever be a "good time." The problem becomes more acute because in many U.S. government agencies, the same department or even the same staff members are responsible for both China and Taiwan affairs. Washington needs to be aware of the need to look at the Taiwan relationship on its own merits, without constantly taking Beijing's potential reaction into consideration.

Issue 2. Pursue trade policies that promote economic liberalization.

Although the Obama administration has been preoccupied in dealing with one crisis after another, it cannot afford to wait much longer before unveiling an overall trade policy. The administration has taken several steps in the right direction, including the opening of negotiations to expand the Trans Pacific Partnership (TPP) and the launching of the National Export Initiative, but these need to be woven into a comprehensive approach to stimulating world trade and growing the American contribution to that trade.

AmCham Taipei urges the U.S. government to continue to show leadership by fostering more open international trade and countering protectionist proposals. In line with our Core Value commitment to free trade, the Chamber supports passage by Congress of the three FTAs – with Korea, Colombia, and Panama – that the United States has already negotiated but which have not yet gone to Capitol Hill for approval. As the economy regains momentum and as political conditions permit, we also ask Congress to reinstate the president's Trade Promotion ("fast-track") Authority, so that the United States may again negotiate market-opening and economy-enhancing trade agreements with other countries, including Taiwan, at the proper time.

Issue 3: End tax-policy discrimination against U.S. citizens overseas.

AmCham Taipei again joins the Asia Pacific Council of American Chambers of Commerce (APCAC) in urging the U.S. government to cease taxing the foreign-source income of Americans working abroad so as to enhance the global competitiveness of U.S. companies. The United States is the only major industrialized country that subjects its expatriate citizens to income tax on their overseas earnings. This aspect of the U.S. tax code makes it more expensive for a U.S. company to employ an American than to employ an expatriate from almost any other country. The result is to decrease the number of Americans working internationally, diminishing the ability of the United States to promote the export of its goods and services. Addressing this problem should be one of the administration's priorities as it promotes its National Export Initiative.

Issue 4: Extend visa-waiver treatment to Taiwanese travelers.

Although Taiwan has relatively low visa-rejection levels, it has not yet been considered for addition to the list of countries accorded visa-waiver treatment by the United States, reportedly because of U.S. concerns about the number of cases of genuine Taiwanese passports used by non-Taiwan citizens in trying to gain entrance into the United States. We urge the U.S. side to continue to work with the Taiwan authorities toward resolving that problem.

As a sign of U.S. determination to promote itself to international tourists, Congress recently passed legislation to establish a U.S. national tourism promotion organization for the first time. The Taiwanese are avid and comparatively affluent international travelers, but tourism from Taiwan to the United States is still far below what it was prior to the 9/11 terrorist attacks. Over the past few years, in addition, Taiwan has received visa-waiver status from such countries as Ireland, Japan, New Zealand, Singapore, South Korea, and the United Kingdom – encouraging travel that might otherwise go to the United States. In the case of Britain, the number of Taiwan visitors jumped by more than 34% in the year following introduction of the visa-waiver system. For the United States, providing visa-waiver entry to Taiwanese travelers would benefit the U.S. travel industry and help stimulate the U.S. economy as it recovers from recession.

REVIEW OF 2009 *WHITE PAPER* ISSUES

The chart below is a status review of all priority issues in the 2009 *Taiwan White Paper*. The progress of each issue is rated according to the following standards:

1—Solved: Conclusive action has been taken on the issue, with a fair and transparent record of implementation. It is no longer considered a problem.

2—In Progress: The issue is currently receiving satisfactory follow-up action from the government.

3—Under Observation: The government has given the issue some initial attention, but it is too early to assess the prospects for resolution.

4—Stalled: No substantial discernible progress has occurred.

5—Dropped: Although not resolved, the issue is no longer a committee priority.

Out of the 129 issues raised in the 2009 *White Paper*, six are rated Solved, 20 In Progress, 40 Under Observation, 52 Stalled and 11 Dropped.

Committee	2009 White Paper Issues	Status	2010 WP	Notes
Agro-chemical	1. Register new products by crop grouping	2	*	
	2. Further tighten law enforcement against illegal pesticides	3	*	
	3. Eliminate fraudulent "me-too" registrations	2		
Asset Management	1. Exempt the capital gains and dividend income of offshore funds from the AMT system	4	*	
	2. Simplify the offshore fund registration/approval process and remove restrictions on SITE fund size	3	*	
	3. Accelerate the adoption of standards under UCITS III regulations and the process of signing MOUs	2	*	
	4. Further relax China-investment restrictions	3	*	
Banking	1. Maintain free-market principles regarding interest rates on lending	4		
	2. Increase transparency and consultation in the rule-making process	2		
	3. Standardize and simplify the regulatory reporting process	2		
	4. Respect client confidentiality and the differing conditions of foreign banks when requiring financial disclosure	4	*	Incorporated into "Rationalize the regulatory and disclosure requirements for wholly-owned subsidiaries of foreign financial services companies."
	5. Develop a sound structured-notes dispute management mechanism	5		
	6. Foster a fair and efficient financial market by enacting a sound Financial Services Act	4		
	7. Maintain the current CDIC insurance premium scheme	5		
Capital Markets	1. Expand the scope of brokers' research and trading to increase industry competitiveness	2	*	
	2. Enhance the trading infrastructure to achieve best practices as a developed market	2	*	
	3. Relax future-trading and related foreign exchange rules	2	*	
	4. Further liberalize the Securities Borrowing and Lending (SBL) market	2	*	
	5. Improve the infrastructure of the NT$ clearing system	5		
	6. Enact a Finance Company Law	5		
Chemical Manufacturers	1. Maintain Taiwan's tariff parity in cross-Strait and regional trade	2		Incorporated into introductory section
	2. Ensure a sufficient supply of feedstock for industry's continued development	3	*	
	3. Integrate the administration of chemical regulatory systems	4	*	Changed to "Streamline the regulatory control of chemical life-cycle management."
	4. Suspend collection of the SPRGA fund and integrate all environmental fees into a single levy	4	*	Changed to "Establish a transparent communication mechanism for better interaction between chemical companies and neighboring communities. "
	5. Crack down on extortion in the name of environmental protection	4	*	
	6. Assure reliable supplies of electrical power	2		Incorporated into introductory section
Education & Training	1. Facilitate greater student mobility and internationalization	4	*	
	2. Establish a system to formally recognize schools other than those offering four-year degree and graduate-level programs	3	*	Changed to "Recognize overseas diploma and certificate programs."
	3. Continue liberalizing regulations governing foreign universities and degrees	4	*	
Environmental Protection	1. Expedite the construction of public sewerage projects	3	*	
	2. Reevaluate greenhouse gas emission (GHG) and energy policies	3	*	
Human Resources	1. Further liberalize Chinese travelers' entry into Taiwan for business activities			
	A) Establish a Straits Exchange Foundation office in China	3	*	
	B) Establish a mechanism for multiple-entry visas	3	*	
	C) Extend the maximum length of stay	2	*	
	D) Eliminate the ceiling on the number of permitted invitees per year	2	*	
	2. Eliminate the working experience requirement for foreign employees of non-tech companies	4	*	
Infrastructure	1. Ensure effective implementation of GPA commitments	1		
	2. Improve the process to attract foreign investment in BOT/PPP projects			
	A) Improve the channels of information	2		
	B) Make market information more transparent	3		
	C) Create greater clarity in the government regulatory process	3		
	D) Provide for an investment exit strategy	4		
	E) Set clear inspection standards	3		
	3. Revitalize the economy by choosing low-cost energy	3	*	Changed to "Expedite power plant development to prevent a future power shortage."
	4. Adopt a long-tem CO_2 reduction target	4	*	
	5. Streamline the Environmental Impact Assessment review process	4	*	
	6. Continue improving Taiwan's procurement practices			Changed to "Follow international norms to improve terms & conditions of government model contracts."
	A) Increase the limit of nuclear liability insurance and improve the coverage	3	*	
	B) Amend the terms and conditions in relevant model contracts	3	*	
	7. Increase the government focus on IT infrastructure	3		
Insurance	1. Find a solution to the problem of toxic liabilities and assure that new business is written in line with international reporting and solvency standards	4	*	
	2. Exclude foreign-currency investments supporting traditional insurance policies denominated in that currency from the 45% foreign-investment limit	3	*	
	3. Maintain the current taxation practice on investment-linked products	4	*	
	4. Amend the Labor Pension Act allow more market-appropriate options for employees	3	*	
Intellectual Property & Licensing	1. Improve remedies for trade-dress violations	4		
	2. Improve judicial treatment of IP cases	4	*	
	3. Reconsider proposed amendments to the Copyright Act	3	*	Incorporated into "Review changes and proposed amendments to the laws on Trademark, Patent, Copyright, and Copyright Collective Management Organization."
	4. Tighten Customs procedures against counterfeit goods	4	*	
	5. Tackle the problem of end-user piracy	4	*	Divided into two issues.
	6. Step up enforcement against smuggled and counterfeit goods	3	*	
	7. Continue to improve campus IPR protection	2		
Medical Devices	1. Create an independent regulatory body and regulations for medical devices			Changed to "Bring the TFDA mechanism for inspecting and registering medical devices in line with international practice."
	1.1 Until a new law specifically governing medical devices can be enacted, expand the definition of "medical device manufacturers" in Article 18 of the Pharmaceutical Affairs Law	3	*	
	1.2 Improve communication with industry and third parties to raise the effectiveness of the management and registration of medical devices	3	*	
	1.3 Publicize the registration guidelines on In Vitro Diagnostic Devices (IVD)	2		

	2. Develop guidelines for the management and review of consumer advertising			Changed to "Focus the regulation of advertising on direct-to-consumer medical devices."
	A) Publicize management and review principles for medical-device advertising	3	*	
	B) Form a review advisory board comprising third-party experts and professionals	5		
	C) Eliminate the pre-approval requirement for advertising messages and replace it with industry self-regulation	4	*	
	3. Revise reimbursement schemes to maintain healthcare quality			
	A) Partner with the medical-device industry in the provision of medical service and establish a communication channel for regular dialogue	2	*	
	B) Increase the number of items covered by the Balance Billing scheme	4	*	
	C) Set transparent reimbursement guidelines for new medical devices and review decisions in meetings with participation jointly by industry, outside experts, and BNHI officials	4	*	
	D) Fully consult with industry before conducting a Price Volume Survey (PVS)	3	*	
	E) Set fixed reimbursement rates for special medical devices	4	*	
	4. Allow the import of medical devices manufactured in China by multinational enterprises	3	*	
Others - Chiropractic	1. Provide a legal basis for chiropractic in Taiwan	4	*	
Others - Tobacco	1. Revise product display regulation to ensure consistent enforcement nationwide	4		Though not listed this year, this is still an important issue concerning the industry
	2. Reconsider the anti-counterfeiting mechanism being considered in the Legislative Yuan	3	*	
	3. Consult with industry to establish a reasonable and feasible mechanism for future collection of a health surtax	4	*	Changed to "Create the legal basis for a "report inventory" mechanism for changes in the cigarette health surtax."
	4. Increase penalties to combat smuggled and contraband tobacco products	3	*	Changed to "Reconsider proposals for a Unified Security and Anti-counterfeiting Mechanism."
Pharmaceutical	1. Reward innovation through a more transparent and predictable pricing and reimbursement system and a speedy approval process			
	A) Reimburse innovative drugs at the A-10 median price	3	*	
	B) Consult with industry, clinicians, and patient groups to set a mutually agreed-upon definition of "Innovation" based on reference from other advanced countries.	3	*	
	C) Pledge that BNHI policies - with regard to Price-Volume Agreements, Risk Sharing, and Pay for Performance, for example - will be based on patient benefits, scientific evidence, and a legal foundation	4	*	
	D) Increase the speed and transparency of the pricing and reimbursement process	4	*	
	2. Reform the Price-Volume Survey/price-cut system			
	A) Revise the overall drug policy (known as PBS for the Pharmaceutical Benefits Scheme)	4	*	
	B) If PVS is continued, establish an audit system (to check both purchasers and suppliers) conducted by a certified third party or parties to ensure the accuracy and transparency of submitted price data	4	*	
	C) Implement a mandatory "standard contract" system at all levels of hospitals/purchasers/drug suppliers	3		
	D) Set a mutually agreed-upon timetable between government and industry for eliminating the Price Gap	4	*	
	3. Implement Separation of Dispensing from Prescribing (SDP)			
	A) Government establishment of a roadmap for full implementation of SDP on the basis of a clear timeline.	4	*	
	B) Provision of more extensive education to the general public about the benefits of implementing SDP.	3	*	
	C) Sufficient funding from the government to improve the community-pharmacy infrastructure	3	*	
	D) The development of clear regulations to ensure good dispensing practice in the pharmacies	3	*	
	4. Improve IPR protection through Patent Linkage and Data Exclusivity			
	A) Patent Linkage	4		
	B) Data Exclusivity	4	*	
	5. Strengthen quality requirements and streamline the regulatory process			
	A) Drug Quality	4		
	B) CPP/BSE	4	*	
Real Estate	1. Ease regulations affecting real estate acquisitions by overseas Chinese and foreign investors	3	*	
	2. Allow PRC enterprises to enter the Taiwan property market	2	*	
	3. Amend rigid regulations governing building usage	4	*	
	4. Establish a non-profit agency to facilitate urban renewal	4	*	
	5. Improve the land auction and bidding process on BOT projects	5		
Retail	1. Accelerate the review and removal of China-import restrictions	3	*	
	2. Adopt international norms for import labeling and standards	4	*	
	3. Stimulate trade by adjusting tariffs	5		
	4. Reform cosmetics regulations to follow international practice	4	*	
	5. Adopt Good Governance principles (4 Cs)	5		
Tax	1. Clarify the scope of Taiwan-source income and allow offshore businesses to file tax returns for their Taiwan-source "other income"	1		
	2. Solve the interpretation gap between government agencies			
	A) Differing interpretations of "standard software" between the MOF and the tax office	3		
	B) Differing interpretations between the Industrial Development Bureau (IDB) and the tax office regarding the R&D investment tax credit and royalty exemption	3		
	C) Difficulties in claiming tax treaty benefits	1		
	3. Solve the double-taxation issue regarding employer's payment of expatriates' income tax	1		
	4. Clarify the definition of "place of using the service" under the VAT and Non-VAT Act	5		
	5. Exercise caution regarding the taxation of derivatives	5		
	6. Reconsider the decision to include Taiwan individuals' overseas income in AMT calculation	4	*	Changed to "Classify capital income from registered offshore funds as domestic income."
Technology	1. Seek innovative ways to stimulate economic growth while also improving public services in healthcare and education	1		
	2. Devise an effective regulatory policy for the internet industry	5		
	3. Remove the IP transfer requirement from government tender requirements	3	*	Incorporated into "Increase government spending on software, services, and intellectual capital"
	4. Continue WTO initiatives to uphold Information Technology Agreement commitments	2	*	
Telecommunications & Media	1. Liberalize the telecom and media sectors	3	*	
	2. Enhance the NCC's efficacy	4	*	
	3. Establish robust public discourse on the "3-in-1" Converged Telecommunications & Media Law	4		
	4. Implement policies in technology-neutral fashion	2		
	5. Enhance spectrum management and adopt international best practices	3		
	6. Facilitate the placement of wireless base stations	4		
Transportation - Express Cargo	1. Remove the weight limitation on express cargo clearance	4	*	Incorporated into "Cultivate a sound regulatory environment for development of the express cargo industry"
	2. Cancel the requirement for invoices to be attached to express cargo shipments	1		
	3. Revise the requirement for an authorization letter when importing low unit-price goods	4	*	Incorporated into "Cultivate a sound regulatory environment for development of the express cargo industry"
	4. Waive or reduce the customs clearance processing fee for express courier shipments	4		
Transportation - Automotive	1. Broaden incentives for cleaner vehicles	4	*	
	2. Replace older, higher emission vehicles	4	*	
	3. Help Taiwan automakers take advantage of their regional competitiveness	4	*	
	4. Improve vehicle regulations and homologation	4	*	
Transportation - Shipping	1. Devise a coordinated economic stimulus incentive program for the shipping industry	4	*	Incorporated into "Provide incentives to spur growth in the shipping sector."

Note: * indicates the issue has been raised again in 2010 *White Paper*
by Doreen Lee & Anita Chen LAST UPDATED: June 23, 2010

《2009台灣白皮書》議題處理進度

以下為《2009台灣白皮書》優先議題的處理進度，各議題評估標準如下：

1—**已解決**：政府已針對議題達成結論性的決定並付諸實行，或已有公開、透明的執行績效。換言之，所提的議題已不再是問題。

2—**處理中**：該議題目前正由政府進行後續追蹤，其進度令人滿意。

3—**觀察中**：政府相關單位已注意到該議題，但後續發展仍待觀察。

4—**擱置中**：該議題無實質可見的進度。

5—**已刪除**：該議題雖尚未解決，但已不再是委員會優先議題。

《2009台灣白皮書》所提出的129項議題，其中6項已解決，20項處理中，40項觀察中，52項擱置中，11項已刪除。

委員會	2009白皮書議題	進度	2010白皮書	備註
農化	1. 改以作物分群作為有效成份登記(A1)的依據	2	*	
	2. 持續強化執法以遏止偽劣農藥	3	*	
	3. 禁絕Me-too產品註冊登記	2		
資產管理	1. 境外基金之資本利得與股息收入應自最低稅負制中排除	4	*	
	2. 簡化境外基金的註冊及許可程序，並移除投信基金的基金規模限制	3	*	
	3. 加速採納UCITS III規範下之標準及簽訂備忘錄之進程	2	*	
	4. 進一步放寬中國投資限制	3	*	
銀行	1. 讓自由市場機制來決定借款利率	4		
	2. 增加法規制訂過程之透明度及意見諮詢	2		
	3. 標準化及簡化呈送主管機關報表之程序	2		
	4. 加強金融機構資訊揭露義務的同時，亦尊重客戶隱私權之保障	4	*	今年改為「促進外國金融機構在台百分之百持股子公司之法規與資訊揭露規定之合理性」
	5. 建立有效的連動債爭端處理機制	5		
	6. 制定合理的《金融服務業法》以促進公平及有效率的金融市場	4		
	7. 維持現行中央存保公司保險費率方案	5		
資本市場	1. 擴張證券商研究及交易的範圍以促進產業之競爭力	2	*	
	2. 增加交易制度合理化及彈性化以達到已開發市場之最佳實務	2	*	
	3. 放寬期貨交易相關之外匯規定	2	*	
	4. 進一步開放有價證券借貸市場	2	*	
	5. 強化新台幣清算系統基本架構	5		
	6. 《融資公司法》之立法	5		
化學製造商	1. 維持台灣在兩岸和區域貿易中的關稅競爭力	2		今年納入前言
	2. 確保產業發展所需的原料供應充足	3	*	
	3. 整合化學品監管制度的管理	4	*	今年改為「精簡化學品生命週期管理的監管制度」
	4. 停止徵收土壤及地下水污染整治費，並將現行環境稅費單一稅制化	4	*	
	5. 制裁假環保之名的訛詐行為	4	*	今年改為「建立透明的溝通機制，以利企業與社區進行良性互動」
	6. 確保電力供應品質	2		今年納入前言
教育及訓練	1. 促進學生的國際化流動	4	*	
	2. 對於非提供四年制及研究所學程的學校機構，建立正式的認可系統	3	*	今年改為「承認國外文憑和證書課程」
	3. 持續開放國外大學及學歷的法規	4	*	
環境保護	1. 迅速進行公共汙水下水道建設計劃	3	*	
	2. 重新評估溫室氣體排放和能源政策	3	*	
人力資源	1. 進一步開放中國大陸人士來台從事商務活動			
	1.1 在中國設立海基會辦事處	3	*	
	1.2 建立多次入境許可證機制	3	*	
	1.3 延長最長停留期間	2	*	
	1.4 免除每年可邀請人數上限	2	*	
	2. 免除外籍專業人士來台工作的兩年工作經驗限制	4	*	
基礎建設	1. 確保GPA的有效與徹底落實	1		
	2. 改善參與BOT/PPP案件的程序以擴大吸引外資			
	2.1 提升資訊傳遞的管道	2		
	2.2 提升市場資訊的透明度	3		
	2.3 建立更明確的政府法規流程	3		
	2.4 提供投資退場機制	4		
	2.5 制定明確的檢驗標準	3		
	3. 選用低成本能源以振興經濟	3	*	今年改為「解決電源開發困境」
	4. 採取長程二氧化碳減量目標	4	*	
	5. 改進環評作業流程	4	*	
	6. 持續改善台灣採購實務			今年改為「依循國際慣例改進政府契約範本中之合約條款」
	A) 增加核子損害責任保險額度	3	*	
	B) 修改相關採購契約範本的條款	3	*	
	7. 提昇對資訊科技建設的重視	3		
保險	1. 尋求處理問題負債的對策，並確保未來新業務承保符合國際會計準則及清償能力標準	4	*	
	2. 排除外幣計價傳統保單國外投資部位計入保險業國外投資45%限額	3	*	
	3. 維持目前關於投資型保險商品之稅負規定	4	*	
	4. 修正《勞工退休金條例》	3	*	
智慧財產權及授權	1. 改善表徵保護的相關侵權行為	4		
	2. 加強對智慧財產權案件的司法處置	4	*	
	3. 重新考量針對《著作權法》修正的提議	3	*	今年納入「重新檢視《商標法》、《專利法》、《著作權法》，和著作權集體管理團體條例》修正草案」
	4. 改善海關作業流程以加強打擊仿冒及走私	4	*	
	5. 處理終端用戶盜版對著作權的侵害	4	*	今年分列為兩個議題
	6. 強化走私及仿冒品的監控	3	*	
	7. 保護校園智慧財產權	2		
醫療器材	1. 建立完備之醫療器材審查管理機構和法規，並樂見「食品藥物管理局」(TFDA) 的成立			今年改為「促進食品藥物管理局（TFDA）醫療器材查驗登記之審查機制與國際法規接軌」
	1.1 在未建立醫療器材的專責法規之前，應放寬《藥事法》第十八條醫療器材製造廠的定義	3	*	
	1.2 增進衛生署及其委外審查單位與業界之溝通，而提升醫療器材審查與管理的效能。	3	*	
	1.3 公告體外診斷產品查驗登記須知	2		

	2. 建立醫療器材廣告之審查與管理辦法			今年改為「醫療器材之藥物廣告審查與管理應針對DTC產品」
	2.1 公告實施醫療器材廣告審查管理原則	3	*	
	2.2 建立第三者之審查機制	5		
	2.3取消廣告審查的事前審查制度與建立業者自律機制	4	*	
	3. 修改健保醫療器材給付制度，維護醫療品質			
	3.1 應視醫療器材業界為台灣醫療體系的重要合作伙伴，建立定期溝通平台	2	*	
	3.2 擴大實施差額給付制度	4	*	
	3.3 公開新醫材給付飄準與審查過程，並由業者、醫材專家與健保局共同會議討論	4	*	
	3.4 執行價量調查的事前應就品項和時程，事後應就調查品項的價格分布、數量和調降價格之計算方式，與業界溝通和協商	3	*	
	3.5 修改特材給付點值為固定	4	*	
	4. 開放跨國企業於大陸廠製造之醫療器材進口	3	*	
其他 - 脊骨神經醫學	1. 提供脊骨神經醫師在台灣的合理、合法位階	4	*	
其他 - 菸品	1. 修正《販賣菸品場所標示及展示管理辦法》並確保執法一致性	4		今年雖未列入，但仍為業者持續關切之重要議題
	2. 請立法院重新思考安全防偽機制	3	*	
	3. 諮詢業者以建立合理可行之健康捐配套措施機制	4	*	今年改為「因應菸品健康福利捐之調整，建立補徵之法源依據」
	4. 提高刑責以打擊走私與私劣菸品	3	*	今年納入「重新考量統一安全防偽機制」
製藥	1. 建立透明一致的定價與給付制度，並加速藥品獲得健保給付，以鼓勵新藥進入台灣市場			
	・新藥給付價格應比照十大先進國中位價。	3	*	
	・諮詢藥廠、醫生、病患團體，並參考其他先進國家經驗，制定普遍接受的「新藥」定義	3	*	
	・藥品價量協定、風險分攤、論質計酬等應納入病患權益、科學證據、法源依據等面向	4	*	
	・提高定價與給付程序的速度與透明度	4	*	
	2. 改善藥價調查制度 (PVS) / 藥價調降機制			
	・檢討整體藥品政策（即「藥價基準」，PBS）	4	*	
	・如要維持藥價調查制度，則必須有針對買賣雙方的稽核機制	4	*	
	・推動藥品買賣的強制性定型化契約	3		
	・推動藥品定價與給付政策的改革	4	*	
	3. 落實醫藥分業 (SDP)			
	・政府應建立時程明確的計畫，以全面實施醫藥分業	4	*	
	・政府應更全面宣導醫藥分業的好處	3	*	
	・政府應提供足夠經費，改善各地社區藥局	3	*	
	・建立明確規範以確保藥局正確調劑	3	*	
	4. 以專利連結與資料專屬權提升藥品智財權保障專利連結			
	・專利連結	4	*	
	・資料專屬權	4	*	
	5. 提升品質要求，簡化管理程序			
	・藥品品質	4		
	・藥劑製品證明書（CPP）／銜接性試驗評估（BSE）	4	*	
不動產	1. 放寬僑外投資人購買台灣不動產的相關法規	3	*	
	2. 允許陸資企業進入台灣不動產市場	2	*	
	3. 修正建物使用的相關法律規範	4	*	
	4. 成立都市更新的非營利輔助機構	4	*	
	5. 民間興建營運後轉移模式 (BOT) 之土地拍賣及招標過程	5		
零售	1. 加速審查並解除中國進口產品的禁令	3	*	
	2. 進口商品的標示及標準應與國際接軌	4	*	
	3. 調整關稅以刺激貿易成長	5		
	4. 修改化妝品衛生管理法規以符合國際慣例	4	*	
	5. 落實完善政府的四大要素	5		
稅務	1. 釐清台灣來源所得的範圍並允許外國營利事業得選擇以自行申報方式就台灣來源所得(利潤部份)完納我國所得稅	1		
	2. 解決政府機關間對於稅法釋疑的歧異			
	A) 財政部及稅務機關對於標準化軟體的認定頗有落差	3		
	B) 工業局及稅務機關對於研究發展支出投資抵減及權利金免稅審查之認定常有不同見解	3		
	C) 申請適用租稅協定優惠時迭遭困難	1		
	3. 解決營利事業幫外籍員工繳納個人所得稅的循環課稅問題	1		
	4. 釐清營業稅法有關勞務使用地之定義	5		
	5. 審慎處理衍生性商品課稅問題	5		
	6. 考量將個人海外來源所得列入最低稅負制之負面效應	4	*	今年改為「將已登記之境外基金之資本利得納入國內所得」
科技	1. 以創新方法刺激經濟成長，同時改善醫療與教育的公眾服務	1		
	2. 研擬有效政策以規範網際網路產業	5		
	3. 取消政府採購合約中轉移智慧財產權的要求	3	*	今年納入「增加對軟體、服務與知識產權之重視」
	4. 持續協助維護資訊科技協定(ITA)的關稅優惠待遇	2	*	
電信及媒體	1. 鬆綁電信及媒體事業	3	*	
	2. 加強國家通訊傳播委員會的效能	4	*	
	3. 建立三合一匯流法規的開放討論公共平台	4		
	4. 執行科技中立的政策	2		
	5. 加強頻譜管理及落實國際最佳慣例	3		
	6. 無線基地台的建置	4		
交通運輸 - 快遞貨物業	1. 放寬對快遞貨物重量之定義	4	*	今年納入「打造健全的法規環境，以促進快遞貨運業的發展」
	2. 取消快遞貨物必須黏貼發票於貨物之規範	1		
	3. 修訂進口低單價貨物之委託書	4	*	今年納入「打造健全的法規環境，以促進快遞貨運業的發展」
	4. 取消或降低快遞通關處理費	4		
交通運輸 - 汽車業	1. 擴大對潔淨車輛的獎勵措施	4	*	
	2. 汰換老舊高污染車輛	4	*	
	3. 幫助車輛業者開拓區域競爭力	4	*	
	4. 改進車輛法規及認證制度	4	*	
交通運輸 - 海運業	1. 為海運業設計整合性振興景氣紓困方案	4	*	今年納入「提供獎勵，以刺激航運業成長」

註：*號代表該議題於《2010台灣白皮書》中再度提出　　研究彙整: 李琬婷/陳幼臻　　更新日期: 2010年6月23日

AGRO-CHEMICAL

The Agro-Chemical Committee appreciates the efforts of the Council of Agriculture (COA) in upgrading the quality of agricultural products in Taiwan and ensuring that the food produced is safe for consumption. The Committee in particular wishes to thank the COA's Bureau of Animal and Plant Health Inspection and Quarantine (BAPHIQ) for its continuing effort to raise the quality and safety standards of agrochemicals produced or distributed in this country.

But the committee must express its disappointment with the insufficient progress made in the past year regarding one of the key issues in our 2009 position paper – the need to crack down on the use of illegal pesticides. That continues to be a major concern in 2010.

A second issue, also critical to improving the livelihood of Taiwan farmers and in ensuring that fruits and vegetables sold in this market are of the highest quality and safe for consumption, deals with proposed new registration rules and crop grouping. For growers in Taiwan to improve their crop yield and better their livelihood, it is essential for them to have access to new technologies and innovative agrochemicals.

Well-formulated regulations and rigorous enforcement on illegal pesticides are equally important in ensuring that food produced in this country conforms to the highest standards in terms of both quality and safety. The Committee believes that adopting the two proposals below will greatly help to reduce the illegal trade and improve food production, enhancing the well-being of the many small farmers in Taiwan.

Issue 1: Tighten law enforcement against illegal pesticides.

It is frustrating to note that the use of illegal pesticides continues to be rampant. Despite efforts by the authorities to control this illicit commerce, unregistered and possibly hazardous illegal products are still widely sold in the market – and in fact the situation is worsening. Although a few violators were indicted last year, the cases have not yet been brought to trial, so it is not known whether convictions will result – and if there are convictions, whether the penalties will be heavy enough to deter other would-be offenders.

The sheer volume of illegal pesticides in the market and the channels by which they are being distributed poses severe challenges to food safety. Smuggled into the country primarily from China, these illegal products are untested and represent a serious potential health risk to both consumers and farmers, especially in the major vegetable-growing areas of Yunlin and Changhua Counties.

In the fourth quarter of last year, it has been learned through market sources that large amounts of what was claimed to be a duplicate of a newly registered and innovative active ingredient (Chlorantraniliprole) was brought into the country illegally, without testing, and was widely used in vegetable plantings. The presence of such unproven and potentially toxic products will lead to serious food safety issues and low consumer confidence in Taiwan's farm produce. Further, it creates unfair competition for the original manufacturers and other law-abiding companies. The result is to discourage multinational companies from bringing products based on new scientific discoveries into Taiwan, depriving growers of the access to new and innovative technologies.

While the Committee acknowledges the COA's past endeavors to combat the illegal trade, the situation in the market makes it evident that much more needs to be done. We urge the COA to step up its campaign against the smugglers and unscrupulous distributors and retailers engaging in this illegal activity. Success will come only if the COA 1) heightens its cooperation with Customs and the relevant law-enforcement agencies to stop the smuggling and domestic distribution and sale of illegal pesticides (especially in the key vegetable-producing counties of Central Taiwan) and 2) intensifies its education and advisory services to farmers on food safety.

The COA aspires to raising Taiwan's standards of food safety, and has allocated substantial resources to that undertaking. It would be most unfortunate if those efforts have been in vain, while the rampant sale and use of illegal and potentially hazardous pesticides goes on unabated.

The problem also needs attention from the highest levels of government. This spring, President Ma Ying-jeou ordered a crackdown on the smuggling from China of commodities falsely labeled as "Made in Taiwan," and the Ministry of Economic Affairs (MOEA) responded by setting up a special task force to tackle this problem. The threat from pesticides smuggled in from China is even more sinister. Since they carry no labels at all, they presumably will not be targeted by the MOEA task force. But the threat they pose to public health and safety is one that government officials should find alarming. Perhaps a separate dedicated task force is needed to eradicate these illegal products from the Taiwan market once and for all.

Issue 2: Adopt effective new registration rules incorporating crop grouping.

The Committee commends the authorities' decision to adopt crop grouping as part of the registration process for pesticides, and we thank BAPHIQ for inviting the AmCham Agro-Chemical Committee to be a part of the task force studying the details of the proposed new process. Under the current registration system, bringing new technology to Taiwan is a long and costly undertaking. Considering

the wide diversity of crops planted from North to South, it becomes extremely difficult and expensive for a company to introduce a new product for use in many different crops. As a result, foreign companies with new and innovative products often choose to confine the registration to a few major crops with the best market potential, or even worse, abstain from the Taiwan market altogether, thereby depriving farmers of access to these innovative products.

The imminent change to crop grouping can help ensure that the right technologies are made available to the growers. It will also encourage multinational companies to introduce innovative, cost-effective, and safer active ingredients (AIs) and technologies into Taiwan for the benefit of the country's agricultural productivity.

But to have the desired effect, the new registration regulations must be drafted properly. It is important that the regulations:

- Be practical, clear, and realistic for all parties.
- Create procedures that are affordable within the Taiwan market environment.
- Be linked to the Minimum Residue Levels (MRL) of the crops concerned.

ASSET MANAGEMENT

The Committee commends the Financial Supervisory Commission (FSC) for its continuing efforts to streamline the regulatory framework for the asset management industry and to build a sound system to enhance investor protection. A healthier and more flexible regulatory regime is in the interest of Taiwan's asset management industry and will ultimately benefit the Taiwanese investing public. Considering the worldwide rebound of stock markets last year, the Committee foresees that Taiwanese investors will be keen to seek better wealth management services and more diversified investment products.

Among the positive changes in the past year was the FSC's agreement, acting on a longstanding industry recommendation, to loosen restrictions on the outsourcing of investment management by Securities Investment Trust Enterprises (SITE) funds; although the relaxation was only partial, it was still a step forward, and hopefully will be followed by fuller opening. In addition, the FSC has also made some progress toward signing a Memorandum of Understanding (MOU) with Luxembourg. The open-minded and productive attitude the Commission has displayed is highly encouraging and will help bring about strengthened cooperative relations between industry players and the FSC.

At the same time, we believe that some regulatory obstacles still need to be removed in order to connect Taiwan more effectively with global financial markets. Our suggestions include improving the registration process, relaxing restrictions on investment strategy and objects, increasing the diversification of investment products of offshore and SITE funds, and deregulating investment procedure requirements for SITE funds. The Committee looks forward to continued constructive communications with the FSC in an effort to achieve early results on these important issues.

Issue 1: Expedite the signing of an MOU with Luxembourg's CSSF.

We recommend that an MOU be signed between the FSC and Luxembourg's Commission de Surveillance du Secteur Financier (CSSF) to resolve longstanding issues related to the restrictions in Taiwan on offshore-fund registration. The Committee urges the FSC to continue coordinating with the CSSF to accelerate the negotiation and execution process. The regulatory hurdles that should be removed or relaxed are as follows:

A. Qualifications of Offshore Funds.

(1) Exemption or waiver of one-year track record. Under current regulations, offshore funds either approved by the FSC or registered in an "FSC-recognized jurisdiction" can be exempted from the requirement of having a minimum one-year track record. In practice, however, no exemption approval has ever been applied for or granted due to a lack of relevant guidelines for such applications, leaving registration in an "FSC-recognized jurisdiction" as the only means of obtaining a waiver from the one-year track record. Signing the MOU would designate Luxembourg as an FSC-recognized jurisdiction, thus qualifying Luxembourg-domiciled funds as eligible for the waiver.

(2) Derivatives limit. Although the limit on the total value of open long positions for derivatives has been increased from 15% to 40% of the net asset value of the fund, we recommend that the initial MOU include a provision for each side to adopt and recognize the governing laws and standards of the other jurisdiction, thus committing Taiwan to adopt the European Union's UCITS III standards (the third phase of the Undertakings for Collective Investments in Transferable Securities). The derivatives limit could then be waived for Luxembourg funds, as UCITS is already recognized as assuring a stable, high-quality, well-regulated investment product with significant levels of investor protection.

B. Fund registration process.

The current regulation governing the registration of new offshore funds stipulates that a general representative may submit only one application at a time. Previously, each application could cover up to five funds, but recently the Securities and Futures Bureau (SFB) lowered the total to three funds per approval. In addition, the application needs to go through a two-step review process, first by the Securities Investment Trust and Consulting Association (SITCA) and then by the SFB. This lengthy procedure prolongs the time for bringing new fund products to the market. The sharing

of resources between the CSSF and the FSC under an MOU may help the SFB overcome its current resource constraints, enabling it to keep up with the rapid development of the asset-management industry and contribute to expanding the fund market in Taiwan.

C. Anti-money-laundering issues.

Taiwan was not included on the "White List" previously drafted by the European Commission to specify countries having anti-money-laundering (AML) standards and obligations equivalent to those in the European Union's directive. Countries not on the White List were subject to stricter AML requirements, such as the disclosure of beneficial owners holding at least 25% of omnibus accounts, as well as more complex procedures for new subscriptions. Although the White List was later abolished, the disclosure requirement remains in effect (unless the CSSF should reinstate a risk-based approach). If intermediaries are requested to comply with this requirement, it would have a huge impact on Luxembourg-domiciled funds distributed in Taiwan because it conflicts with Taiwan laws..

The MOU could solve the AML problem by allowing the sharing of customer information between Taiwan and Luxembourg for anti-money-laundering purposes, especially regarding the identification of beneficial owners of omnibus accounts whose holdings exceed 25% of the omnibus account position. Taiwan could then be considered as having AML obligations equivalent to those of the EU directive.

Issue 2: Ensure equal tax treatment by exempting capital income derived from registered offshore funds from the Alternative Minimum Tax regime.

So as to maintain an environment of fair competition among various types of offshore-fund industry players, equal tax treatment should be provided to offshore funds registered and distributed in Taiwan, listed Exchange Traded Funds (ETF), and overseas funds launched by local SITEs. But as result of a Ministry of Finance (MOF) ruling defining the capital income from registered offshore funds as offshore income, that income – but not income from the other two categories of funds – has become subject to Alternative Minimum Tax with the implementation this year of the AMT system.

The FSC indicated in September 2009 that offshore funds registered in Taiwan and SITE overseas funds are both deemed as securities under the Securities Exchange Act. But despite the virtually identical nature of offshore funds registered in Taiwan and SITE overseas funds, the MOF is considering the capital income from SITE overseas funds as "domestic income," not subject to inclusion in the taxable income basis of the AMT system. Further, the MOF is also treating the capital income from ETFs listed on the Taiwan Stock Exchange as "domestic income," even though they are in fact launched overseas. According to that logic, the capital income from registered offshore funds should receive the same treatment. We are dismayed that the MOF has continued to insist on carrying on this unwarranted discriminatory policy, unreasonably diminishing the competitive position of one category of fund against other categories. The Committee again strongly urges the MOF to take a position on this issue consistent with that of the FSC: classifying the capital income from offshore funds registered and distributed in Taiwan as "domestic income," the same as for SITE overseas funds and ETFs.

Issue 3: Advance the regulation of onshore funds.

One of the Committee's goals is to foster the growth and development of the local SITE industry by introducing global best practices and expanding international business opportunities. A key element in reaching this goal will be Taiwan's ability to attract world-class talent in the field of asset management to this market, so as to help cultivate local expertise and human capital. To create an environment in which global industry players may be interested in contributing their valuable experience to the onshore fund market, however, it is essential that Taiwan relax certain existing restrictions that have reduced its attractiveness to these individuals. We strongly recommend that the FSC and SFB adopt the following practices:

1. ***Allow double hatting for SITE fund management.*** Current regulations prevent portfolio managers of offshore funds from concurrently managing SITE funds. That rule unnecessarily limits opportunities to share expertise. The offshore fund business in Taiwan is developing rapidly, and Taiwan's SITE industry would benefit from the chance to align itself more fully with world trends and have fund managers with global experience. The Committee urges the FSC to allow domestic SITE fund managers, after meeting certain requirements, to engage in the management of offshore funds or to provide investment consultation services in connection with offshore funds at the same time that they are managing the SITE fund. To further facilitate this change, we also ask the FSC to remove the stipulation that the SITE fund manager must be engaged in that position on a full-time basis.
2. ***Permit concurrent management of segregated accounts.*** Under current regulations, a SITE may engage in the investment management of offshore collective investments pursuant to a discretionary mandate. But due to conflict-of-interest concerns, individual asset managers may not concurrently provide investment management services to both a SITE fund and a segregated account pursuant to a discretionary mandate. Such conflict-of-interest concerns run contrary to internationally accepted industry norms in leading financial centers, including Hong Kong and Singapore. In those jurisdictions, asset management companies and their individual asset managers are regulated through a licensing regime, with the day-to-day operation of the asset management business governed

by self-regulation in accordance with established best practices guidelines. There are no restrictions on the type of collective investments that may be concurrently managed. Taiwan should follow such international practices of self-regulation by setting best-practice guidelines, which are sufficient to protect the benefits and interests of investors. We urge the FSC to remove the current restrictions, allowing the concurrent management of SITE funds and offshore funds by SITE asset managers.

3. ***Permit full delegation of portfolio management.*** For many years, a SITE was not allowed to delegate onshore-fund investment business to a third party. But on December 21, 2009, the FSC issued a ruling allowing a SITE to delegate the fund investment business to a qualified third party in any overseas region other than Asia and Oceania, provided that certain requirements are met. We urge the regulator to now move forward to allow full relaxation by including delegation to third parties within Asia and Oceania, so as to increase the global opportunities available to onshore funds.
4. ***Allow feeder fund business.*** Many neighboring countries, such as Korea, Hong Kong, and Singapore, have permitted the distribution of feeder funds (funds that invest solely through other funds). The Committee recommends that the FSC follow the same approach by removing relevant restrictions on the feeder fund business in Taiwan. For SITEs, the launching of feeder funds could provide retail investors with more choices of foreign investment products, and NT$-denominated SITE funds could protect profits from overseas investments from the risk of foreign-exchange-rate fluctuation. A feeder fund could also reduce the associated costs for SITEs to manage or maintain a new fund, and could help increase the size of SITE funds. In addition, according to other countries' experience, the fee structure of a feeder fund is usually quite competitive compared with the offshore fund it links to. We believe that both investors and local asset management industry players would benefit from the introduction of feeder funds.

Issue 4: Further relax China-investment restrictions.

The Committee is pleased to see the progress being made on cross-Strait matters as a result of the financial MOU signed between Taiwan and China. We request, however, that the 10% limit on a Taiwanese onshore/offshore fund's investment in securities listed in China be abolished. This important step would place Taiwanese citizens on an equal footing with citizens of other countries in taking a meaningful ownership stake in Chinese companies.

Currently, many Taiwanese avoid this restriction by investing in the China market through Hong Kong and other countries. By removing this limit, Taiwanese citizens could make such investments domestically, which would benefit the local asset management industry while also allowing the Taiwan government to better keep track of the extent of such investments.

Some concern has also been raised about the ability of Taiwanese investors to redeem money out of QFII (Qualified Foreign Institutional Investor) accounts in China. While it is true that QFII places some restrictions on fund remittance, this issue is not unique to Taiwan investors and fund managers have found ways to address this issue for their customers.

BANKING

The Committee appreciates the steps taken by the Financial Supervisory Commission (FSC) over the past year to resolve issues covered in last year's *White Paper.* In particular, the Committee notes the efforts to increase openness and transparency in the rule-making process, such as the pre-consultation with the financial industry through a series of public hearings in enacting the "Rules Governing Offshore Structured Products," and in amending the "Guidelines for Banks Engaging in Derivatives Business" as well as the "Regulations Governing the Scope of Business, Restrictions on Transfer of Beneficiary Rights, Risk Disclosure, Marketing, and Conclusion of Contract by Trust Enterprises." We believe that this enhanced transparency will lead to a healthier regulatory environment. The Committee also appreciates the FSC's efforts to streamline certain regulatory reports so as to reduce the burden on the banks of filing duplicate information. We hope that these efforts continue, with emphasis placed on the reporting of exceptions instead of requiring detailed business or transaction statistics.

The Committee is also pleased by the prospect for Taiwan's signing of an Economic Cooperation Framework Agreement (ECFA) with China. Although details about how the financial services industry will be treated under ECFA are still unknown, the Committee hopes that post-ECFA, Taiwan regulators will assure a level playing field for both foreign banks in Taiwan and local banks in terms of the regulatory framework. The Committee also encourages the Government to further relax restrictions on PRC business visitors' entry into Taiwan so as to enhance financial-industry interaction between Taiwan and China.

The recent amendments to the Offshore Banking Act exempting withholding tax on OBU structured-product gains was another encouraging sign. The Committee believes it will help enhance Taiwan's competitiveness in regional financial activities. We appreciate the coordination among the Executive Yuan, FSC, Ministry of Finance, and Central Bank that made it possible for this amendment to be swiftly submitted for legislative approval.

Further, the Committee appreciates the current consultation between the industry and the government on cross-border marketing issues (particularly the cross-border local services enhancement rule). The Committee looks forward to a quick resolution of this issue, as it is of utmost importance to the industry.

Finally, considering that the Taiwan banking system has weathered the global financial crisis, the Committee recommends that the government focus its financial supervision regarding investment products on risk disclosure rather than placing restrictions on which products can be sold. Such an approach would provide sufficient protection to investors, while allowing the financial sector to offer a wide range of products to meet investors' needs. The Committee also urges the government to continue to move toward preparation of a sound Financial Services Act (FSA), so as to create a framework for uniform regulation of all types of financial institutions. The Committee will continue to monitor the progress of the draft FSA and is willing to provide input or comments as necessary.

In this year's paper, the Committee wishes to bring the following key issues to the government's attention:

Issue 1: Rationalize the "Regulations Governing Offshore Structured Products" and its operating rules.

In the wake of the 2008 global financial crisis, the FSC moved expeditiously to implement relevant laws and regulations, such as the "Regulations Governing Offshore Structured Products" (OSP) and its operating rules, aimed at protecting investors who experienced asset losses derived from certain structured products. While the Committee strongly supports the goal of investor protection, we are also concerned that the current regulatory regime for offshore structured products prevents investors from adequately fulfilling their desired composition of asset allocation and portfolio diversification, and also hampers the growth of Taiwan's financial markets. Limiting the range of available investment products and creating a tedious approval and filing process that lengthens the time needed for new products to be introduced to the market is out of synch with the Ma administration's clearly stated policy goal of building Taiwan as a regional financial center.

To prevent the further shrinking of Taiwan's financial market and the outflow of Taiwan investors' capital to neighboring countries with less-onerous regulations and restrictions, the Committee urges the government to closely review the "Regulations Governing Offshore Structured Products" and its operating rules and to consider the specific suggestions below.

- Adopt a program-based or structure-based approval approach, instead of reviewing and approving on a note-by-note basis
- Remove hurdles hindering the growth of the OSP market in Taiwan:

  A. Non-Professional Investor (Non-PI) distribution.
  1. Remove the double-rating requirement covering both the issuer/guarantor and the note itself.
  2. Lower the minimum rating requirement from AA- to A+.
  3. Remove the mandatory cancellation of the note issuance upon rating downgrade.
  4. Remove the distributor fee caps of 0.5% per annum and 5% in aggregate.
  5. Remove the requirement that the equivalent transaction conditions applicable in the jurisdiction where the offshore issuer and product are registered shall also be applied in the R.O.C.

  B. Professional Investor (PI) distribution.
  1. Remove the three-day review period.
  2. Relax the tape-recording requirement. Pursuant to Article 22 of Rules Governing Offshore Structured Products, the important contents of the relevant investor information summary should be read aloud to investors and should be recorded.
  3. Remove the requirement for public announcement/ Taiwan Depository & Clearing Corp. (TDCC) reporting upon PI product launch
- Revise the requirements related to Offering Documents (product statement and investor information summary).
  A. Remove the requirement related to placing the auditor opinion, legal opinion, probability of loss, and average annualized return in the product statement.
  B. Relax the requirement for Chinese translation of the full version of the latest audited financial reports.
- Revise the requirements related to reporting and public notice:
  A. Shift the reporting obligation for the daily and monthly note subscriptions and redemptions outstanding from master agent/issuer's local branch to the distributors.
  B. Enhance the TDCC reporting system (enable the uploading of the issuer's head-office financials and material information on a single page, instead of the current uploading on a note-by-note basis).

Issue 2: Support the growth of the wealth management and trust businesses.

Although the government's policy goal is to develop Taiwan as a regional financial center for asset and wealth management, the range of investment funds currently available in Taiwan is still very limited, and the speed with which new investment products can be introduced into the Taiwan market is quite slow, dampening Taiwan's competitiveness compared with Hong Kong and Singapore.

The Committee suggests the following steps to help strengthen the competitiveness of Taiwan's wealth management and trust businesses:

- Relax investment restrictions and simplify the registration process for funds offered to professional investors in Taiwan. In Hong Kong, funds are not required to be authorized or registered for distribution if offered only to professional investors. In Singapore, funds offered to accredited investors require only a simple notification and are not required to comply with any investment guidelines. In Taiwan, however, funds offered to professional and retail clients are subject to the same restrictions. Even

under private placement schemes, some types of funds (such as those with a relatively high derivatives ratio, funds investing in commodities, etc.) are restricted. We propose that Taiwan adopt rules similar to the ones in Hong Kong and Singapore for funds offered to professional investors.

- Reduce the threshold for an individually managed trust account to be allowed to invest in private placement funds (PPF). Currently, an investor must put up funds of at least NT$50 million in such an account to be eligible to purchase PPFs. The requirement is impractical for individual investors, who generally diversify their investment assets into different portfolios and accounts. On the other hand, individual investors are eligible to subscribe to a PPF launched by a Securities Investment Trust Enterprise (SITE) if his/her net worth exceeds NT$10 million individually or NT$15 million jointly with a spouse, or if the annual income exceeds certain amounts. For the sake of consistency across industries and to make more investment alternatives available to individually managed trust accounts, we propose that such accounts be allowed for investment in a PPF if the individual investor has put up NT$10 million in funds in the account, or if the investor meets the qualifications as a subscriber to PPFs launched by SITEs.

Issue 3: Exempt foreign banks from the "thin capitalization regulation."

The "thin capitalization regulation" being considered by the Legislative Yuan states that an enterprise's inter-company borrowing shall be maintained at a certain multiple of its net worth. Interest expenses on any borrowing exceeding that limit would not be tax deductible. Our understanding is that the limit is likely to be set at three times for a corporate entity and six times for a financial institution. The Committee proposes that foreign banks be exempted from such a limit for the following reasons:

- Interbank taking and placement are part of the banking industry's core business, and foreign banks are often required to take and place foreign currency funding with their head office or affiliates for various reasons, including the central management of currency and liquidity risks. Enforcement of the thin capitalization rule on foreign banks would have an unnecessary and adverse impact on the funding operation of foreign banks in Taiwan.
- The equity structure of a foreign bank branch in Taiwan is different from that of a local company. While a local company can issue domestic common shares, a foreign bank branch relies on its head office for funding its working capital. It would be unfair for foreign banks, especially those organized as branches, to be subject to the same limit on inter-company debt to local equity. The regulation would have a significant negative impact on the business scope and operating cost of foreign banks in Taiwan – and on foreign bank branches in particular.
- The Bank for International Settlements (BIS) ratio is a sufficiently effective tool for managing banks' capital adequacy. Additional requirements regarding various local capital and operating ratios are imposed on foreign bank branches in Taiwan under the "Regulations Governing Foreign Bank Branches and Representative Offices." It is unnecessary to set up any further limitations.

Given the above situation, the Committee strongly suggests that foreign banks be exempted from the "thin capitalization regulation."

Issue 4: Rationalize the regulatory and disclosure requirements for wholly-owned subsidiaries of foreign financial services companies.

In the Committee's position paper last year, we called for a review of the applicability of certain regulatory and disclosure requirements to wholly-owned subsidiaries of foreign financial services companies in Taiwan. In light of the increasing number of foreign banks in Taiwan operating in the form of a subsidiary or likely to do so in the future, we believe that this issue merits further discussion and evaluation.

As we stressed previously, while we recognize the importance of sound corporate-governance structure and practice, we believe that there are no universally applicable governance rules and principles, and so any rules and principles should not be applied indiscriminately. As clearly explained in the paper *Enhancing Corporate Governance for Banking Organizations* issued by the Basel Committee on Banking Supervision in February 2006, the implementation of corporate-governance principles should be proportionate to the size, complexity, structure, economic significance, and risk profile of a bank as well as the group (if any) to which it belongs. A local bank that is a wholly-owned subsidiary of a foreign bank differs substantially from a publicly-held company in terms of the size and complexity of the shareholding structure, which in our view justifies simplified corporate-governance/disclosure rules.

We understand the public interest in ensuring the safety and soundness of banks, even when not publicly held. As a result, we support rules and measures, such as the appointment of independent directors, aiding the regulatory and supervisory objectives of ensuring sound risk- and accounting-practices by banks. But we believe that certain requirements are not necessary or practical where a bank subsidiary is not publicly held, as there are no multiple shareholders and no minority shareholder interest to be protected. Among these are the rule regarding the disclosure of directors' and senior managers' remunerations, and the requirement for appointment of supervisors by unassociated shareholders – which in any case is irrelevant considering the shareholding structure (ultimately one single shareholder) of a foreign bank subsidiary.

We therefore urge the regulator to review the relevant governance rules as they may apply to foreign wholly-owned-

subsidiary banks, and impose the requirements only if they are considered appropriate to the size and shareholder structure of foreign wholly-owned subsidiary banks and critical to achieving regulatory and supervisory objectives.

CAPITAL MARKETS

The Committee applauds the regulators' continued efforts in advancing Taiwan's capital markets and maintaining good market order. The Committee especially wishes to thank the Financial Supervisory Commission (FSC) for listening to the Committee's concerns and issues on an on-going basis.

As global capital markets are highly intertwined, Taiwan's progress must be judged relative to developments in other countries. Considering the speed and scope of the progress being made in other Asian markets, it is vital for Taiwan to work even harder to strengthen its competitiveness in the international arena. Sustained capital-market development requires coordinated and well-thought-out guidelines and policies. This takes vision and inter-agency coordination. In this regard, the Committee would also like to echo many of the issues raised in the Tax Committee, which illustrate the need for much more coordination among government agencies to further the competitiveness of Taiwan's capital market.

As always, the Committee stands ready to assist the Taiwan government in its endeavors to ensure a well-functioning capital market. In this spirit, the Committee makes the following suggestions:

Issue 1: Enhance the trading infrastructure to achieve best practices as a developed market.

Market reform to achieve best practices is needed to ensure the Taiwan market's continuing competitiveness. Despite many positive efforts in this direction made by the government over the years, more still needs to be done in adopting international best practices so that Taiwan can reach developed-market status.

1. ***Differentiate between rules for institutional investors and retail investors.*** Institutional investors have better knowledge, risk appetite, and credit. The rules and requirements designed to protect retail investors are therefore unnecessary for institutional investors. Indeed, applying such rules and requirements to institutional investors actually places them at a disadvantage relative to retail investors. Instead of imposing a rigid across-the-board requirement for pre-delivery of cash/securities for stocks under surveillance, for example, the decision should be at the discretion of the broker according to the institutional investor's credit. Similarly, it should be optional rather than mandatory for brokers to check on stock availability before executing block trades. Since many foreign and local institutional investors' cash and securities are held by custodian banks, under the current regulatory regime institutional investors require more time and incur higher costs for pre-deliveries or pre-checking than do retail investors. There is no logical basis for creating such disadvantages for institutional investors.
2. ***Allow market price order.*** Currently, only limit price orders can be accepted for foreign equity trading in Taiwan, even though market price orders are a common type of order taking in the world's major equity exchanges. Allowing market price orders would give investors the flexibility to build or liquidate positions in a fast-moving market. It would be especially helpful when investors are trading securities in a different time zone, as it would eliminate the need to replace the limit price order several times due to price fluctuations. We believe that through proper education and explanation of the risks involved in a volatile market, such as buying-at-high and/or selling-at-low, possible misunderstandings between investors and securities firms could be reduced to the minimum.
3. ***Allow margin trading of foreign securities.*** Margin trading for domestic securities has been in place for more than 20 years, but margin trading in foreign securities is still off-limits pursuant to the "Regulation Governing Securities Firms Accepting Orders to Trade Foreign Securities." Margin trading capability gives investors better opportunities to enhance return on investment and enables securities firms to generate additional revenue with controllable risk. As many sophisticated Taiwan investors are quite familiar with the mechanism and risks involved in margin trading, we suggest that the prohibition on margin trading of foreign securities be lifted.

   Certain control mechanisms, like the amount limit for margin trading, can be established with investor's equities or fixed-income instruments as collateral. Additionally, in order to protect individual investors from potential risk exposure, the government can start by permitting only "professional investors" or institutional investors to engage in margin trading of foreign securities.
4. ***Allow personnel cross registration and business outsourcing/insourcing across financial industries.*** One of the major characteristics of a financial center is the ability of quality manpower to freely float across and among financial services. Given the stated goal of turning Taiwan into a regional financial center and developed market, Taiwan should permit financial-industry professionals to register and perform across various financial-industry sectors, as long as their qualifications meet regulatory requirements. The rigidity of the existing Taiwan barriers to such movement has prevented financial services companies from realizing potential opportunities to achieve synergy and efficiency. For instance, a skilled risk or financial controller working in a global financial services company is now allowed to register with only one of the financial industry sectors covered by the company, e.g. only the bank or only the securities firm. This system not only prevents the

financial services company from realizing integration, it also prevents a multi-industry financial services group from exercising overall control of aggregate risks across all of it businesses. Moreover, the restrictive outsourcing/insourcing rules provide limited relief in this regard. If these restrictions are not relaxed, global financial firms with a "universal banking" organizational structure and/or "one-stop shopping" business model will be discouraged from expanding their activity in this market, making Taiwan much less attractive as a regional financial center.

5. ***Clarify structured products' issuer/guarantor status.*** Article 6 of the "Rules Governing Offshore Structured Products" stipulates that the ROC branch or subsidiary of the issuer or guarantor of offshore structured products shall serve as the issuer's or guarantor's master agent. It further states that a subsidiary of a foreign bank, securities firm, or insurance company is created through direct or indirect investment in Taiwan as approved by the FSC, with the parent entity holding more than 50% of the shares of the said subsidiary. In other words, the rules imply that only a bank, insurance company, or securities firm can act as the issuer/guarantor.

   It is common, however, for Financial Holding Companies (FHCs) to act as guarantors for securities issuance, including structured products, although the structure of the FHCs may vary in different jurisdictions. From the Taiwan rules, it appears that only an FHC directly possessing a securities, banking, or insurance license may act as the issuer/guarantor, which means that a U.S.-style FHC that holds the relevant license through its subsidiary would not be qualified to serve as the issuer/guarantor. The Committee strongly suggests revision of the relevant regulations to allow an FHC to be the issuer or guarantor of offshore structured products, even if it does not directly own the securities, banking, or issuance license. This change would provide investors with a broader choice of products, while providing them with the same protection as enjoyed by international investors in other jurisdictions.

6. ***Relax structured products issuer's/guarantor's rating requirement.*** According to Article 18 of "Rules Governing Offshore Structured Products," the long-term debt rating of the issuer or guarantor of the relevant offshore structured products sold to general investors needs to be equivalent to S&P AA- or above. This stringent rating standard has ruled out many potential issuers/guarantors maintaining an A or A+ rating. Moreover, this rating requirement for offshore structured products is significantly different from the rule in the "Guidelines Governing the Scope of Business, Restrictions on Transfer of Beneficiary Rights, Risk Disclosure, Marketing and Agreement for Trust Enterprises," which permits a trust bank to sell offshore non-structured bonds or debentures to general investors when the issuer or guarantor's rating of the bond is A- or above. In terms of the issuer's or guarantor's credit risk, there should be no difference to investors whether it is a structured product or a straight bond.

Issue 2: Expand the scope of brokers' research and trading to increase industry competitiveness.

1. Allow securities firms to conduct consigned trading of China-related stocks. To promote the competitiveness of Taiwan's Securities Investment Trust Enterprises (SITEs) and meet the needs of local investors, the FSC – effective July 2008 – relaxed the investment limit in China stocks from 0.4% to 10% and removed all limits on investing in China-related stocks listed in other regions. On March 2, 2010, the regulators approved China red-chip stocks for consigned trading at securities firms; the consigned trading limitation on other China-related stocks is still intact, however. This limitation seriously undermines local securities firms' competitiveness. To promote the securities business, we suggest that China-related stocks (including China stocks, H stocks, stocks issued by China enterprises and listed in other regions, etc.) be included within the scope of foreign securities for which consigned trading is permitted.
2. Increase investor education to resolve issues related to media use of foreign securities brokers' research reports without consent. The media often uses its own channels to obtain foreign securities brokers' research reports, and then quotes or takes excerpts from the contents. This unauthorized use may impact market performance or stock prices – and sometimes generates investor complaints to the regulators. Brokers provide the research reports only to clients for their reference – not to the media – and the issuance of press releases and any other contact with the media occurs only when relevant approvals have been given. The problem of media misuse of foreign securities brokers' research reports is therefore best addressed through increased investor education on correct investment practices, not through the current method of issuing a public announcement on the Taiwan Securities Association (TSA) website. Such an announcement does not prevent the media from quoting unauthorized research reports, but it does add administrative burdens and costs to securities firms. We suggest that the Taiwan Stock Exchange and Gre-Tai Securities Market hold investor seminars and produce booklets explaining that securities brokers should not be responsible for unauthorized quotes from their research reports in newspaper or magazine articles, and that investors should not rely on such articles in making investment decisions.

Issue 3: Relax futures trading and its related foreign-exchange rules.

Although the Taiwan Futures Exchange has made significant progress since its establishment in 1997, futures

trading in Taiwan would benefit from several regulatory changes giving institutional investors greater incentive to participate in the market:

- Remove the pre-margin requirement for institutional investors, and instead allow brokers to exercise discretion regarding pre-margin payments, based on their own credit policy.
- Allow creation of a give-up mechanism to provide investors with more flexibility and options in trading futures across different Futures Commission Merchants (FCMs). Removing the pre-margin requirement would be a key prerequisite for offering a give-up mechanism. Investors would then no longer need to maintain two margins, at give-up and full-service FCMs respectively.
- Allow Foreign Institutional Investors (FINI) to trade futures with New Taiwan dollars. Currently, FINI clients can use only foreign currencies to trade futures and are subject to relevant NT$ foreign-exchange conversion requirements. Because of the inconvenience this causes for foreign clients, allowing FINIs to trade futures with NT$ would stimulate the Taiwan futures market.

Issue 4: Further liberalize the Securities Borrowing and Lending (SBL) market.

Taiwan is considered one of the most important markets in the Asian region for securities lending and borrowing (SBL). While the SBL community applauds the enormous progress made by the Taiwan Stock Exchange (TWSE), Ministry of Finance, and the FSC in promoting the SBL market, we believe there is still opportunity to increase market and operational efficiencies, which in turn would lead to greater utilization and liquidity levels.

The following suggestions from market participants are seen as ways to bring substantial growth to Taiwan's SBL market:

1. ***Create a lender of last resort.*** In Korea, the Korea Securities Depository provides a facility as "lender of last resort" to the market. In relation to SBL, this facility is generally utilized by borrowers to ensure delivery on recalls to the lender. It is not a substitute for the normal recall process for returning securities as the cost and collateral levels are incrementally higher – but it ensures that virtually no settlement fails in the Korean market. Although an essentially similar facility exists in Taiwan, it is only available to lenders. Extending it to borrowers would encourage more lenders to enter the market, with positive results.
2. ***Treat movement of lent/borrowed securities as settlement of an SBL transaction.*** Current regulations allow the lender and borrower to follow the terms and conditions of the negotiated agreement between them. As a negotiated SBL transaction is already "matched," it does not need to be matched again on the Stock Exchange via input by SBL brokers. Delivering and receiving the loaned securities by custodians facilitates settlement of the transaction. As a result, the requirement can be eliminated for the lender and borrower to "place" an order with SBL brokers, who in turn input into the TWSE platform for matching. The parties should be allowed to follow standard settlement procedures by sending settlement instructions to the custodians. The custodians can then report the transaction details to TWSE for control purposes. Existing handling fees to TWSE would remain, as TWSE still has to maintain the transaction information reported by the custodians.
3. ***Improve the recall process and permit lenders and borrowers to resolve expenses incurred in a settlement failure in accordance with the terms and conditions of the negotiated agreement.*** Under the new TWSE mechanism, the lender can recall and sell on the same day (T day) and meet T+2 settlement under certain conditions. The new mechanism, however, does not consider the possibility that the borrower may be unable to purchase/borrow from the market, which may cause a settlement failure on the lender's part, with a penalty if the lender has sold the recalled securities on T day. In typical SBL transactions in most markets, it is the borrower's responsibility to return securities when securities are recalled within the market-settlement cycle; otherwise, the borrower bears the costs. We suggest closing this gap by exempting the lender from this type of failure and allowing for the costs of remedy to be settled according to the agreement between the parties.

   Similarly, given the lack of a "lender of last resort" mechanism, the borrower often may be unable to make delivery on recalls by the lender, even though the borrower should be responsible if a short sale fails. To provide a working solution for a negotiated SBL, we suggest that the parties involved be allowed to settle the costs associated in such settlement failure in accordance with the negotiated agreement.
4. ***Study the possibility of allowing a borrower to lend borrowed shares onward.*** Since title to securities is transferred to the borrower in a SBL transaction (as seen by the requirement that the borrower be disclosed as a major shareholder if its ownership of any stock reaches 10%), the borrower should be permitted to lend the borrowed securities to another party.

CHEMICAL MANUFACTURERS

For the past several years, the number-one issue in the Chemical Manufacturers' position paper has been "Maintain Taiwan's tariff parity in cross-Strait and regional trade." Given the progress in cross-Strait relations that has enabled negotiations to proceed on an Economic Cooperation Framework Agreement (ECFA) between Taiwan and China, there is no longer a need to continue to state that request as an Issue – particularly since most reports have indicated that petrochemicals will be included among the industries

to enjoy tariff benefits under ECFA's "Early Harvest" provisions. That step will be an important factor in ensuring the continued competitiveness of Taiwan's chemical products in the China market.

Following the signing of ECFA, we urge the government to proceed to seek agreement from other countries, including major trading partners within the Asian region, on the negotiation of bilateral Free Trade Agreements. As greater regional economic integration takes shape in the years ahead, it will be vital for Taiwan to be part of any such arrangements, so that its trade competitiveness is not eroded.

The Committee also expresses its appreciation to the government and the Taiwan Power Co. for their efforts to assure a reliable supply of electrical power to the chemical industry. While problems related to unscheduled outages and unstable voltage have not been completely eliminated, sufficient progress has been made that this issue also has been dropped from this year's paper.

The 2010 paper instead focuses on proposals to assure adequate feedstock for the industry's future development, integrate regulatory control of the chemical industry within a single agency, promote the use of Remote Operation Centers, suspend collection of the Soil and Groundwater Pollution Remediation fund, establish Community Advisory Panels to improve chemical industry-community communications, and adopt international standards for inspection of high-pressure containers.

On all of these issues, the Committee looks forward to exchanging views with the relevant government organizations in pursuit of our common goal of boosting Taiwan's economic development and social well-being.

Issue 1: Ensure a sufficient supply of feedstock for the industry's continued development.

The future viability of Taiwan's petrochemical industry will depend on sufficient availability of feedstock from upstream suppliers. Due to continuous and timely investment in new naphtha-cracking units over the decades by the state-owned CPC Taiwan Corp. (formerly Chinese Petroleum), supplemented in recent years by the facilities of the private-sector Formosa Plastics Group, Taiwan's petrochemical industry until recently has never had to worry about inadequate supplies of basic feedstock.

That situation has been changing. A project by a CPC-led consortium known as Kuokuang Petrochemical to construct a new complex on reclaimed land in Yunlin County was blocked for lack of Environmental Impact Assessment approval. The consortium has proposed shifting the site to reclaimed land in Changhua County's Tacheng Township, but the future of the project still remains uncertain as the Environmental Impact Assessment is still on-going. Without this project, which will involve both a cracker for ethylene/aromatic hydrocarbons and a petroleum refinery, a shortage of basic feedstock may well arise.

Formosa Plastics Group owns the Sixth Naphtha Cracking Project and the associated mid- and downstream petrochemical plants that constitute an autonomous industrial supply chain, while CPC Taiwan has only naphtha crackers, partnering with private petrochemical plants to complete the supply chain. CPC's Fifth Naphtha Cracker, located at its Kaohsiung Refinery, currently supplies more than 45% of the total feedstock needed by the industry. However, due to the upcoming relocation of the refinery as promised years ago by the government to the neighboring community, dozens of downstream petrochemical plants located in the nearby Jenwu and Tashe Industrial Parks will have to be shut down, forcing the domestic petrochemical industry to cut its production scale by half from the present level.

Taiwan's petrochemical industry has made significant contributions to Taiwan's economic development, and particularly to the economic well-being of the Greater Kaohsiung area. The relocation of CPC's Fifth Naphtha Cracker will cause significant impact to the Taiwan petrochemical industry's supply chain. According to a *Petrochemical Industry Report* by the Taiwan Institute of Economic Research, after the Kaohsiung refinery is shut down (scheduled for 2015), Taiwan will face an annual decline in production value worth NT$425.6 billion (US$13.5 billion) as well as a loss of 163,000 jobs, adversely impacting Taiwan's economic growth and stability.

Our understanding is that CPC conducted two public surveys regarding the proposed relocation of the Fifth Naphtha Cracker and that the results showed majority support among local residents for the facility to remain in the present location. We suggest bringing the issue to a formal vote among residents of the surrounding district. Due to various complicated factors, communications between CPC and the local community have broken down and relations have been tense. Considering the potential consequences for the national economy, the Committee urges the central government to step in to try to resolve the matter, rather than leaving this "hot potato" to the local authorities and CPC.

Besides swiftly tackling the issue of the Fifth Naphtha Cracker's relocation, the government needs to find ways to accelerate the Kuokuang project. Both actions are vital to support an industry that is a major contributor to the Taiwan economy and is relied upon by a wide range of other industry sectors.

Issue 2: Streamline the regulatory control of chemical life-cycle management.

The government restructuring to be carried out over the next several years provides an excellent opportunity to integrate the various agencies currently responsible for aspects of chemical regulatory management. Such chemical control responsibilities are currently spread among the Council of Labor Affairs, Environmental Protection Administration (EPA), the EPA-sponsored Emergency Response Information Center (ERIC), Department of Health, and National Fire Administration. The Committee believes

that merging those units to form a unified national chemical agency would help industry conduct chemical management more effectively, especially at a time when international regulatory requirements are becoming more demanding. These include such efforts as REACH (Registration, Evaluation, Authorization, and Restriction of Chemicals), GHS (Globally Harmonized System of Classification and Labeling of Chemicals), the Stockholm Convention for Persistent Organic Pollutants, and the Montreal Protocol for HCFC/HFC (hydrochlorofluorocarbon and hydrofluorocarbon) reductions. At the same time, Taiwan's own chemical controls, such as the Toxic Chemical Emergency Response requirements and ECN/NCN (Existing Chemical Notification/New Chemical Notification) scheme, are also becoming more stringent.

From the perspective of chemical emergency response, the Committee believes that the organizational streamlining to be achieved by integrating the various existing resources would greatly enhance efficiency and effectiveness. We note that ERIC's performance in the area of toxic chemical emergency response has been widely recognized as among the best in the Asia-Pacific region. We suggest that ERIC first be officially incorporated into the EPA organization, and that it later serve as the nucleus for the integrated agency, with its emergency response services extended from toxic chemicals to covering all chemicals.

Issue 3: Establish a transparent communication mechanism for better interaction between chemical companies and neighboring communities.

For many years, this paper has included a section calling for the elimination of "community payments." This is a euphemism for a form of blackmail in which chemical companies have been forced to allocate funds to nearby communities. Even after making the community payments, chemical companies often still have to face various unreasonable requests, such as awarding construction contracts to members of the nearby communities or sponsoring ad-hoc community events.

Over the years, the situation has become somewhat less egregious. For one thing, there is now significantly more transparency in the use of the funds. In addition, although plants in several chemical industrial zones continue to make community payments as a legacy of past practice, manufacturers have successfully resisted expanding the custom to new locations. The industry firmly believes in fulfilling its corporate social responsibility, including appropriate support to neighboring communities, but it equally staunchly opposes any demand for such payments under duress, outside of normal procedures.

While the community payments problem has been contained, chemical companies continue to be harassed by individuals making false accusations of environmental offenses in an effort to extort money or favors (such as a supply contract, construction contract, land sale, or the hiring of a friend or relative).

The Committee recommends that the competent authority establish an official and transparent communication mechanism to efficiently deal with such community issues and complaints. As an example, many other countries use a mechanism called the "Community Advisory Panel" (CAP), which serves as a bridge between the community members and chemical companies. A CAP is usually established with the government's help, and the government regularly organizes public meetings at which companies can explain their environmental and safety measures and answer the community's questions.

Until community payments can be completely eliminated, the Committee also suggests that the government help facilitate discussions between chemical companies and their neighboring communities with the aim of devising mutually acceptable rules of conduct for both sides to follow. Such rules, for example, should specify that communities refrain from asking companies to sponsor events on an ad-hoc basis, but instead submit an annual sponsorship proposal by the end of each year so that the companies can incorporate the requests into a business plan in an orderly fashion.

Issue 4: Advance the use of Remote Operation Centers for on-site air separation units.

The Committee acknowledges the improved cooperation between government agencies and chemical manufacturers to actively pursue industrial automation, promote "lean process" capabilities to reduce product cost, and generally enhance the industry's competitiveness.

As part of that effort, we suggest paying more attention to the role of Remote Operation Centers, which have been increasingly used in industry, both within Taiwan and abroad. A domestic example is the Taipei MRT Wenshan-Neihu line, which utilizes driverless trains. But Taiwan has never adopted any Remote Operation Center standards or guidelines. To ensure that Taiwan can remain abreast of international levels of advanced technology in this field and maintain its competitiveness, we urge the government to make up for that deficiency by issuing appropriate standards and guidelines for the industry to follow.

Among the applications suitable for Remote Operations Centers are on-site air separation units, for which remote operation brings the following advantages:

1. Centralized operation by experts to improve supply reliability and facilitate access to advanced international technology.
2. Improved people management, plant productivity, and optimized operations management.
3. Continued compliance with existing regulations and original operation requirements.

We recommend that the government, in establishing a complete set of domestic regulations and standards for the management of Remote Operation Centers, put international experience in this area into practice in Taiwan. For example,

the industrial gas associations of the European Union, United States, Japan, and other advanced countries have acknowledged such a management system. We recommend that the government approve the use of such remote control systems in workplaces classified as "C-class dangerous" or in new factories, and that it allow manufacturers to change the existing on-site operation management mode to remote control management in order to keep up with international trends in advanced technologies and to achieve the goal of production management optimization.

Issue 5: Suspend collection of the SPRGA fund and integrate all environmental fees into green taxes.

The various levies imposed by the EPA based on the "polluter pays" principle – including fees for air pollution, soil pollution, recycling management, and one now in preparation for water pollution – have aroused controversy due to questions about the selection of the payers, the rates, the reasonableness of the criteria, and the allocation of the funds collected.

An example of the unfairness of the system is the soil pollution fee based on the Soil and Groundwater Pollution Remediation Act (SGPRA). The petrochemical industry is paying 97.95% of the money going into the SGPRA fund, while the heavy-metal manufacturing and electroplating industries that are responsible for the bulk of the pollution have not been paying their reasonable share.

Further, the existence of the polluted soil and groundwater sites resulted from lack of proper supervision by the EPA. Government budget should therefore be used to remediate these sites instead of putting the burden on a small number of companies. Although EPA considers that 40% of the polluted sites in Taiwan can be traced to petrochemical pollution, most of these sites – such as gas stations, registered factories, and storage facilities – belong to identifiable owners, who under the law should be responsible for remediation of their own sites. The stated purpose of the SGPRA fund, on the other hand, is to pay for the remediation of sites where the owners are unknown or cannot be located. In other words, for most of the affected sites, the SGPRA fund has no useful role to play.

In addition, the 2010 amendments to SGPRA have broadened the scope of the fund to cover some items that should instead be covered by government budget. Using the special fund to cover government budgetary shortfalls is contrary to the basic principles behind the establishment of such funds. Due to the continual government budget deficits, insufficient money has been available for environmental protection, prompting the EPA to ignore the original intention of the SGPRA legislation and divert use of the fund to the monitoring, investigation, and verification of locations that are especially prone to pollution – such as farmland, gas stations, storage tanks, illegally abandoned factories, and old military storage facilities. This kind of investigation work should be paid for out of regular government appropriations instead of being covered by the SGPRA fund.

So far, SPGRA-fund revenues have exceeded expenditures. From the start of SPGRA fee collection in 2001 through the end of November 2009, the total fund reached NT$5.9 billion, with about NT$600 million to $700 million levied annually on the petrochemical industry. But total spending came to only NT$1.9 billion, leaving a balance of NT$4 billion.

Although the Committee regards the payment of SPRGA levies as an act of corporate social responsibility, we believe that collection of the fees should be based on actual needs – and not just to see the fund accumulate. According to the recently amended SGPRA, the definition of polluters has been broadened to industries other than the petrochemical industry. However, the items and rates for the newly-added industries have not been decided. Therefore, it will be unfair if the EPA continues collecting the levies solely from the petrochemical industry. The Committee calls on the EPA to immediately halt the practice of relying almost entirely on the petrochemical industry for these levies. Until such time as SPRGA funds are claimed from all potential polluters based on the "polluter pays" principle, the EPA should suspend SPRGA-fund collection.

Lastly, the Committee urges the government to begin preparations to combine all environmental levies, such as fees for air pollution, soil pollution, and the oil fund, into one "energy and environmental tax" as a way to transform Taiwan's current environmental fees into a "green tax" regime. The Committee suggests that the government refer to OECD practices for integrating all environmental fees into a single levy. This is not to suggest that the government create additional taxes, but rather to consolidate the existing ones in order to better allocate the country's resources. Green tax reform can contribute to an overall improvement in the country's financial structure by broadening the tax base, lowering the public's tax burden, and reducing social welfare surtaxes imposed on companies.

Issue 6: Follow international standards in the inspection of high-pressure containers.

Taiwan regulations for high-pressure gas containers are not aligned with internationally recognized standards. In fact, while such standards have been adopted by the United States, the European Union, the United Nations, and even China, Taiwan has no explicit inspection standards for such containers. Chemical companies may therefore face problems when containers are imported and presented for inspection, reducing the competitiveness of Taiwan-based manufacturers and harming their business prospects. In 2008, for example, some chemical manufacturers imported more than 20 DOT (the U.S. standard, which is internationally recognized) containers, but they were not inspected until a year later, causing substantial financial losses for the companies.

Currently, the Council of Labor Affairs (CLA) follows Japanese practice, which effectively prevents the inspection

and use of UN ISO containers in Taiwan. Japanese regulations permit the use of ISO containers for the import of products not produced in Japan, or for export to other countries, but not for transport from plants in Japan to domestic customers. By copying this practice, the Taiwan government is hurting domestic specialty-chemical and gas manufacturers by keeping them from using many types of high-pressure containers for the local market. As a result, chemical manufacturers may prefer to locate new manufacturing facilities outside of Taiwan. Costs are also increased for electronics companies in Taiwan that are the customers for these chemicals, forcing them to buy more expensive imported products and making their supply chain less reliable.

Currently, Taiwanese authorities do not follow the provisions of Chapter 6 of the "Regulations for Safety Inspection of Dangerous Machines and Equipment," which stipulates that imported containers can be inspected according to foreign standards. Instead, Taiwan requires imported containers to meet domestic Chinese National Standards (CNS) and transportation regulations, which often prevent the inspection and use of imported containers in Taiwan.

We recommend that the CLA refer to the example of South Korea, which previously also followed the Japanese regulatory system, but later changed the legal framework to align with international standards. UN ISO containers have now been used by chemicals manufacturers in Korea for many years.

Like DOT standards, containers with UN ISO specifications are used and recognized globally. In fact, a complete system, the UN Orange Book, is in place to govern their inspection and re-inspection. We recommend that the Taiwan government recognize and follow this system without requiring domestic standards to be met as well, allowing manufacturers in Taiwan to raise their competitiveness by using UN ISO or DOT containers domestically and in exporting chemicals.

EDUCATION & TRAINING

How will Taiwan help its citizens and corporations identify, secure, and exploit their competitive advantage in the new economic order in which developed nations are rapidly transforming from Industrial-Age to Digital-Age economic models?

Over the past five decades, Taiwan's economic performance has exceeded that of the United States, China, and Hong Kong. But during the last five years, while the rest of the Asian region was enjoying strong growth, Taiwan has lagged behind most of its neighboring countries.

During the 1980s and 1990s, as Taiwan's labor-intensive industries evolved into world-class manufacturing facilities, both the government and academia played an important role in that transformation. Taiwan became an Asian role model for economic and democratic development, but without the right infrastructure – including education and training – that would never have been possible.

Now Taiwan is once again at a crossroads. Will it again successfully make the necessary adjustments in its learning models to help its citizens compete with people from other nations?

Until recently, education and training provided individuals with specific sets of skills that could usually last an entire lifetime. In the fast-paced, change-driven Digital Age, that will no longer be the case. Will Taiwanese academic institutions be able to meet the challenge of preparing their citizens to compete in this new environment?

While the Ministry of Education (MOE) has been open to communication and discussion, its responsiveness over the past five years to international trends has been far slower than in other developed Asian countries, chiefly Hong Kong, Singapore, and South Korea. As a result, Taiwan's citizens have been deprived of the kinds of opportunities for personal growth and development that have been available in other Asian countries.

Of particular concern to the Committee are the following three issues:

Issue 1: Continue liberalizing regulations governing foreign universities and degrees.

The Committee appreciates the efforts over the past several years to remove some of the barriers to the establishment of foreign schools in Taiwan. For example, the Private School Law was amended by the Legislative Yuan in December 2007 to allow foreigners to serve as the chancellor or chairman of a private school, and to remove the cap on the number of foreign directors permitted to serve on a private school's board. The Committee also welcomes the Ministry of Education's decision to allow credits from distant-learning courses to account for up to half of the total required credits for a degree. These are certainly steps in the right direction.

However, the regulations governing foreign university programs in such nearby markets as Malaysia, Hong Kong, Singapore, and China are still far more attractive than the present conditions in Taiwan. In those markets, foreign universities are allowed to set up branch offices and to bring in faculty to deliver courses and programs. The resulting degrees are fully recognized in those countries.

The law here still stipulates that foreign universities may apply to set up full-scale campuses but not branch offices or satellite campuses. Taiwan universities, however, can easily set up satellite campuses or branch offices offering degree programs in the United States and other countries. Furthermore, students attending joint-degree graduate programs taking place in Taiwan will have problems receiving recognition for credits not earned physically at the foreign institution's main campus. Given such barriers to entry, Taiwan has been unable to attract U.S.-based business schools and other professional schools such as have been operating elsewhere in Asia (for example, the University of Chicago

Business School in Singapore, the National University of Singapore-UCLA joint executive MBA program, or the Johns Hopkins University's Nanjing Center in China). The presence of high-quality, reputable U.S. institutions in Taiwan's education market would do much to spur innovations in the local education sector, and would provide a wealth of choice for Taiwan's students.

The Committee therefore calls upon the government, in line with the spirit of liberalization and internationalization that it has espoused, to permit bona fide foreign universities to operate legally in Taiwan without undue restrictions. In particular, the Committee urges the MOE to:

- Allow accredited Taiwanese schools to partner with MOE-recognized U.S. and other foreign institutions to create joint-degree graduate programs, and to recognize as valid and legitimate any credits and degrees earned in such programs, regardless of the geographic location where the credits toward the degree are earned.
- Allow MOE-recognized U.S. and other foreign universities to establish branch offices or satellite campuses in Taiwan for the sake of offering certificate and degree programs to Taiwanese and international students from all over the world. As long as the programs they offer are identical to those offered at the institution's home campus and are taught by the institution's own qualified faculty via on-line distance learning or on-site in Taiwan, the Committee sees no reason why such U.S. university programs should not be allowed to recruit students and run MOE-recognized academic programs in Taiwan.

It is the Committee's view that the government should revise the law to permit U.S. and other foreign universities offering degree and non-degree programs to operate in Taiwan and to recognize foreign degree programs based on their quality only, regardless of where the instruction is given.

Issue 2: Facilitate greater student mobility and internationalization by removing systemic barriers.

A systemic barrier inhibits the movement and exchange of students to and from Taiwanese post-secondary institutions. Currently, if Taiwanese students wish to enroll in a one-year or one-semester exchange program at an overseas institution, their home institution in Taiwan must have a "twinning agreement" with the overseas school in order for the student to transfer the credits earned overseas back to his or her Taiwanese school. This policy creates several problems:

- Students' choice is limited to a select number of overseas programs approved by their home institution. This occurs even though the MOE recognizes a much larger group of overseas schools as providing quality programs.
- Highly ranked overseas institutions may not necessarily be interested in entering into a twinning agreement with a Taiwanese school, but would be willing to accept individual students from that school for an exchange year. Once again, the current policy limits Taiwanese students' choices. Similar problems arise if foreign students wish to attend a Taiwanese school for an exchange year.

In order to facilitate greater student mobility and internationalization, the Committee suggests that the system be revised to enable Taiwanese students to attend any overseas school recognized by the MOE, without the need for a twinning agreement with the student's home school. Recognition of individual credits towards graduation requirements would be at the discretion of the student's home institution.

Issue 3: Recognize overseas diploma and certificate programs.

The MOE recognizes educational credentials earned at overseas university/college undergraduate and graduate degree programs, but does not accord the same kind of recognition to overseas diploma and certificate programs in community/junior colleges and universities.

Diploma and certificate programs are typically applied and/or vocational education, focusing on a highly specialized field of job training. People with these skills are in high demand in the Taiwan employment market. Following the upgrading of most junior colleges in Taiwan over the past decade to become four-year degree-granting institutions, there is now an under-supply of personnel with advanced vocational skills. But many prospective students in such programs are discouraged from considering them because of uncertainty about whether the diplomas or certificates will be acknowledged in Taiwan. Clearly recognizing these overseas diploma and certificate programs would help in relieving the shortage of needed talent in the job market, while also providing Taiwan's students with greater overseas educational choices. By withholding such recognition, the MOE is unjustifiably denigrating these shorter-term vocational or applied programs and ignoring current needs in the employment market.

ENVIRONMENTAL PROTECTION

Environmental questions are becoming increasingly important elements in public-policy deliberations in Taiwan as in countries throughout the world. We hope that these vital matters can receive wide attention and discussion in Taiwan as the first step toward forging an effective consensus on how to ensure sustainable development, assuring both environmental protection and economic growth.

This year the Committee repeats two of the crucial issues raised last year – increasing the level of effective wastewater treatment in Taiwan and devising a practical and rational approach to dealing with the challenge of Greenhouse Gas emissions. In addition, we have added a third issue calling for expansion of the Green Mark program to recognize not only products made from recycled materials but also other environmentally friendly products.

The Committee would also like to take this opportunity to urge the government to explore initiatives to improve energy performance in buildings, including the promotion of "Green Buildings." And we would like to call attention to the requests raised by two other committees – Chemical Manufacturers and Infrastructure – for the adoption of a more efficient Environmental Impact Assessment process. Under the current system, prospective projects are frequently kept in limbo for years pending a final EIA review. That situation serves neither the interest of setting clear-cut environmental policy nor the need of business to be able to make and act upon investment decisions expeditiously.

The Committee looks forward to opportunities to share information and ideas with the relevant government agencies.

Issue 1: Expedite the construction of public sewerage projects.

Despite Taiwan's high level of economic development, sewage connectivity remains significantly behind those of other countries. While Taipei city can boast a connection rate of over 98% and Kaohsiung's is about 60%, the overall figure for Taiwan was less than 24% according to the most recent figures available. In comparison, neighboring countries such as Japan and South Korea have connection rates of 70% and 80% respectively.

In its "i-Taiwan" package of infrastructure projects, the Ma administration has committed to investing US$9.26 billion over the next five years with the aim of increasing sewage connectivity by an average of three percentage points per year. Although that is a welcome development, at the announced pace it will be a long and expensive exercise to bring Taiwan up to a level commensurate with its economic status.

Given limited central government funds, the best solution would be to attract more private-sector participation in financing and operating waste-water treatment plants. The i-Taiwan plan, in fact, calls for US$1.3 billion in private-sector investment in such projects. But for the plan to succeed, the government needs to create the right conditions to encourage investors to participate. Currently potential investors are likely to be deterred by government pricing controls that may not allow an adequate return. Moreover, in Taiwan the burden of financing hookups from households to the sewage system is placed on the company managing the sewage treatment plant, whereas in most other countries, the government takes responsibility for establishing the sewer hookups and networks.

Another concern is that the local government agencies carrying out the sewage projects often lack the requisite experience and expertise. The problem is exacerbated by contradictory policies and regulations between the central-government level and the county and city administrations. A more transparent and consistent regulatory regime needs to be created, possibly by establishing a new entity with clear authority to oversee the entire process.

It should also be pointed out that expenditure on constructing new facilities will have limited impact unless budget is also allocated for the proper maintenance of existing treatment facilities. Funds for maintenance have been seriously insufficient because the total cost of water treatment is not passed along to the consumer at all. Unless funding is put on a rational basis, Taiwan will never be able to resolve its sewage treatment problems.

The Committee urges the speedy adoption of changes in policy and practice to help ensure successful implementation of the sewage connectivity and wastewater treatment portions of the "i Taiwan" priority projects.

Issue 2: Reevaluate greenhouse gas emission (GHG) and energy policies.

The Committee recognizes the Taiwan government's effort to establish a greenhouse gas (GHG) registration platform and to encourage companies to engage in the voluntary reduction of GHG emissions. One important approach in achieving such reductions is the use of market mechanisms such as carbon trading (on either a voluntary or mandatory basis). Complementary measures covering transportation and building energy efficiency are also needed to encourage R&D and capital investment in newer technologies. The Committee supports the goal of reducing GHG emissions, but would like to raise the following recommendations associated with the draft GHG Reduction Act currently being reviewed by the Legislative Yuan:

- Exclude indirect CO_2 emissions from the overall calculation of GHG emission so as to prevent the double counting of emissions by electricity suppliers.
- Develop more clearly defined energy-efficiency standards for each product category or facility, with IPCC (Intergovernmental Panel on Climate Change) guidance and protocols used as reference where appropriate. Some sectors, such as cement and aluminum, are already working on voluntary energy-efficiency standards, and these could be considered for adoption.
- Delete the phrase "most feasible technology" from the bill, as there can be no objective means for determining that standard. Whenever enterprises can provide solid evidence of GHG reduction, they should receive retroactive carbon credits without having to prove use of the "most feasible technology."
- Refrain from setting a cut-off year for retroactive carbon credits. Enterprises should be able to get retroactive carbon credits whenever they can show solid evidence of GHG reduction over the past two decades, as many multinational companies started their efforts in the 1990s.
- Set GHG reduction goals under the conditions of clear and finite GHG emissions baseline examination surveys and processes.
- Involve all stakeholders in the GHG reduction efforts.
- Require companies to conduct internal survey on GHG emissions every year but extend the frequency of

submission for external surveys to once in three years. It is also recommended to adjust the frequency of surveys and submissions based on the total GHG emissions by individual enterprises; companies with a higher amount of GHG emission should undergo more frequent surveys to keep more careful track of their status.

- Reserve a potion of the carbon credits for the government to support specific strategic initiatives, such as industrial projects that are important for economic development but would increase GHG significantly. A sound process must first be in place to collect stakeholders' input, however.
- Adjust the penalty in the early years to focus more on education than on punishment, encouraging non-compliant enterprises to learn from their experience and improve their performance.

If it appears that a long period of time may elapse before passage of the bill, the Committee urges the government to step up efforts in the meantime to encourage enterprises to voluntarily decrease their GHG emissions.

Issue 3: Create a new eco-labeling category for virgin fiber tissue products certified by a globally recognized standard of responsible forest management.

It is estimated that deforestation accounts for one-fifth of global greenhouse gas emissions, more than the total from automobiles, airplanes, and trains. Forest protection has therefore become a critical issue for both government and industry in seeking to reduce the impact of global warming. Taiwan's demand for woods is approximately 5.5 million cubic meters per year, and over 95% of the supply is imported, mainly from Southeast Asia, where serious illegal logging of precious rainforest has been observed and reported by environmental NGOs such as Greenpeace and the World Wildlife Fund.

There is a growing trend to protect forests by promoting responsible forest management systems and Chain of Custody certification such as that provided by the Forest Stewardship Council. The approach encouraged by the European Union, New Zealand, and various other countries adopts a dual-track eco-label system that acknowledges products made from virgin as well as recycled fiber. Despite the worldwide trend, however, Taiwan's Environmental Protection Administration for years has included only paper products made from recycled fiber in its Green Mark system.

The Committee appreciates that the Taiwan government originally developed the Green Mark program to encourage product recycling. But since there is never just a single solution to reducing environmental impact, we urge consideration of a broader policy that takes other options into account. Taking tissue paper as an example, even though Taiwan imports 750,000 tons of waste paper annually from overseas to satisfy the demand for recycled fibers, over 95% of the domestic market for tissue paper consists of virgin-fiber products. Without an adequate program to assess the environmental impact and encourage the responsible use of raw materials in this market segment, there is no way to assure that the majority of the tissue products on the market are not using wood fibers from endangered forests.

The Committee urges the speedy adoption of policy changes to widen the Green Mark program, creating a new category to recognize virgin-fiber tissue products from certified sustainably managed forests. This step would not only contribute to reducing the negative impact of climate change, but would also eliminate the current unfair trade conditions in Taiwan in which only manufacturers of recycled-fiber products carrying eco-labels are eligible to sell to government organizations through the Government Procurement Act. Revising the Green Mark program along the lines we suggest would enable consumers to make better-informed choices regarding the fiber sources of products they purchase, expand the available options of green products, and most importantly, help to decrease deforestation by illegal logging and thereby contribute to countering global warming.

HUMAN RESOURCES

The Committee would like to take this opportunity to applaud the Taiwan government's efforts in the last few years to make the Taiwan employment market more accessible to foreign professionals. We look forward to further relaxation of restrictions on foreign and mainland Chinese professionals' entry into Taiwan, so as to create a more competitive, global, and attractive work environment in Taiwan's employment market. The Committee recognizes the need to balance the opening up of Taiwan's job market with the revision of relevant labor regulations, in order to increase competitiveness but at the same time protect the local labor force. Among the issues raised below, however, the Committee would particularly like to express its concern about the potential ramifications of the draft amendments to the Labor Standards Law and Labor Union Law currently under consideration.

Issue 1: Reconsider proposed amendments to the Labor Standards Law to balance labor protection with the impact on business.

The Committee appreciates the opportunity for open dialogue with the Council of Labor Affairs (CLA) regarding the proposed changes to the Labor Standards Law (LSL). We urge the CLA to give serious consideration to the following suggestions, as they are crucial to the ultimate goal of protecting labor without undermining business competitiveness.

Labor Dispatch

1. "Labor dispatch" means sending the workers employed by one entity to another entity to provide services under the second party's supervision and management. A draft amendment to the LSL seeks to regulate this

activity in Taiwan, but it fails to clearly define what constitutes labor dispatch. When a company outsources its call center services or customer-complaint handling services, for example, will that company be deemed as engaging in labor dispatch activity and therefore subject to the restrictions contained in the amended law? We recommend redrafting the amendment to draw a clear distinction between labor dispatch and the outsourcing of human resources and other business services.

2. Fixed-term contracts and labor dispatch are popular practices in Taiwan because the current LSL imposes excessive constraints on employers regarding severance or termination of employment, depriving employers of the HR management flexibility needed to survive in today's competitive markets. We recommend that no constraints be imposed on fixed-term contracts or labor dispatch, so as to help maintain Taiwan's competitiveness.
3. Article 9-1 of the draft amendment would require a company wishing to use dispatched workers to first obtain approval from the labor union or labor-management meeting, and would limit the number of dispatched workers to no more than 10% of the enterprise's total employment. But labor unions or other groups representing employees have their own interests to consider and will be unable to review workforce questions objectively. The amendment would have the biggest impact on the manufacturing sector, which employs the largest number of dispatched workers. If companies are unable to use dispatched workers, they might instead fill job vacancies with foreign workers or transfer purchase orders to overseas facilities. In either case, the consequence is fewer job opportunities for Taiwanese and a larger unemployed population. In addition, multinational companies often have headcount restrictions; if hiring flexibility in Taiwan is reduced, they may move the job opportunities to other countries.

   The Committee suggests that the requirement for approval by the labor union or labor-management meeting be deleted, and that the proposed limit on the percentage of dispatched workers in the company's workforce be removed or eased (either across the board or for certain types of dispatch services). For example, if the number of dispatched workers does not exceed 10% of the total employees, approval by the labor union or labor-management meeting should not be required; for specific circumstances such as seasonal work or special projects, employers should be able to apply for a higher percentage of dispatched workers.

   Further, the draft article's second paragraph requires a company requesting to use dispatched labor to first publish such details as the number of workers required, the period of dispatch, and the relevant job descriptions. As the rationale for this requirement is unclear, it is more likely to spur labor disputes than to serve any positive purpose. We recommend deleting this requirement.
4. According to paragraph 3 of Article 9-1 of the draft amendment, a company requesting to use dispatch labor may not use those workers to perform services that would have been performed by workers who are on strike. Strikes are simply a form of labor dispute, and the standards for what constitutes a strike have been relaxed under the draft Labor Union Law. Under these circumstances, if dispatched workers may not be used to substitute for workers on strike, how is it possible for a business to continue its operation? This restriction would discourage companies from investing in Taiwan, causing unemployment to rise. We urge that this paragraph be deleted.
5. Under paragraph 2 of Article 9 of the draft amendment, a labor dispatching company may not enter into fixed-term or temporary fixed-term contracts with dispatched workers except under a limited number of special conditions listed in paragraph 1 of Article 9. This prohibition, however, does not apply to other businesses, and appears to be discriminatory against the dispatch service industry. At the very least, one-year fixed-term contracts should be allowed for short-term projects.
6. Article 74-1 of the draft amendment would permit companies to register to engage in the dispatch service industry without an approval process to ensure that they meet specific qualifications. This system would fail to give sufficient protection to dispatched workers' rights and interests. We suggest setting basic qualifications for participation in the dispatch service industry (for instance, that an applicant have a good performance record, provide comprehensive employee training, and implement a business plan). Companies should also be required to report regularly to the competent authority to help prevent irregularities.
7. Article 9-3 of the draft amendment stipulates that a requester may not ask for "specific" dispatched workers. Does this mean a requester cannot create any qualification requirements on workers at all? Is it barred from asking for substitutes for certain dispatched workers? As the requester will be the recipient of the services provided, it should have the right to choose which dispatched workers it wishes to use. This article should be deleted, the term "specific" should be more clearly defined, or some explanation provided to remove the ambiguity.
8. The draft does not explain how existing dispatched workers would be affected by the amendment's passage into law. We suggest specifying a transition period to give businesses a reasonable period of time to deal with existing dispatch relationships and to prevent legal complications.

Termination of Labor Contract

1. With reference to the current Article 11 of LSL, many labor-management disputes have arisen over whether employment severance is illegal when the specified causes for termination have not been met, even though

the employer is willing to pay a severance fee. The draft amendment now seems to impose an even stricter condition for what constitutes permissible circumstances for severance. Article 11, for example, would allow severance only under the condition of "no appropriate alternative job for the employee." Does that include situations in which the business is closing down, suspending operations due to a force majeure event, suffering losses, or experiencing business entrenchment? In those cases, there would be "no alternative job" for employees. In addition, must "appropriate alternative job" refer to a job within the company, or could it also include jobs outside the company (such as at an affiliated company, or even jobs unrelated to the company)? More explicit definitions are needed.

2. The draft amendment would also apply the condition of "no appropriate alternative job" to employees found to be incompetent, indolent, or negligent. That paragraph should be deleted, so as not to impose an excessive burden on employers.

Severance Pay for Early Separation

1. Paragraph 2, Article 17 of the draft amendment provides that "in the case of early separation during the period of advance notice, the employer shall still pay the severance fee to the severed employee." It is left unclear, however, whether the severance pay should be calculated according to the previously determined separation date or the date of the early separation. We recommend revising the paragraph to specify that "severance pay is to be calculated until the actual termination date."
2. During the period of advance notice, employees remain obliged to transfer their work to their successors. As early separation inevitably affects the smoothness of the work transfer, the employers' rights and interests should also be taken into consideration.

   We suggest that in the case of early separation, if the severed employee fails to satisfy paragraph 2, Article 15 to which the period of advance notice under Article 16 applies *mutatis mutandis* under the draft amendment, the employer may ask the worker to pay a penalty (calculated in line with paragraph 3 of Article 15), with the penalty deductable directly from the severance pay.

Minimum Service Years

1. Article 18-2 stipulates that an employer may require employees to serve for a minimum number of years only when it "provides professional skill trainings to its employees and has designated training funds available." However, a minimum service may be agreed upon between the employee and the employer for reasons other than on-the-job training, such as the provision of sign-on bonuses or overseas job opportunities. It is thus inappropriate to impose this limitation, and it should be deleted from the two subparagraphs under paragraph 1.
2. The draft amendment provides that a worker is not liable for liquidated penalties or damages for early termination of a labor contract before expiry of the minimum service period in a "circumstance not attributable to the employee." According to the CLA's exposition of the draft amendment, a "circumstance not attributable to the employee" means circumstances in which the employee terminates the labor contract under Article 14 of the LSL or Article 489 of the Civil Code. We suggest that these two circumstances be cited explicitly in the law to avoid future disputes. The same applies to paragraph 3 of the same article.

Non-competition

1. Article 18-3 deals with the enforceability of non-competition clauses in labor contracts, but does not include detailed particulars. If non-competition is to be directly regulated under the law, more specific regulations will be needed on the "reasonable scope" of the "period for which and the territory in which the non-competition clause is effective" and the "scope of occupational activities and applicants for employment." As these will need to be specified in the enforcement rules or the legislative intent, the Committee requests the opportunity for early input into the drafting of the Enforcement Rules and would continue to monitor the process once the law is passed.

No Transaction Compromising Employment

1. Article 20 of the draft amendment provides that in the event of a business entity's combination, spin-off, general assumption or general assignment, or transfer of all or substantial part of its business or assets, the labor contracts shall continue to exist and be binding on the assignee, unless otherwise agreed to by the workers and the employer, or unless the workers declare their objection to the transfer. But the Business Mergers and Acquisitions Law (BMAL) has already provided for how to deal with employment following a business merger, and those regulations have worked well all these years. If the amended LSL now requires the company to assume all the employees, it would certainly affect a company's desire to engage in merger activity and therefore be detrimental to Taiwan's overall competitiveness. We suggest revising Article 20 of the LSL to be consistent with the provisions under Articles 16 and 17 of the BMAL.

   In the case of a spin-off or assignment of substantial business or assets, the draft is unclear about the scope of the employees subject to transfer. To avoid any discrepancy between the two laws, we suggest that the draft be revised to be made consistent with the BMAL. At minimum, the draft should make explicit that employees to be transferred are limited to those directly related to the departments subject to spin-off, while for back-office employees, the assignor and assignee should be allowed to determine which employees are to be transferred.

Overtime

1. Article 33 of LSL provides that "Where the convenience of the public or other special cause necessitates the adjustment of regular working hours and overtime hours for lines of business under Article 3 other than manufacturing and mining in a manner not contemplated in Articles 30 and 32, the local competent authorities may, if necessary, by order permit such adjustment after having consulted the competent authority with jurisdiction over the line of business and the labor union."

   The article and the labor authority require industries to provide comment through the union or industry association. But for state-owned enterprises or industries with few companies (e.g. power generation equipment), it is very difficult or impossible to present an industry-wide position. We recommend revision of Article 33 to delete the requirement for presentation of an industry-wide position and of Article 30-1 to allow regular and extended working hours to be averaged on an annual basis rather than the monthly basis as at present.

Average salary calculation

1. The average salary calculation under Article 2 of LSL uses an average of the last six months' compensation. That disadvantages companies with distinct seasonality or with significant bonus payments at Chinese New Year, inflating pension or severance payments if employees retire or are terminated soon after the peak earnings period. Instead, the average salary calculation for severance payment and pensions should be based on an average of the prior 12 months' earnings.

Issue 2: Further liberalize Chinese travelers' entry into Taiwan for business activities.

The Committee offers the following recommendations for streamlining and liberalizing procedures, and removing unnecessary barriers, for entry by mainland Chinese professionals for commercial purposes:

1. ***Establish a Straits Exchange Foundation office in China.*** When an applicant in mainland China wishes to visit Taiwan for business purposes, the inviting organization (the "Inviter") needs to apply on his or her behalf to the National Immigration Agency (NIA) of the Ministry of Interior. The Inviter must also submit certain documents in support of that application. All of these materials then need to be submitted to the NIA in Taiwan because there is no Taiwan representative office in China. Mailing these documents to Taiwan prolongs the processing time, however. That often creates problems for certain Chinese visitors – for example, first-time applicants and those who previously violated relevant regulations during their stay in Taiwan – for whom the Inviter is required to submit the application at least 10 business days prior to the date of departure from China.

   The subject of the exchange of representative offices with Beijing has been raised during cross-Strait talks. If agreement along these lines could be reached, the Taiwan office in China could facilitate the application process for visitors to Taiwan from the mainland, saving considerable time for the applicants.
2. ***Establish a mechanism for multiple-entry visas.*** Currently, except for mainland Chinese employees of cross-border companies that have established branch offices on both sides of the Strait (who are eligible for multiple-entry permits), other mainland Chinese coming to Taiwan for business activities are granted single-entry permits valid for two months, with the option of applying for additional single-entry permits. Although the application process is less onerous for additional single-entry permits, the process is still quite time-consuming, as it entails obtaining the consent letter from the Inviter, compiling a new itinerary, and submitting those documents to the NIA. We suggest broadening the eligibility for multiple-entry permits, reducing the need for travelers to apply for numerous one-time entry permits or additional successive entry permits.
3. ***Extend the maximum length of stay.*** Mainland Chinese coming to Taiwan to conduct business interviews, inspections, or surveys, hold meetings, give lectures, or to exhibit at or visit trade shows may stay in Taiwan for a maximum period of one month. Those coming to engage in activities required by contract, such as business research, examination of goods, after-sales service, and technical support, may stay in Taiwan for a maximum of three months. Given that it can take 10 to 20 business days to prepare the documents and process the visa application, it seems quite unreasonable to limit the person's stay in Taiwan to only one month. We recommend extending the one-month limit to two months and the three-month limit to six months to better accommodate practical business needs in light of the increasing volume of business interchange between Taiwan and China.
4. ***Eliminate the ceiling on the number of permitted invitees per year.*** While the government last year relaxed some restrictions on the number of invitees that individual organizations are allowed per year, the Committee urges the authorities to remove this restriction entirely. Currently, when the Inviter is a domestic enterprise with annual revenue under NT$30 million, the number of Chinese professionals it may invite within one year may not exceed 50. When the Inviter is a foreign company (including the Taiwan subsidiaries, affiliates, and representative offices of foreign companies) or a domestic company with annual revenue exceeding NT$30 million, the maximum number increases to 200. Given the increasingly frequent commercial exchanges across the Strait and the improved relationship between the two governments, as well as the Taiwan government's eagerness to promote development of MICE and related businesses, the above restrictions seem out of date. Removing them will facilitate business

expansion and development.

Issue 3: Amend the Labor Union Law to set reasonable rules for union representation.

The Labor Union Law gives a union the right to negotiate with management on behalf of its members regarding such issues as official leaves of absence by union representatives to handle union affairs, the number of representatives on the employee welfare committee and pension committee, and the number of employees that may be outsourced in future, etc. But if the union members do not exceed one-half of the total number of employees – regardless of whether union membership is compulsory or voluntary – the union cannot claim to represent the bulk of the employees.

During its current consideration of amendments to the Labor Union Law, the CLA should take the opportunity to deal with that point. If the union membership is less than half of total employment, the Law should stipulate that its representation on the employee welfare and pension committees should be pro-rated and its legal rights limited. In addition, the law should specify whether "total employees" refers to total employment at "one site" or "one company."

Issue 4: Eliminate the work experience requirement for foreign employees of non-tech companies.

Except for technology-oriented industries, current regulations still require that foreign professionals hired to work in Taiwan have at least two years of related work experience.

As encouraging foreign talent to work in Taiwan is an effective way to provide a more internationalized working environment for the benefit of Taiwan's own talent – and since neighboring countries are competing to attract the best and brightest from all over the world – the Taiwan government's conservative and protectionist approach is both unnecessary and counterproductive to its own policy goal of upgrading Taiwan's international living environment. We urge the Taiwan government to swiftly revise the regulations to eliminate this requirement.

INFRASTRUCTURE

Since Taiwan's accession to the WTO's Government Procurement Agreement (GPA) in July 2009, an impressive number of tenders have been opened to companies from GPA member countries. We applaud that good performance and specifically recognize the superb efforts of the Public Construction Commission (PCC) in coordinating and executing the response to the GPA commitments. The Committee welcomes PCC's open attitude and appreciates the opportunities it has had for frequent dialogue with the Commission in seeking solutions to our members' concerns. We look forward to continuing that constructive working relationship.

The Committee believes, however, that much more can be done to attract U.S. companies' participation in Taiwan's procurement market. Given the Obama Administration's recent launching of a National Export Initiative, this is a subject that the U.S. government should be ready to pursue. As discussed below, it is also in Taiwan's interest to attract more international involvement in its infrastructure development. We suggest that this topic be added to the agenda of the next U.S.-Taiwan bilateral trade talks.

In last year's position paper, we cautioned that due to the Taiwan government's overly ambitious short-term CO_2 reduction target, it has become increasingly difficult to gain approval to build low-cost, coal-fired power plants. Unfortunately, little improvement in the situation occurred during the past year, and the timelines for all coal-fired power plants under planning have now been delayed by more than four years.

As the Committee has pointed out in the past, if the completion of low-cost, coal-fired power plants continues to be delayed, the only way for the Taiwan Power Co. (Taipower) to meet future power demand will be to increase its dependence on very expensive gas-fired power projects. Recent developments have confirmed the basis for that concern. Currently, four gas-fired units are scheduled to be completed before any new coal-fired units. As the cost of gas is much higher than for coal, the replacement of one base-load 800MW coal-fired unit by a gas-fired unit of the same capacity will result in additional fuel expenditure of NT$10 billion (US$317.5 million) per year. The extra cost for four gas-fired units would exceed US$1.2 billion annually, damaging Taiwan's competitiveness. This year we once again reiterate our long-term plea that the government review and revise its policy on CO_2 reduction goals.

Issue 1: Adopt a practical and achievable CO_2 reduction target.

In the wake of last year's Copenhagen Conference, the Taiwan government has revised its original CO_2 reduction plan. The new target is to reduce CO_2 emissions in 2020 to the 2005 level and in 2025 to the 2000 level. Comparing these targets with the CO_2 emission levels that will be brought about by Taipower's announced power development plan for the next 10 to 15 years, however, it is quite clear that these ambitious targets are not achievable.

A power project takes a very long time to complete. For a fossil-fuel power plant, at least 10 years is needed, considering the time required for site selection, feasibility study, environmental impact assessment, and construction. The process is even longer for a nuclear power plant. To meet projected power demand for the next 10 to 15 years, Taipower has prepared a long-term power development plan, updated annually, which takes into consideration such factors as the current power supply/demand and base/medium/peak load, long-term economic growth, power demand forecast, domestic/international fuel market, changes in power generation technology, the status of private power plants, etc. The plan also forecasts total power-plant installed capacity,

and the kinds of power plants (nuclear/fossil/renewable) to be put into operation. Through careful analysis of the power development plan, it is easy to calculate how much CO_2 emission the power industry will generate in the next decade.

Further, as power generation accounts for more than half of total CO_2 emission in Taiwan, the amount of CO_2 emissions from power plants is a very good indicator of whether the government's targets are feasible. A simple calculation shows that in 2020 the level of CO_2 emission from the power industry will have increased by 40% compared to 2005, and by 100% from 2000 to 2025. It follows that in order to meet the CO_2 emission target (2025 reduced to the 2000 level), emissions from all other sectors – transportation, manufacturing, commerce, household, etc. – will have to be cut to zero. This is clearly impossible.

Alternative power generation from renewable energy sources, such as wind and solar, will account for less than 3% of Taiwan's total power supply, and therefore will not be of much help toward achieving the government's goals.

After the failure of last year's Copenhagen Conference, the future of any new international treaty to replace the Kyoto Protocol (which expires in 2012) is now rather uncertain. In addition, none of the CO_2 reduction technologies currently considered the most promising – renewable, nuclear, and carbon capture and storage – will be able to solve Taiwan's CO_2 emission challenge in the next 10 to 15 years. Should any international treaty be put into effect in the near future, the only option for Taiwan may be carbon trading.

Adopting an impractical objective is not a harmless exercise – it is a threat to Taiwan's future economic well-being, since decisions on future development projects will be based on these targets. We strongly urge the Taiwan government to adopt a more practical long-term CO_2 reduction policy and to revise the current short-term goals accordingly.

Issue 2: Expedite power plant development to prevent a future power shortage.

Almost all power plants in Taiwan that have already been completed or are scheduled for completion in the 16-year time frame between 2000 and 2015 began construction or engineering design before 2000. From 2000 to 2007, new power units were added every year to meet the 4% annual growth in power demand, and Taiwan's total power generation capacity increased by one-third.

The power development status for the years between 2008 and 2015 is less positive. According to Taipower's power development plan of five years ago, Units 1 and 2 of the Longmen Nuclear Power Project were scheduled to be completed in 2009/2010 to meet the projected 2008-2011 growth in power demand. Besides the Longman project, Taipower's original plan was to build a series of high-efficiency supercritical coal-fired power plants from 2012 to 2015 to meet power demand growth for those four years.

The situation changed dramatically in the past five years, however. First, the completion dates for the Longmen units has been delayed to 2011/2012. All of the planned supercritical coal-fired plants are also facing obstacles, either from the EIA review process or local opposition. Construction is estimated to be at least four years behind schedule, which puts the projected completion dates beyond 2016.

The only reason why no power shortage has resulted from these serious delays is the global economic recession that slashed power demand starting from mid-2008. Power consumption in Taiwan even recorded negative growth for two consecutive years (2008-2009), which was unprecedented in Taipower's history. Even though demand is now beginning to pick up, it may just recover to the 2007 level by mid-2011.

Thus, except for a small private power plant, the 2008-2015 period is scheduled to see only two new power projects (both nuclear units) become operational, and their construction started back before 2000. Moreover, the fate of two planned coal-fired power plants (Changgong and Suao) remains uncertain. If these coal-fired power plants cannot be completed as scheduled, and are then replaced by gas-fired plants (which have a shorter construction schedule), the additional fuel cost will amount to NT$50 billion (US$1.6 billion) annually. The financial burden will necessarily require an increase in electricity rates, inevitably affecting the competitiveness of Taiwan's export-oriented economy and discouraging the entry of foreign direct investment. The Committee calls on the government to pay urgent attention to this potentially very serious problem for the Taiwan economy.

Issue 3: Remove barriers to meaningful international participation in Taiwan's government procurement market.

The Committee commends the Taiwan government for faithfully implementing its GPA commitments over the past year. Since Taiwan's accession to GPA in July 2009, a large number of tenders have been opened to companies from GPA member countries. According to PCC statistics, as of February 28 this year, a total of 1,352 Taiwan government tenders valued at NT$198 billion (US$6.3 billion) had been opened to GPA members.

Only 195 of the tenders (14% of the total), however, were awarded to foreign companies. The total value of those contracts came to NT$13 billion (US$413 million). In addition, it is noteworthy that virtually all of these tenders were for trade items rather than construction-related services.

As the Committee has frequently pointed out in the past, international companies are able to bring in new technologies and skills to help upgrade the quality of Taiwan's infrastructure and the management methods being utilized. Foreign participation in these tenders does not mean depriving Taiwanese workers of jobs, as most of the contracts need to be carried out locally. Rather, increased foreign participation in these tenders will enable Taiwan to become more visible in the global marketplace and more attractive for foreign direct investment.

The Committee therefore recommends that the Government develop an action plan to spur more involvement

by international companies in future GPA-applicable tenders. The goal should be to reverse the general perception among multinationals in the construction industry that "Taiwan is a difficult place to work in." Some of the steps that could be taken are as follows:

1. ***Eliminate tender awards based on Lowest Bid.*** Currently, most of the Taiwan government's procuring agencies favor use of the Lowest Bid system instead of Most Favorable Bid (MFB) or Highest Value/Advantages Bid (HVAB), both of which meet the requirements specified in Taiwan's government procurement laws and regulations. MFB and HVAB bring the benefit of better quality on public projects, since winners of Lowest Bid tenders often proceed to look for ways to cut corners, and MFB and HVAB tenders can be carried out with the most cost-effective planning and controls, ensuring that the award is based on thoroughly objective criteria. The Committee recommends that the government designate MFB and HVAB as the norm for government tenders and require all government procuring entities to choose one of these methods.
2. ***Accept requests for reasonable contract changes.*** In Taiwan, procuring agencies are invariably resistant to contractors' requests for fair and reasonable adjustments to awarded contracts. This practice places enormous burdens on contractors because many contingencies are impossible to predict before contract execution. Particularly problematic is the habit of many project owners or their representatives of requesting changes in the project without a formal change order. Considering that the construction schedule is often under heavy time constraints, and that the contractor may be held responsible for any delays, the contractor often proceeds to make the requested change – but later finds that no corresponding price adjustment is forthcoming. The prevalence of this phenomenon mars Taiwan's reputation in the international market.
3. ***Fully privatize the prominent A/E firms.*** Some major architectural/engineering firms that were originally government-owned have been reorganized to operate under the supervision of non-profit foundations, but in reality continue to be run under strong government influence. These firms enjoy good business standing, given their size and past project experience. The Committee recommends that the government adopt a more aggressive plan to genuinely privatize these firms to improve the openness and efficiency of the market.
4. ***Place more emphasis on turnkey projects.*** Many GPA member countries have adopted the turnkey-project method because of its efficiency and cost effectiveness, but it is still rarely used in Taiwan. We recommend that the government adopt more design/build and engineering/procurement/construction types of turnkey projects. In more efficient markets, these types of projects tend to attract the best players, whose advanced design concepts can help to effectively deliver quality products. If tenders are based on local A/E design, foreign contractors can rarely compete solely on the construction segment.
5. ***Remove recently imposed restrictions on construction companies.*** The Committee considers a recent legislative amendment to the Construction Industry Act, which imposes unwarranted barriers on foreign construction companies wishing to take part in non-GPA-applicable tenders in Taiwan, to be protectionist and cause for concern. While GPA projects would be exempt from the terms of the amendment, it would still impact companies from GPA countries interested in participating in tenders valued below the GPA threshold equivalent to about NT$1 billion. The revised law bars contracts from being awarded to foreign companies unless they have entered into a joint-venture with local counterparts. Further, the revision tightens the qualification rules for a foreign company to upgrade its construction license from Class B to Class A. These changes represent a step backward from the Ma administration's stated vision of openness and internationalization.

Issue 4: Follow international norms to improve terms and conditions of government model contracts.

Despite Taiwan's accession to the GPA in 2009, international contractors still face substantial market-entry difficulties because of unfair terms and conditions in some government contracts, further discouraging international bidders from being active in this market. Below are the major problems facing international bidders:

1. ***Lack of both ceiling on liability and consequential damage liability exclusion.*** The availability of fair contract terms and conditions is a crucial factor when experienced international contractors conduct risk management. Whether a ceiling on liability is provided and consequential damage liability is excluded are two of the most significant risk factors for foreign contractors.

   While some improvement has taken place in recent years in the terms and conditions used in many government contracts, the problem will not be resolved unless the Taiwan government standardizes the terms and conditions for all contracts to incorporate a ceiling on liability and to exclude consequential damage liability. We appreciate PCC's agreement to study the feasibility of making this change, thereby bringing Taiwan in line with international practice. As part of the study, we encourage PCC to consult with the state-owned or state-controlled enterprises, such as Taipower, CPC Corp. Taiwan (the former Chinese Petroleum Corp.), and China Steel, that are the most active in procuring first-class equipment and construction services from international bidders. By reviewing the terms and conditions used in their procurement contracts, it should be possible to assess whether a ceiling on liability and the exclusion of consequential damage liability are essential for foreign contractors, especially those from the United States and Europe.

In addition, the government's model contract requires that all information and documents be kept confidential, but the period of confidentiality is not defined, thus apparently requiring contactors to keep all such information and documents confidential in perpetuity. We also suggest that procurement entities accept a certificate of insurance instead of the actual policy as proof of insurance.

2. ***Lack of consistency in model contracts.*** The PCC provides several different model contracts for various types of procurement projects, but the terms and conditions of these model contracts are not uniform. Over the years, some of these have been revised to adopt more internationally accepted terms and conditions, while others still reflect an outmoded approach. We urge the PCC to conduct an overall review of these model contracts with the aim of achieving consistency.

   Among these model contracts, the one covering construction projects was amended last year to incorporate a ceiling on liability, exclude the liability for loss of profit, and remove the infringement of intellectual property right from the exceptions to limits on liability. We regard that as a positive step, and encourage the PCC to amend the other model contracts accordingly.

   In all these model contracts, bidders have the option – but are not required – to grant the intellectual property rights to the procurement entity. Some procurement entities, however, insist that such IP rights be transferred for free. Procurement entities should respect intellectual property rights and implement fair and reasonable provisions for doing so.

3. ***Lack of bilingual versions of tender documents and model contracts.*** Currently, most procuring entities provide Chinese-only bidding documents, even for tenders that are supposed to be international tenders, or to be open to international bidders. Since English is the most commonly-used language in international business, Taiwan would make itself a more attractive investment destination for international construction-service companies if it were to provide bilingual versions of tender documents. We also suggest that the government provide an English version of all model contracts. In addition, care should be taken that the bidders' rights and obligations as stated in the Chinese and English versions are identical.

4. ***Inadequate nuclear damage insurance.*** The scope of nuclear damage insurance adopted by Taiwan has always been far lower than the current international standard. As a result, many first-class contractors in the nuclear field are reluctant to enter this market. We understand that the Atomic Energy Council has been studying this issue, and we look forward to a swift solution in the near future.

Issue 5: Improve government efficiency by reviewing and streamlining administrative procedures.

The Taiwan government's reorganization plan is slated for implementation in January 2012. The plan, which involves merging various ministries to reduce inter-agency interface, is aimed at improving government efficiency – a goal which we very much support. Another means of enhancing government efficiency would be to conduct a comprehensive review of administrative procedures to ensure that each step is essential and to eliminate any redundancy.

One area that has been notably inefficient is the environmental impact assessment (EIA) review process of the Environmental Protection Administration (EPA). As was pointed out in previous years' *White Papers*, many major infrastructure projects have been hampered by the seemingly interminable delays caused by this review process.

The normal EIA review process, which has been in use for more than 20 years, calls for any EIA report submitted to the EPA to be reviewed by a committee selected from among the 21 EPA commissioners. The committee's recommendation is then forwarded to the EPA's general monthly meeting for a final decision. In 2009, another step was added to the process: an "expert review" during the committee review stage. The "expert group" consists of representatives from local governments, NGOs (mostly environmental groups), and the public or private organizations (project owners) who submitted the EIA report. The "expert review" is redundant, since its function is the same as that of the original review committee. The extra step lengthens the process and makes it more complex, without adding any real value.

Another example of inefficiency is the feasibility study (F/S) review process. In normal practice, when a state-owned enterprise submits its F/S for a project to the State-Owned Enterprise Commission (SOEC) of the Ministry of Economic Affairs (MOEA), the SOEC will invite experts to form a review committee. The conclusions of that committee will be reviewed by the MOEA and then passed to the Executive Yuan (EY) for final approval, after which the EY will forward the report to the Council for Economic Planning and Development (CEPD) for comment.

In a recent case, CEPD asked SOEC to hire an outside organization to do a second review of the F/S report that had already been reviewed and approved by the SOEC's review committee. We cannot see the point of ordering an additional review by an external organization at the end of the process. If any expert's opinion is considered vital, he or she could be invited to testify before the SOEC's review committee.

As these two examples demonstrate, besides Cabinet reorganization there are many simple ways in which government processes could be streamlined if agencies in the bureaucracy take up their designated responsibility instead of passing the buck to other entities.

INSURANCE

The Taiwan life insurance industry has continued to undergo significant change in the last 12 months. Low interest rates, new investment link taxes, and increased consumer protection have added to the existing negative spread and

capital adequacy concerns, and have increased the challenge of writing new business that is both good for consumers and sustainable for insurance companies. The overall regulatory and economic environments are increasing the difficulties for both incumbent domestic and foreign companies, and will continue to challenge Taiwan's aspirations to position itself as a regional financial center. Recognizing that many of these issues are rather technical, in this year's position paper we have, where possible, included specific examples of changes in regulatory wording that would be required to effect our recommendations.

As a special note, we would like to take this opportunity to recognize the positive steps the Insurance Bureau has taken to address the problem of companies in the industry that have failed to maintain the minimum 200% risk-based capital (RBC) requirements. We understand the tremendous challenge involved in coming up with a rehabilitation program that will balance policyholders' interests and the overall cost to society if governmental support is required. We recognize, as has been the experience in many countries, that all parties will bear some cost in the process, and we encourage following a balanced approach.

Issue 1: Seek solutions for the negative spread and capital adequacy problems.

As in last year's position paper, negative spread and capital adequacy issues are our top concern for the Taiwan insurance industry. Although recent headlines highlighting insurance companies' short-term profits, record sales, and strong dividends have created a public image of industry strength, low interest rates and extremely low (possibly negative margin) new business are exacerbating the long-term negative spread problem and increasing the stress on insurers' already weak capital positions. While the public seems relatively unaware of the situation, the underlying risk to the industry is becoming more evident to the Legislative Yuan. On March 22, 2010, the Financial Committee of the Legislative Yuan resolved that given concerns about the perceived reserve shortfall of over a trillion New Taiwan Dollars due to the negative spread issue, the Financial Supervisory Commission (FSC) should more rigorously supervise the insurance industry and require boards of directors to monitor the solvency status of their companies and regularly report to the FSC's Insurance Bureau on the results of their self-assessment.

The Committee therefore continues to support the government's plans to move to implement International Financial Reporting Standards (IFRS) and solvency rules (Solvency II) without delay. We urge inclusion of the following items in the IFRS Phase I implementation in 2011:

- A clear valuation of company assets and liabilities on a standard market basis for accounting and solvency purposes;
- Drawing a distinction between insurance contracts and investment contracts. Investment products would be subject to the accounting standards for financial rather than insurance contracts;
- Increased disclosure in the notes to company accounts;
- Acceptance of the existing liability valuation basis if the basis can pass a best-estimate adequacy test.

While we understand that many companies will struggle to meet the new standards, we believe that it is critical for consumer protection to create greater transparency for consumers to evaluate the risks they are taking when choosing an insurance provider. At the very minimum, we would support implementing a requirement that all insurers publicly disclose the capital required to support their new business policy guarantees (unit linked or traditional), given a publicly published set of financial reporting and solvency standards (whether IFRS or a local standard).

Issue 2: Allow insurers an exception to the foreign investment limit for foreign-currency investments.

Foreign-currency denominated policies have continued to grow in popularity in the past year in line with the Taiwan public's increasingly international orientation. But the foreign-currency investment limits currently in place discourage new companies from entering this market because the regulations fail to distinguish between foreign-currency-denominated investments that back traditional NT$ liabilities and assets that are purchased to match policy liabilities denominated in the same foreign currency. The Committee therefore proposes that the Insurance Act, in particular Article 146-4, be amended to provide that "the Insurance regulator has the authority to grant an exception to insurance companies in regard to the foreign-currency investment limit when such investments are appropriate and necessary to the proper asset/liability matching as well as efficient product management for new business written under traditional insurance policies denominated in the same foreign currency."

Issue 3: Allow life policyholders to pay and receive in New Taiwan Dollars for foreign-currency-denominated policies.

Life policyholders should be given the choice of paying premiums and receiving benefits in New Taiwan Dollars for foreign-currency-denominated policies. This initiative would have no impact on the foreign-exchange policies of the Central Bank of the Republic of China (CBC), nor would it change the product pricing, specifications, underwriting, investment strategy or anything in relation to the products. Rather, it simply relieves customers of the burden of maintaining a foreign-currency bank account and simplifies the foreign-exchange settlement and reporting process. Customers choosing to invest in foreign-currency-denominated policies may anticipate a future need for such foreign currency but do not necessarily have a foreign-currency account at the time of purchase. Upon the expiry or maturity of the policies, customers may wish to convert the foreign-currency payment into New Taiwan Dollars due to their actual needs. Also, in many situations it is costly to maintain a foreign-currency account.

Unfortunately, the current "Regulations Governing Foreign Exchange Business of Insurance Enterprises" and the relevant insurance regulations, including the "Regulations Governing Investment of Investment-linked Insurance" and "Criteria and Guidance Notes for Life Insurance Enterprises Engaging in Non-Investment Foreign-Currency-Denominated Life Policies," stipulate that life policyholders of foreign-currency-denominated policies can make payments to or receive payments from insurance companies only in foreign currency. That requirement unreasonably makes it necessary for consumers to have a foreign currency bank account before they can purchase life policies denominated in foreign currency.

The Committee recommends to both the CBC and the FSC that insurance companies be allowed to handle the foreign-exchange settlement and reporting procedures on behalf of their customers, who would then be able to pay premiums to and receive benefits from the insurance companies for foreign-currency-denominated policies in New Taiwan Dollars. Such an initiative would simplify the process and reduce the cost for consumers by allowing transactions at institutional rates, subject to CBC reporting requirements. Each individual policyholder would still be subject to the existing US$5 million annual foreign currency transaction quota (i.e. US$5 million for purchases and US$5 million for sales).

This suggested approach is similar to the practice by which employment service agencies handle foreign-exchange settlement and reporting requirements on behalf of foreign laborers as per release no. 0980028398 issued by the CBC's Foreign Exchange Bureau on May 25, 2009.

The Committee will separately provide the CBC and FSC with proposed wording for amendments to the relevant regulations to carry out the changes being suggested.

Issue 4: Maintain the previous taxation practice on unit link products.

The Committee reiterates its request for the Ministry of Finance (MOF) to rescind its proposed tax on investment-linked insurance policies (ILP). As the MOF has chosen to by-pass the legislative process as should be required to make this change, we believe that this administrative decision will be subject to constitutional and legal review, and if implemented as announced will raise concerns both domestically and internationally. We respectfully request the MOF to review this decision, taking into consideration the recommendation by the FSC and its Insurance Bureau to exclude from taxation policies that clearly qualify as insurance under their regulatory guidance.

Section 7, Paragraph 1, Article 4 of the Income Tax Act clearly states that life insurance proceeds are free of income tax. Further, Section 2, Paragraph 1, Article 12 of the Income Basic Tax Act provides that proceeds from life insurance and annuity policies are subject to income basic tax only when the proposers and beneficiaries are not the same person – and in the case of death benefits, when the total payment received within the same tax-reporting household exceeds NT$30 million.

The laws do not make a distinction as to whether the policy is unit-linked or for traditional products. But to our regret, the MOF on November 6, 2009 issued an official ruling imposing tax on income from ILP, effective January 1, 2010. The MOF's promulgation of this ruling without amending the said legislative articles has clearly violated the statutes referred to above and raised significant constitutional concerns.

For the past several decades, the provision of tax incentives has effectively motivated people in Taiwan to invest in life insurance policies for long-term savings and financial protection, thus strengthening the social-security net. Investment-linked insurance products serve exactly the same purposes as traditional life products in providing both protection and savings. As a result, ILP has for years been an insurance product welcomed by Taiwan consumers and become an important option enabling people to meet the growing needs of retirement planning. The newly enacted taxation of ILP will severely limit the choice of Taiwanese citizens in funding their insurance needs.

As to the question of the constitutionality of changing existing laws without going through the legislative process, the MOF has cited Judicial Interpretation No. 420 as well as Article 12-1 of the Tax Collection Act, which are based on the doctrine of "substance-over-form." But the Committee considers that this neglects the fundamental constitutional principle of "taxation by statute," which serves as the basis for Interpretation No. 420 and for all tax laws. In the past decades, numerous interpretations by the Council of Grand Justices have viewed Article 19 of the ROC Constitution, which stipulates "the people shall have the duty of paying taxes in accordance with law," as meaning that taxation must be based on requirements set forth by law. There has never been an interpretation deviating from the principle of taxation by statute.

Ignoring the fact that ILP is authorized under the Insurance Act as an insurance product, the MOF asserts that the linkage of ILP policies to selected investment tools means it should be considered an investment instrument and should be taxed the same as other financial investment products. In so doing, the MOF adopts a view contrary to that of the FSC and deviates from the Insurance Act that for decades has treated ILP as insurance.

We respect the MOF's efforts to strive for fairness in the taxation system. But we strongly object to the use of an administrative ruling to in effect revise the law without following the legislative process and in direct contradiction to guidance provided by insurance regulations.

The MOF argues that the impact will be nominal because 1) under the current tax system, only stock dividends, bank deposit interest (above a NT$270,000 threshold), and offshore income (subject to thresholds of NT$1 million per household and NT$6 million of total basic income per year) are computed into the gross income of policyholders for their annual tax returns, and 2) 94.6% of existing ILP contracts

would generate only NT$50,000 to $60,000 in profits, assuming investment returns of 5% to 6% per annum. The MOF estimates that only 5% of ILP contracts will contribute to tax revenue, yet is demanding that the entire industry invest significant resources to modify its IT infrastructure, amend systems, and redesign operations to ensure that every ILP policyholder receives all applicable tax certificates for proper tax reporting, so as to enable the tax offices to appraise the nominal tax amount. The life insurance industry is deeply concerned by the MOF's intention to collect an extremely modest amount of additional tax at the price of imposing immense difficulties and complexities on the life insurance industry.

From the perspectives of constitutionality, social security, and economic benefit, we respectfully request that the MOF reconsider its administrative announcement. If the MOF strongly believes that its objective is appropriate, it should follow proper legal procedures to amend the relevant laws and regulations. Relying merely on an administrative ruling has raised constitutional issues that will be subject to legal challenge. If legislation can be easily overridden without due process, it would also have an adverse impact on public confidence in the Taiwanese legal system.

Issue 5: Reconsider amendments to the Labor Pension Act.

The Committee appreciates the patience and efforts of the Council of Labor Affairs (CLA) in reviewing and discussing our concerns over undue requirements in the Labor Pension Act that restrict life insurers from offering suitable annuity products to Taiwan's workforce. Unfortunately, to date, serious regulatory barriers remain in place, preventing life insurance companies from participating in the labor pension market. They are 1) a threshold company size of 200 employees, 2) the stipulation that at least 50% of employees give their consent and participate in the annuity insurance program, and 3) the requirement for a guaranteed minimum return set at the two-year time-deposit rate.

The thresholds of company size of 200 employees and at least 50% of employees' consent and participation have unreasonably removed the pension scheme option for workers at most Taiwanese companies. The requirement of guaranteed minimum return has ignored the nature of a "defined contribution" pension scheme, as well as the actuarial principle of the life insurance business.

We ask the CLA to reconsider its labor pension policy so as to give Taiwanese workers the option of investing their pensions (both voluntary and non-voluntary contributions) in asset classes that would be expected to provide greater returns over a longer-term investment horizon. Or at an initial stage, at least the "voluntary" portion of their contributions should be exempted from the above regulatory restrictions.

It is well-accepted, sound advice that individuals with at least 10 years to go until retirement should consider investing in equities, fixed-income instruments, and other somewhat riskier assets that promise returns far above traditional bank-deposit rates. Many Asian countries adopted the approach of encouraging such investments long ago. Despite the current economic situation, after recovery markets around the world can be expected to once again provide opportunities for superior returns.

The committee urges the CLA to remove the above-mentioned barriers, and in so doing allow Taiwan's workforce to benefit from the advantages that annuity products can bring.

Issue 6: Reserve credit for long-term life reinsurance

Reinsurance is a key component of the insurance marketplace, serving to reduce volatility and improve insurers' financial performance and stability. An insurance company's "capacity" is the maximum amount of risk it can undertake in line with the company's surplus. Reinsurance provides a tool allowing an insurer to assume more risk and receive premium income, while transferring a portion of the risk to the assuming insurer. Taiwan's current regulatory regime, however, does not allow a life insurer to take financial-statement credit for the reinsurance protection it purchases for long-term life insurance. As a result, a ceding life insurer cannot reduce its loss reserve by the amount ceded, even though the risk has been transferred. The life insurer is therefore compelled either to reduce the amount of risks assumed and policies written, or to forego the opportunity to engage in a variety of types of risk classes and business. Inevitably this situation will unfavorably affect the development of the life insurance marketplace.

The Committee therefore recommends that the Insurance Bureau allow "Reserve Credit for Long-term Life Reinsurance" to permit a ceding life insurer to take credit on its financial statement for risk ceded to a reinsurer. We propose that reserve credit should be granted when a reinsurance arrangement meets the following requirements:

1. The reinsurance is ceded to an assuming insurer that meets the requirements of "eligible reinsurer" stipulated in Article 7 of "Regulations Governing Insurance Enterprises Engaging in Operating Reinsurance and Other Risk Spreading Mechanisms."
2. The reinsurance contract meets one of the criteria stipulated in Article 5 of "Regulations Governing Insurance Enterprises Engaging in Operating Reinsurance and Other Risk Spreading Mechanisms."
3. Eligible reinsurers post collateral in order to fund their obligations in accordance with reinsurance contracts. The amount should be equal to the credit for the statutory reserves, and collateral could be in the form of a letter of credit (L/C), asset in a trust, or any other form of security acceptable to the FSC. L/Cs and trusts would need to be issued and managed by qualified financial institutions unrelated to the reinsurer for the benefit of the ceding life insurer. In the event of a default by the reinsurer, the L/C amount and trust assets would be unaffected, and the ceding life insurer could access these funds to pay future

claims if the reinsurer fails to do so.

4. Qualified financial institutions issuing the L/Cs or holding assets in trust on behalf of a ceding life insurer would need to meet the following criteria: a) Credit rating above a certain level stipulated in Article 8 of "Regulations Governing Insurance Enterprises Engaging in Operating Reinsurance and Other Risk Spreading Mechanisms," b) Demonstration of sound business performance and financial soundness in the last three years, and c) Absence of any record of penalty against it for material regulatory violation in the last three years.
5. While credit is granted, a minimum statutory RBC ratio is still required.
6. For accounting treatment in GAAP practice, reserve credit for reinsurance is treated as a reduction to the insurer's liability or recognized as a reinsurance asset. The current Taiwan accounting treatment of reserve credit for one-year insurance is recognized as a reinsurance asset upon reinsurance agreement. Without change to the local accounting treatment, it is suggested that the reserve credit for long-term life reinsurance be recognized as a reinsurance asset.

INTELLECTUAL PROPERTY & LICENSING

The Committee is pleased to observe that the protection of intellectual property rights continues to be a high priority with the Taiwan government. Over the past year, the authorities have undertaken reviews, often resulting in amendments, of the Trademark, Patent, Copyright, and Copyright Collective Management Organization Acts. The Intellectual Property Court, established in July 2008, has become an important institution through its professional review of appeals made by both defendants and plaintiffs. The Intellectual Property Task Forces and the National Police Administration have continued to independently investigate and prosecute intellectual property infringers, while the Taiwan Intellectual Property Office (TIPO) under the Ministry of Economic Affairs should be recognized for its unceasing efforts to improve the overall IPR environment.

Although we are gratified by the progress mentioned above, certain areas – as outlined in the Issues below – deserve further attention from the government in order to bring Taiwan's IPR regime to an even higher level. In addition, we would like to voice our support to the Pharmaceutical Committee's call for the adoption of Patent Linkage and Data Exclusivity protection for pharmaceuticals in Taiwan, steps that would strengthen Taiwan's IPR protection while also encouraging investment and innovation in the pharmaceutical industry.

Issue 1: Institute more effective controls over the import of counterfeit and smuggled goods.

The Committee urges the Taiwan government, as its number-one priority in the coming year regarding IPR enforcement, to implement measures to control the importation of counterfeit and contraband goods. China is the primary source of counterfeit and smuggled goods entering Taiwan. With the steady expansion of cross- Strait travel, transportation, and trade, it is necessary to place more emphasis on intercepting counterfeit and contraband import goods originating in China and bringing those responsible to justice.

As has been well documented, smuggled and counterfeit goods carry substantial health, safety, and environmental risks. In addition, this illegal business finances organized crime, adversely affecting social stability in Taiwan. This trade also results in billions of dollars in lost tax revenue for the government, and similar losses to Taiwan-based businesses due to unfair competition, with a consequent negative impact on employment in Taiwan.

The Committee suggests the following ways to better combat the import of counterfeit and smuggled goods:

- Develop a more systematic, speedy, and transparent mechanism for Customs to take action against those found to be importing counterfeit or smuggled goods. This system should allow action on seizures to be carried out within weeks, rather than months as at present. Better channels of cooperation and coordination between Customs and other Taiwan law enforcement agencies also need to be established. This should include more disclosure of information related to Customs seizures to such other government units as TIPO, the Judicial Yuan, Ministry of Justice, Ministry of Interior, and Ministry of Finance (the regulatory body for tobacco and spirits). One means of effective disclosure would be establishment of a regularly updated database, shared by Customs and the other relevant government bodies, listing the names of convicted or fined importers of counterfeit and smuggled goods.
- Take action against the substantial amount of trade in counterfeit and smuggled goods, particularly for luxury goods, being conducted through the postal system, especially the Express Mail Service (EMS). Distributors and individual customers in Taiwan who order counterfeit goods through the Internet often receive the goods by EMS. Customs therefore needs to increase the rate of inspections it conducts on incoming regular mail and EMS parcels. In addition, courier companies who appear to be used the most by websites offering counterfeit and smuggled goods should be checked more frequently by Customs, and if necessary receive formal warnings or even be placed on a blacklist.
- Build better cooperation between Customs and rights-holders, for example providing rights-holders with information on importers and exporters implicated in instances where seizures have resulted in criminal complaints. We encourage Customs to work closely with both companies and other law enforcement bodies to conduct prevention campaigns targeting specific product

categories. Special campaigns could be launched to allow for increased inspection of certain types of suspected EMS parcels or container shipments.

- Target the increasing volume of unregistered and potentially hazardous pesticides being smuggled into Taiwan, primarily from China. As noted in the position paper by the Agro-Chemical Committee, solving the problem will require more effective monitoring of agro-chemical vendors by the Council of Agriculture and more vigorous scrutiny of incoming shipments by Customs and law-enforcement agencies. The widespread use of these illegal pesticides represents a health risk to farmers and a serious challenge to Taiwan's food safety.

Issue 2: Review changes and proposed amendments to the laws on Trademark, Patent, Copyright, and Copyright Collective Management Organization.

- ***Retain the punitive damages concept in the Patent and Trademark Acts.*** TIPO is currently proposing amendments to the Taiwan Patent Act and the Trademark Act, which together with the Copyright Act are Taiwan's main intellectual property legislation. The draft amendment to the Patent Act was submitted to the Legislative Yuan for deliberation on December 3, 2009, and the draft amendment to the Trademark Act has been under review by the Executive Yuan since March 4, 2010.

  It is a general principle under the Taiwan Civil Code that claims for damages should be limited to the actual damages/losses suffered by the claimant, who has the burden of proof to demonstrate such actual damages/losses. But intellectual properties such as copyrights, trademark rights, and patent rights are intangible assets whose value may not be easy to quantify or calculate. The rights-holder thus often has difficulty in pressing a claim for damages resulting from IPR infringement, or in receiving the appropriate compensation, especially since Taiwan lacks a full discovery system such as exists in the United States.

  In view of that situation, the punitive damage concept has been introduced at different times into the Patent Act (Article 85), Trademark, Act (Article 63), and Copyright Act (Article 88). This approach has allowed punitive damages to be imposed in situations where the court considers the scale of infringement to be especially severe (under the Trademark and Patent Acts) or when the rights-holder is unable to prove the actual damages (under the Copyright Act). In addition, the level of allowable punitive damages under the Patent Act was increased from two times the actual damage amount to three times when the law was revised to decriminalize all types of patent infringements in 2001.

  The relevant punitive damage clauses would be deleted, however, if Article 99 of the Draft Amendment to the Patent Act and Article 71 of the Draft Amendment to the Trademark Act are enacted as currently proposed. The Committee is highly concerned about the negative impact of such a change on patent and trademark cases – and if this signals an intention by TIPO to remove the punitive damage concept from all IPR legislation, it is concerned that Article 88 of the Copyright Act may be the next target. We vigorously oppose these two draft amendments, as their passage would represent a significant step backward in the development of IPR protection in Taiwan.

- ***Avoid unfair treatment of copyright holders who are unable to join an appropriate collection society.*** A proposed amendment to Article 37 of the Copyright Act would unfairly restrict copyright holders' right to pursue criminal liability against unauthorized users if they are not a member of a collection society. The draft amendment does not take into account whether an appropriate collection society for the rights-holder even exists.

  Taiwan has only seven collection societies: two for sound recordings, three for musical works, one for musical videos, and one for book authors and publishers. For numerous rights-holders, for example those involved in TV programming, there is no suitable collection society for them to join. TV programming is often shown at public venues such as hotels, hospitals, restaurants, coffee shops, department stores, sales outlets, and public transportation facilities without payment of royalties. The amendment to Article 37 would restrict rights-holders, both in Taiwan and elsewhere around the world, from taking criminal action against such infringing users. It is unfair and unreasonable to restrict the rights of these rights-holders, especially when there is no collection society available for them to belong to.

  In Taiwan, civil actions are usually time-consuming and ineffective as a means for rights-holders to seek redress. As only criminal action may have a deterrent effect in such cases, depriving copyright holders of their right to take criminal action against infringers is a very serious matter.

- ***Re-evaluate recently passed amendments to the Copyright Collective Management Organization Act.*** Amendments to this law passed by the Legislative Yuan in January have weakened the position of copyright holders vis-à-vis users and will be seriously detrimental to the future development of the copyright collection business. The primary concerns are:

1. **Provisions creating a single window system and joint tariff rate.** By granting TIPO the power to compel rights-holders of the same use type to form a single window for collection purposes, as well as giving the Office the right to set the joint tariff rate, the amendment vests TIPO with excessive authority to intervene in the collection decisions of rights-holders and in the business activities of collection societies.

   International experience has shown that licensing markets function most effectively – for the ultimate

benefit of both rights-holders and users – where rights-holders remain free to seek the most efficient way to administer their rights. To ensure that free market conditions exist in Taiwan, rights-holders should be allowed to determine for themselves whether to collect royalties jointly with other rights holders, and if so, which collection society to join and entrust their rights to. Imposing restrictions on those rights is both ineffective and threatens the development of the licensing market. In particular, requiring all rights-holders to jointly collect royalties on performance rights is likely to result in conflicts in both the collection and distribution of royalties. Such conflicts would impede the proper functioning of the market and negatively impact users' ability to obtain licenses.

The majority of countries in the world leave it up to rights-holders to decide how to license their rights. In certain countries, rights-holders of the same type prefer to administer their rights under one collective management organization. But their freedom to do so, and to decide whether to join a particular organization or to establish a new one, should be maintained. To ensure the existence of favorable conditions for the development of the licensing market, the law should be further amended to eliminate the obligation to offer "single window licensing" and joint tariff rates.

2. **Prohibition on the use of commission agents to collect royalties.** Due to the diminishing level of legitimate market sales for recordings, copyright royalty income obtained through collection societies has become an increasingly important revenue source for record companies. The rights-holders, however, wish to ensure that the collection societies minimize overhead and other administrative costs, and that commercial uses are licensed appropriately. With regard to public performance, these cost savings are achieved in part through the use of commission agents, and collection societies around the world depend upon them to reach commercial users who publicly perform recorded music, to educate those users on the need to obtain a license, and to issue relevant licenses.

In Taiwan, the recording industry's collection society previously retained commission agents to provide more effective geographical coverage. But under a September 2008 ruling by TIPO, this practice is no longer permissible.

The inability to use agents for licensing purposes has had a direct negative impact on rights-holders' licensing activities, reducing the amount of revenue collected. It also results in a large number of businesses operating without a license, denying rights-holders the remuneration to which they are entitled and undermining the rule of law.

No good reason has been presented for prohibiting the use of agents for licensing and royalties collection, and the underlying policy objective is unclear. If there are any concerns about licensing practices, they can be addressed most effectively by establishing an industry code of conduct on public-performance licensing. Such an agreed-upon set of rules would ensure that the system is not abused and that users' interests are protected.

3. **Lack of detailed rules to implement the "three-strike" provision.** The new Internet Service Provider (ISP) legislation, including its implementation regulations, deals only with the process of notice and counter-notice in the case of infringing material on a website, but does not include any specifics for implementing the called-for "three-strike" (graduated response) provision for dealing with repeated P2P piracy.

TIPO is encouraging ISPs and rights-holders to agree on a code of conduct to govern the operation of such a system. The ISPs, however, despite the risk that they could lose all "safe harbors" extended by the law if they do not promptly and fully implement a graduated response system, have been reluctant to sit down with rights-holder groups to fashion a code of conduct that is efficient, inexpensive, and fair to rights-holders, ISPs, and users.

Nearly a year after passage of the new law, no agreement has been reached and there is still no clear guidance for implementing the three-strike provision. The Committee suggests that TIPO:

1. Reiterate clearly that ISPs who fail to implement this obligation will lose their "safe harbors" under the new law, and

2. Take action, including the issuance of administrative guidelines, to induce ISPs to fully participate in negotiating a code of conduct with rights-holders to implement this mechanism.

Issue 3: Strengthen judicial treatment of IP cases.

This Committee's *White Paper* submissions over the past 10 years have noted that the courts hamper the enforcement of IP laws by letting off most convicted IP offenders with light, suspended sentences and low fines. Unfortunately, that situation continues to be the case. Counterfeiters have consequently come to view being taken to court as merely a manageable cost of doing business, since the financial incentives to engage in counterfeiting far outweigh the risk of severe punishment. Only when the profit motive is removed will counterfeiting be deterred. The Committee therefore continues to advocate the imposition of higher levels of fines on convicted infringers, as is allowed under the revised Trademark, Copyright, and Fair Trade Laws.

The Committee also continues to urge changes in the Civil Code and the Code of Civil Procedure to create effective mechanisms for statutory damages and discovery in civil cases, as well as recognition that IP rights-holders have a right

to recover the costs of enforcement.

One new issue concerns the difficulty that copyright holders are encountering in taking civil actions in the IP Court. Last year, the IP Court regularly rejected applications from plaintiffs for preservation of evidence. This constitutes a serious obstacle for IP civil actions, especially in cases where evidence of infringement can be found only in the defendants' offices or factories.

Issue 4: Define Internet piracy as a public crime.

Given the rampant Internet piracy in Taiwan and its damaging impact on legitimate commerce, as well as the even greater difficulty rights-holders experience in uncovering infringements compared with other forms of IPR violations, the Taiwan government should amend the Copyright Act to include Internet piracy among the transgressions defined as "public crimes." This designation obviates the need for a rights-holder to file a complaint and enables the police to take the initiative in conducting raids when there is cause to believe that acts of piracy are being committed. In 2003, Taiwan designated as public crimes all offenses related to Optical Disk piracy, and it had an immediate, positive impact in reducing OD piracy.

Adding Internet piracy as a public crime would allow law-enforcement agencies to react quickly and decisively to deal with piracy on the Internet, which will be critically important if the growth in such illegal activity is to be contained. The first priority would be to target offenders who have obtained economic benefit from their infringing activities on the Internet.

Issue 5: Continue taking action against software piracy.

The software industry is the sector that suffers the most in Taiwan from "end-user piracy" – the unauthorized copying, distributing, or under-licensing of software by users in commercial settings. Indeed, while the proportion of pirated products among all software in use in Taiwan has dropped for the past two years, the estimated amount of loss to the legitimate software industry actually increased because of the overall expansion of the market. Taiwan needs to take the following actions to decrease end-user piracy:

1. ***Engage in increased public education.*** A critical component of any successful effort to reduce software piracy is the creation of a fundamental shift in the public's attitude toward such behavior. The Taiwan government should continue its efforts to increase public awareness of the importance of respecting creative works by informing the public about the risks associated with using pirated software and encouraging the use of legitimate products. Some of the most successful efforts to reduce software piracy in Taiwan have resulted from comprehensive public education campaigns launched jointly by government and industry. We commend the government for these efforts and encourage their continuation.
2. Continue to carry out targeted law-enforcement actions, with follow-up prosecutions where appropriate, to help deter infringement and to foster the use of legitimate software by businesses in Taiwan.

Issue 6: Continue to implement legalization strategies for business software in the public sector.

While governments generally have procurement policies in place for physical property, some government agencies, government contractors, and government employees do not always pay proper attention to software procurement procedures. As a result, the unauthorized use of business software in the public sector has become an endemic problem in Taiwan. We suggest that the Taiwan government take the following actions:

1. Review the current status of this problem and ensure that appropriate legislation, policies, and practices are fully in place, including the addition of proper software asset management (SAM) procedures in audit requirements for public-sector entities.
2. Increase the IT budget for purchasing legitimate software so that government agencies can set an example for the private sector with regard to IPR protection and the promotion of proper business practices.
3. Continue existing training programs. TIPO conducted three IPR training sessions for 500 government employees in 2009, educating them on how to tell genuine from counterfeit software products so as to avoid being defrauded by dishonest dealers during the course of purchasing and government tenders. In 2010, TIPO will conduct six more training courses to cover the majority of government officers responsible for the procurement and use of software, plus three training sessions for small and medium sized enterprises. The Committee appreciates TIPO's support in this exercise.

MEDICAL DEVICES

The Committee is delighted that the relevant governmental agencies have responded positively to several of the issues raised in the 2009 *Taiwan White Paper* and have taken appropriate action to improve the business environment in this industry. In 2010, the Committee hopes that with the establishment of the Taiwan Food and Drug Administration (TFDA), Taiwan's system for managing and inspecting medical devices and its regulatory measures for advertising DTC (direct-to-consumer) medical devices may soon be completed. In the meantime, the Medical Device industry is concerned about the potential business impact from implementation of "Taiwan Diagnosis Related Groups" (Tw-DRGs) and the pending revision of the National Health Insurance Law to create the Second Generation National Health Insurance program.

Below, we present our detailed recommendations concerning these issues.

Issue 1: Bring the TFDA mechanism for inspecting and registering medical devices in line with international practice.

The TFDA was established on January 1 this year, and on the same day the new agency announced its 10 administrative goals. Among them, enhancement of a product safety management system and supervisory environment, establishment of a professional product inspection mechanism, promotion of international cooperation and exchange, acceleration of development of the biotechnology industry, and establishment of a specialist training mechanism are closely related to the medical devices and biotech sectors. The Committee hopes that with the TFDA's establishment, Taiwan's system for managing and inspecting medical devices may be raised to meet international standards, thus fostering development of Taiwan's medical device and biotech industries.

Given the rapid development of the medical device and biotech industries, the current inspection and management mechanisms need to be modified based on international practices. For the short-term, the Committee recommends the following.

1. ***Relax the definition of a "medical device manufacturer."*** A medical device manufacturer, as defined in Article 18 of the Pharmaceutical Affairs Act, is: "a manufacturer engaged in the manufacture, assembly, wholesale or export of medical devices as well as in the import of materials used to produce medical devices." This definition differs from the European and American practice, which defines the "manufacturer" of a device as the company legally responsible for the product and for monitoring it after it is placed on the market. Although it is now common to find a complex division of labor among manufacturers of different countries during the production process, the Department of Health (DOH) – unlike its U.S. and European counterparts – still regards the factory that physically produces the item as the "manufacturer" when inspecting medical devices or identifying which factory should provide the Quality System Documentation (QSD). Because of the difference in definitions, it is often extremely difficult to obtain documents and certifications from other countries that meet Taiwan's requirements. Consequently, products in the Taiwan market are often launched much later than in other Asian countries; in some cases, they are unable to be registered and sold in Taiwan at all. The result is that Taiwanese people may not have access to the latest medical products and technology, and their right to treatment is negatively impacted.

   To cope with the increasingly complicated international division of labor, we recommend that the DOH revise its definition of "manufacturer" to accept that the companies legally responsible for the products and for monitoring them after they are placed on the market are indeed the manufacturers. Those are also the companies that should be called on to provide product-manufacturer QSDs and permits. The DOH should also bolster its communication with Customs personnel to ensure they understand that the origin of a product is determined by the location of the factory that produces it, rather than the COO (country of origin) shown on the label attached to the product.
2. ***Enhance communication among the TFDA, medical device Notified Bodies, and the industry.*** For QSD registration, the medical device Notified Bodies (organizations accredited to validate the compliance of a device) often interpret registration standards differently from the TFDA itself, causing delays in the QSD approval and in the registration and sale of medical devices. TFDA personnel and the Notified Bodies are urged to consult periodically with manufacturers in order to build consensus on how medical devices should be registered and to improve the efficacy of the validation process.
3. ***Establish standards for identifying changes to registered products.*** The registration of changes to products after they are placed on the market is often delayed or is unable to be completed due to differing interpretations between reviewers and manufacturers. The result is that product changes made by foreign manufacturers do not get reflected in timely fashion in the Taiwan market. To prevent this occurrence, thus saving time and administrative costs, we recommend that the TFDA establish uniform standards for changes in line with international regulations. In addition, the TFDA is requested to explain and discuss with manufacturers the basis on which it identifies changes.
4. ***Update the definition of new medical devices and high-risk medical devices.*** Since the approval process for new medical devices and high-risk medical devices requires a large amount of documentation, reviewers must spend a great deal of time to complete registration procedures before the devices are permitted to be launched on the market. Considering the limited manpower and time available for the registration process, as well as the rapid technological development for medical devices, it would be helpful if the TFDA were to review the criteria used to identify new medical devices and high-risk medical devices. Reviewers will then be able to spend their time more efficiently on medical devices that are genuinely new or high-risk, thereby shortening the time needed for products to reach the market.

Issue 2: Focus the regulation of advertising on direct-to-consumer medical devices.

1. ***Redefine the term "pharmaceutical advertising" as it applies to medical devices.*** Users of DTC medical devices (such as contact lenses, thermometers, sphygmomanometers, and other Class-I products) are generally ordinary consumers who lack professional medical knowledge. In order to ensure consumer safety and the proper use of these products, medical device companies need to cooperate with the health authorities to

provide appropriate health education for consumers.

Restrictions on "pharmaceutical advertising" under Article 24 of the Pharmaceutical Affairs Act, however, make it difficult for medical device manufacturers to communicate to consumers important information on medical efficacy and the safe and proper use of the product. We therefore urge DOH to re-define the term "pharmaceutical advertising" as a message that meets each of following criteria (that is, if any one criterion is unmet, the message should not be regarded as pharmaceutical advertising):

- Contains content that aims to stimulate the consumers' desire to purchase the product.
- Clearly displays the product's name.
- Would be perceived by ordinary consumers as an advertisement rather than health education.

2. ***Place limits on pre-approval censorship.*** Industry understands the rationale for continuing to subject advertising of DTC medical devices – as defined by the health authorities to include contact lenses, blood glucose meters, sphygmomanometers, thermometers, and other Class-I products – to pre-approval censorship prior to publishing. We offer the following suggestions, however, in order to make the management of advertising more reasonable and workable:
   - Pharmaceutical advertising in professional journals aimed at medical professionals should be exempted from pre-approval censorship.
   - A negative list should be announced of terms and phrases specifically prohibited from use in advertising for each product category.
   - A new advertising category covering packaging should be established in order to effectively manage DTC medical devices.
3. ***To facilitate its development, a platform should be created for regular and open communication between the authorities and the industry.***
   - Pharmaceutical advertising should be regulated by means of post-market supervision, with manufacturers regularly monitoring their product advertisements on the market and voluntarily removing them when necessary.
   - A mechanism for self-regulation and disciplinary measures could be established through the relevant industry associations. If the authorities agree to institute such a system on a trial basis, pre-approval censorship could be suspended for a given period – say, five years – in the interim.

Issue 3: Reform the National Health Insurance (NHI) payment system to raise Taiwan's competitiveness in medical services.

Taiwan has long had a high level of medical service quality, and its National Health Insurance (NHI) system has gained considerable international renown. But funding shortages are calling into question the long-term sustainability of such high-quality, low-cost universal healthcare. As a result of these financial pressures, the introduction of new medical technologies might encounter difficulties, negatively affecting overall medical-service quality and patients' right to optimum treatment. The committee therefore suggests reforming the NHI payment system for medical devices by expanding the balance billing program, revising the current methods for conducting Price Volume Surveys (PVS) and amending parts of the "Taiwan Diagnosis Related Groups" (Tw-DRG) plan that began to be phased in from January 1, 2010. The overall objective is to facilitate the introduction of new medical technologies by offering reasonable payments and ensuring the continued competitiveness of Taiwan's medical services. Our suggestions for the Bureau of National Health Insurance (BNHI) are as follows:

1. ***Formalize a balance billing program to protect patients' medical options.*** Given the NHI's limited financial resources, it faces difficulty in introducing new medical technologies and new medical devices in a timely manner. A balance billing program (where patients can opt to pay extra for certain treatments not covered by the insurance program) can help alleviate this problem by providing patients with more medical device options while effectively preventing the wastage of NHI resources. In previous editions of the *White Paper,* this committee has repeatedly expressed our support for a balance billing program for medical devices.

   In Article 43 of the draft legislation prepared for establishment of a proposed "Second Generation" NHI, BNHI has included provisions to create a legal basis for utilizing balance billing. The Committee looks forward to passage of that amendment by the Legislative Yuan, so as to make it possible to expand and institutionalize the use of balance billing for medial devices.
2. ***Ensure the introduction of new medical technologies and devices under the Tw-DRG payment system.*** It might take several years before the cost of new medical technologies and devices are reflected in the new Tw-DRG (Taiwan Diagnostic Related Groups) system because of the steep learning curve in the application of these technologies. To address this concern, countries such as United States, Germany and Australia have established additional payment mechanisms when introducing similar systems. The Committee would like to offer the following suggestions:
   - For new medical technologies not included in the NHI under the Tw-DRG payment system, BNHI should evaluate their clinical effects and resource consumption patterns annually, and incorporate those that become widely used in the Tw-DRG payment system.
   - For new medical devices with new functions that have qualified for benefits, BNHI should first provide fee-for-service payment for both surgical procedures and medical devices or else reimburse medical devices at cost. The next stage would entail collecting data

on the devices' medical-resource consumption and communicating with industry on potential application procedures for inclusion in Tw-DRG. Once those procedures and operating methods have been finalized, the medical devices with new functions can be included in the system.

- Tw-DRGs information should be open and transparent in order to serve as an objective reference for healthcare expenditures. BNHI should annually make an advance announcement of the proposed Tw-DRG payment percentages, including payments for medical devices, and provide a window for consultation before finalization.
- Unless the system is designed properly, the implementation of Tw-DRG under the global budget payment is likely to affect hospitals' medical-service quality due to cost considerations. To motivate hospitals to provide patients with effective treatment, they should be assured of a certain level of income on the condition that quality standards are met. We suggest setting the payment point value of Tw-DRG at NT$1 per point.

3. ***Rationalize PVS methodology and assure transparency of information.*** After adoption of the Tw-DRG payment system, there should eventually no longer be a need for reimbursement prices for medical devices or the conducting of PVS for this industry. Because that system will be implemented phase-by-phase over five years, however, we suggest some revisions to improve the system during the interim period. Currently the major problem is that BNHI lacks a clear policy for medical devices as to the frequency of conducting the PVS and the selection of products to be surveyed. Our suggestion is that all medical devices be included within the PVS, but staggered over a four-year cycle. In addition, we urge the BNHI, after completion of the PVS, to communicate with the surveyed companies by official letter, informing them of such aspects of the survey results as the weighted average market prices, as well as the 5th and the 95th percentile prices and quantities, for all product categories covered in the PVS. We also suggest that within the first five years of receiving a reimbursement price, medical devices should be allowed a 15% R-Zone margin during the PVS process, so as to encourage companies to introduce new medical devices and technologies into this market.

Issue 4: Allow the import of medical devices manufactured by multinational enterprises in China.

More and more international medical devices companies are setting up manufacturing sites in China to accommodate global needs and manufacturing trends. Multinational companies with operations in China apply the same level of quality control as in their home country, and these products are certified for sale in major markets around the world. In many cases, however, Taiwan prohibits their import. The Committee hopes that the proposed Economic Cooperation Framework Agreement with China will lead to liberalization of the importation rules. We urge the government to begin the relaxation with the import from China of medical devices manufactured by multinational companies, especially those that have already proven to be of high standard by obtaining market approval in the United States and the European Union.

OTHERS

CHIROPRACTIC

Issue 1: Provide a legal basis for chiropractic in Taiwan.

Although the past year has seen the apparent cessation of raids and other forms of overt harassment of doctors of chiropractic in Taiwan, disappointingly there has been absolutely no progress toward ending the consistent discrimination against the chiropractic profession by the health authorities and members of the medical establishment. The relatively small number of doctors of chiropractic in Taiwan, all of them trained in U.S. institutions, continue to be denied formal recognition as legitimate healthcare practitioners and are prohibited from advertising their services or making any claims about the results or efficacy of their treatments.

At a time when Taiwan's National Health Insurance program has been under considerable financial pressure – as shown by the increase in premiums adopted earlier this year and the current effort to devise a Second Generation NHI – it would be reasonable to encourage chiropractic as an additional choice of treatment for particular physical problems. As a natural and conservative healing art that uses neither drugs nor surgery, chiropractic has been welcomed in many countries as an economical solution for certain ailments, thus contributing to holding down healthcare costs.

On the contrary, however, the health authorities in Taiwan have continued to display the kind of negative attitude toward chiropractic that was found in the United States and other Western countries around a century ago. In the West, that attitude has long since been overcome as scientific evidence of the health benefits of chiropractic, as well as its cost-saving advantages and high levels of patient satisfaction, became widely acknowledged. In the United States alone, over 30 million visits are made to chiropractic doctors every year.

In addition, the profession has long received recognition by the World Health Organization (WHO), which works closely with its affiliated NGO, the World Federation of Chiropractic, on various projects around the world. [The World Federation of Chiropractic, by the way, lobbied on behalf of Taiwan's accession to the World Health Assembly, but never received any thanks or even acknowledgment from the Taiwan authorities or medical community].

In its "Guidelines on Chiropractic" issued in 2005, WHO defined chiropractic as "a health care profession concerned with the diagnosis, treatment and prevention of disorders of the neuromusculoskeletal system and the effects of these

disorders on general health." An official Chinese version of the Guidelines has now been released. Whereas the terminology applied in Taiwan to Doctors of Chiropractic tends to denigrate them as "back soothers," the WHO text – in both English and Chinese – clearly extends to them the title, classification, and respect of "doctor."

Taiwan has long shown its high regard for the WHO through its efforts to gain representation, whether as a member or observer, in the World Health Assembly. That regard should be extended to accepting WHO's recognition and respect for the profession of chiropractic, thus enabling Taiwan citizens to enjoy wider choice in selecting the forms of healthcare they prefer. Ironically, that freedom to enjoy legal chiropractic care is available not only in Hong Kong and Singapore but in mainland China – though oddly not in democratic Taiwan.

In 2006, a group of Taiwan legislators sought to enact a Chiropractic Law in line with the standards set forth in the WHO guidelines. The proposed bill would have permitted chiropractors trained and licensed in advanced countries (in the United States training entails four years of university plus five-and-a-half years of graduate professional school) to practice legally in Taiwan. Since no comparable educational programs exist in Taiwan, there are no domestically trained doctors of chiropractic. Hong Kong faced a similar situation in the past, and created a special registration system for foreign-trained doctors of chiropractic.

In Taiwan, the proposed bill was eventually dropped due to the vehement opposition of the Taiwan Medical Association, which made a number of false and inflammatory accusations about chiropractic, apparently out of protectionist sentiment in viewing doctors of chiropractic as potential competitors. Yet despite the TMA's clear bias against chiropractic, the association appears to hold veto power over official policy on this matter. In some responses to previous *White Papers*, the government cited the TMA's opposition as a reason why chiropractic does not deserve formal recognition.

In those past responses, the Department of Health has also insisted on the need to follow a three-part process of "Education-Examination-Licensing." By that logic, doctors of chiropractic may not be recognized in Taiwan until this country has established its own facilities for training such professionals and set up an examination system to confirm their proficiency. But there is no legal basis for such a requirement, and it could be decades – if ever – before Taiwan could complete the Education and Examination stages. Meanwhile providers of a valuable healthcare service are left in limbo. As the above-mentioned Hong Kong solution shows, it would be quite feasible to recognize doctors of chiropractic in the interim based on their overseas educational and professional credentials.

The totally unreasonable barriers raised against chiropractic professionals educated and licensed in the United States have become an issue in the bilateral trade negotiations between Taiwan and the United States known as the Trade and Investment Framework Agreement (TIFA) talks. The problem is also raised by the U.S. Trade Representative in the healthcare section of the 2010 National Trade Estimate Report on U.S. trade relations with Taiwan, as it was in the 2009 edition.

Significantly, practitioners of Chinese traditional medicine were recognized and allowed to practice in the United States by receiving "grandfathering" treatment before an appropriate regulatory system could be established. In addition, there are many hundreds of Taiwanese practicing medicine, traditional Chinese medicine, and chiropractic in the United States. In the interest of mutual respect and reciprocity, Taiwan should accord similar treatment to U.S.-licensed chiropractic professionals.

The Department of Health is urged to resist protectionist pressures, continue to refrain from engaging in raids and other forms of harassment against chiropractic doctors, and actively support passage of legislation to allow them to practice here with professional dignity. At a time when Taiwan has received WHO permission to participate in International Health Regulation 2005 and when the cross-Strait thaw has opened the way for Taiwan to take part in the WHA for the past two years, official recognition of the chiropractic profession would bring Taiwan in line with WHO policies and with the rest of the world.

TOBACCO

Issue 1: Reconsider proposals for a Unified Security and Anti-counterfeiting Mechanism.

The Legislative Yuan's Social Welfare and Environmental Hygiene Committee passed an additional resolution on December 22, 2008, calling on the Ministry of Finance (MOF) and Department of Health (DOH) to create – on a one-year trial basis – a "unified security and anti-counterfeiting mechanism" for tobacco products. Passage of the main resolution, implementing the additional resolution, followed on January 11, 2009. Currently, some lawmakers are proposing to amend the Tobacco and Alcohol Administration Act (TAAA) to require industry to implement such a unified security and anti-counterfeiting mechanism. This kind of system aims to reduce counterfeiting and bring more security to the supply chain by introducing a stamp tax system, with certification of authenticity applied to individual packaging and perhaps to pallets, cases, and cartons as well.

But the nature of Taiwan's smuggling problem has changed in recent years, and no longer consists mainly of bulk shipments of counterfeit goods. Rather, the pattern now primarily involves small quantities of lawful imports used to conceal larger volumes of illicit goods of little-known brands – the so-called "cheap whites" – for which no duties or taxes are paid.

A unified security and anti-counterfeit mechanism

cannot resolve this new type of smuggling, and might even exacerbate the problem, since the experience of other countries has shown that the unified security and anti-counterfeiting certificates may themselves be counterfeited.

Before formulating its policy on this matter, the government should carefully consider its feasibility and invite industry representatives to discuss the practical issues involved. We would like to bring the following points to the attention of the authorities:

1. ***Legitimate importers and manufacturers of tobacco products have already adopted their own anti-counterfeiting identification features.*** The smuggling of tobacco products not only affects the government by reducing tax revenue (the tax loss is estimated at NT$35 for each pack of illicit "cheap whites" that is sold) but also seriously impinges on the rights and interests of legitimate tobacco manufacturers and importers. Since smuggling threatens their corporate existence, members of this Chamber in the tobacco industry have established their own proprietary security features for the tobacco products they manufacture or import. Each year they jointly hold three to four training meetings and an annual seminar with government investigative authorities, and excellent results have been produced.
2. ***The nature of Taiwan's illicit cigarette problem has changed.*** As mentioned above, in recent years most of the smuggling has been undertaken by unscrupulous businessmen who legally import small quantities of self-branded tobacco products through Customs, but use that business as a cover for smuggling in large amounts of tobacco products through a variety of ever-changing channels. These tobacco products are sold directly in night markets, betel-nut stands, and grocery stores, which is a completely different mode of operation from that of traditional counterfeit/contraband tobacco products. In addition, due to the increase in the health surtax on tobacco products from June 2009, as well as the economic downturn and the increased price of tobacco products, there is now more financial incentive to engage in smuggling. The illicit cheap whites, typically selling for under NT$35 a pack, have consequently flooded the market. According to reports from both official sources and private investigations, the market share of counterfeit or poor-quality tobacco products ranges from 8% to 10% each year, among which illicit cheap whites represent about 70% to 80% of the volume. As illegal operators find ways to skirt regular customs-clearance procedures, implementation of a unified security and anti-counterfeit mechanism would do little to solve this problem.
3. ***Implementation of a unified security and anti-counterfeit mechanism on tobacco products lacks a theoretical basis.*** The products being smuggled and counterfeited in Taiwan are not limited to tobacco products, but extend to other types of goods – including agricultural products – that carry even more risk to consumers' health and safety. But the government has not implemented any type of "unified security and anti-counterfeit mechanism" specifically applicable to agricultural or other products. To single out tobacco products for this purpose seems both unfair and unreasonable, since it would require legitimate importers to bear unnecessary extra logistical and operational costs, and would be contrary to the essence of Taiwan's free and open market.
4. ***Industry's opinion should be taken into account in setting up a regulatory scheme,*** so as to maintain the operation and interests of the legitimate market. The smuggling of unreasonably low-priced tobacco products is a serious problem in Taiwan, but cannot be resolved by simply adopting one single mechanism. The authorities should intensify their anti-smuggling inspections of fishing boats and container shipping, promote public awareness, amend applicable laws to increase the criminal penalties for the sale or smuggling of illicit tobacco products, strengthen efforts to trace the entire supply chain of smuggled tobacco products, and enhance incentive rewards to inspection personnel. Only a multi-pronged approach can effectively address this problem and counter the proliferation of illicit and counterfeit tobacco products.

   If the government insists on creating a unified security mechanism, however, industry requests that the authorities first 1) conduct comprehensive studies that refer to the relevant experiences of other countries and 2) compare a variety of systems before selecting one to implement. Such a comparison would help ensure that the relative costs and effectiveness are fully understood and that infringement on the rights of legitimate businesses can be avoided.

Issue 2: Create the legal basis for a "report inventory" mechanism for changes in the cigarette health surtax.

On January 23, 2009, the Office of the President announced that the health surtax levied on each pack of cigarettes would be raised to NT$20, with the new rate coming into effect on June 1 last year. Industry has consistently emphasized that use of the "report inventory" mechanism would be the most effective, lowest cost, and least market-disruptive way to implement the health surtax.

Under the "report inventory" mechanism, all manufacturers, importers, distribution channels, or sellers of tobacco products report their respective tobacco inventories one day prior to the effective date of the health surtax. They then pay the government the difference between the amounts owed on their respective inventories based on the old and new health surtax rates.

Since the quantity declared can easily be checked against the computerized import/export data held by manufacturers, importers, and convenience stores (which account for the bulk of the retail sales), it is quite unlikely that the records could be falsified.

Last year's *White Paper* urged the government to create

a legal basis for such a "report inventory" system through an expedited legislative process, and to appoint impartial third-party organizations such as the CPA Association of the Republic of China, the Consumers' Foundation, or other private groups to carry out the audits. This would put in place a permanent mechanism with appropriate supporting measures to address any future increase in the tobacco health surtax in a way that maintains market order and curbs illicit trading.

Although the competent authority – the DOH's Bureau of Health Promotion – several times confirmed the feasibility of carrying out a "report inventory" system, in the end the proposal did not materialize due to the "lack of legal basis." Instead, a system of pasting price-identification labels on each package was adopted, a laborious process that delayed introduction of the new health surtax and caused the treasury to suffer a significant revenue loss. The pasting of price labels also caused great inconvenience to legitimate importers and downstream vendors, and involved an immense expense in terms of manpower and materials. Further, this approach led to considerable confusion in the marketplace – even disputes between retailers and consumers, since both old and new prices were shown on the labels.

Considering that the Tobacco Hazards Prevention and Control Act provides for the amount of health surtax to be adjusted every two years, similar problems are likely to recur next year unless action is taken now. The government should therefore proceed to prepare a bill as soon as possible for submission to the Legislative Yuan to establish the legal basis for implementing a "report inventory" mechanism.

Issue 3: Abstain from restricting the wording on tobacco containers and external packaging.

In its circular of November 5, 2009 on "Prohibited Wordings in the Promotion or Advertising of Tobacco Products," the DOH specifically bars the use of the following wording on tobacco containers or external packaging: "carefully selected," "high quality," "renowned," "refined," "limited edition," "special collection," and "special." It goes even further to prohibit "any descriptive wording" on the tobacco container or external packaging.

With regard to that ruling, the following points are relevant:

1. As no such restrictions have been imposed under the law, the constitutionally protected right of freedom of expression should prevail. Whether under the Commodity Labeling Law, Tobacco and Alcohol Administration Act, or Tobacco Hazards Prevention and Control Act, no legal restrictions have been imposed on the packaging and design of tobacco-product containers. In addition, the containers and packaging used for tobacco products legally imported by legitimate importers are not specifically designed for the Taiwan market, and such controls would be contrary to international regulatory practice. Most fundamentally, the wording employed on tobacco-product packaging is the legal right of the tobacco industry, protected by constitutional guarantees of freedom of speech and property rights
2. The factual descriptions on the packaging of tobacco products are not intended to mislead consumers, and are in line with regulatory restrictions.

   The Tobacco Hazards Prevention and Control Act, like similar legislation in many other countries, restricts the wording that can be used in the promotion or advertisement of tobacco products, but does not prohibit any descriptive wording on tobacco-product packaging except – as in the case of phrases such as "mild" or "low tar" – when the wording may mislead consumers into believing that a particular tobacco product carries less risk to health. Wording on the packaging that does not generate any misleading effect remains legitimate under the applicable laws of Taiwan and other countries.

Issue 4: Exclude the tobacco health surtax from the base in calculating business tax.

As of January 12, 2009, the law governing the tobacco health surtax was changed from the Tobacco and Alcohol Tax Act, for which the competent authority is the Ministry of Finance (MOF), to the Tobacco Hazards Prevention and Control Act under the jurisdiction of the DOH. In addition, recently passed amendments to the Tobacco and Alcohol Tax Act further substantiated the transfer of the legal authority by deleting certain provisions relating to the tobacco health surtax and leaving only the stipulation that other government agencies may "collect the tobacco health surtax on behalf of" the MOF.

In a press release dated November 4, 2009, the MOF stated that "funds generated from the tobacco health surtax are for designated purposes and are not considered to be in the scope of taxation." Despite that interpretation, the amount charged to the consumer for the tobacco health surtax is also included in the base from which value-added and non-value-added business tax are calculated. This is inconsistent with the MOF's own pronouncements on the nature of the surtax, and the industry requests that the government address this issue by issuing clear guidelines to the collecting agencies that the amount of the surtax not be included in the taxable base for value-added and non-value-added business tax.

In July 2009, the Executive Yuan proposed an amendment to the Value-added and Non-value-added Business Tax Act, which are currently being considered by the Legislative Yuan. After passage of the amendment, consumers would not only have to pay the tobacco health surtax but also bear the burden of higher amounts to be paid for value-added and non-value-added business tax. As this step would represent double taxation and also ignore the distinction between taxes and surtaxes, we urge the Legislative Yuan not to approve this measure.

PHARMACEUTICAL

For the research-based pharmaceutical industry, Taiwan has for some years been an extremely difficult market in

which to operate. As a result of the government's policy of conducting frequent Price Volume Surveys (PVS) followed by substantial price cuts, Taiwan now has the lowest overall drug prices in any major market – on average, the price of original drugs in Taiwan is only 28% of the level in the United States. The six rounds of PVS since 2000 have slashed prices by a total of NT$50 billion (US$1.58 billion), and a seventh PVS is currently under planning. Facing an unprofitable price level, manufacturers are frequently deterred from launching new and innovative drugs in Taiwan, leaving patients in this market without access to the most up-to-date treatments.

At the same time, this Committee is heartened by the prospect that solutions to these problems can be found due to the willingness of the Department of Health (DOH) and its Bureau of National Health Insurance to engage in meaningful dialogue on possible new approaches to drug pricing and reimbursement policy. Based on data from an economic model produced last year after extensive study, the industry is convinced that Taiwan could revise its pricing system to reward innovation without exceeding the projected NHI budget parameters. We appreciate the cooperative and open-minded attitude displayed by the health authorities in reviewing our proposals.

Another positive recent development was the inauguration at the beginning of this year of the Taiwan Food and Drug Administration (TFDA) under the DOH. We welcome the establishment of the TFDA and encourage it to seek to learn from the long experience of the FDA in the United States.

As explained below, we also recommend eliminating the PVS system – which has not succeeded in its objective of controlling the "pharmaceutical price gap" problem – and replacing it with an annual Drug Expenditure Target set in consultation with the various stakeholders.

These changes, together with the other suggestions in this paper, would markedly improve the business environment in Taiwan for the pharmaceutical industry, while also providing better healthcare for the Taiwan public and enabling the government to raise the effectiveness and financial stability of the NHI operation.

Given Taiwan's many advantages as a location for developing the biopharmaceutical industry and for conducting clinical trials, multinational drug companies look forward to the creation of market conditions in which they could increase their involvement and investment in this market.

Issue 1: Reform drug-pricing policy to reward innovation, and replace Price Volume Surveys with a Drug Expenditure Target system.

The reimbursement price offered to new pharmaceutical products in Taiwan has steadily declined from the A10 (10 benchmark advanced economies) median to only 72% of the lowest A10 price in 2007-2008. The pricing system for new drugs does not currently reflect the degree of innovation of the products, which lowers Taiwan's attractiveness as a market for introducing new and innovative drugs.

Industry is currently engaged in a constructive dialogue with DOH and BNHI on reimbursement-pricing policy, however, as seen in two productive Pharmaceutical Innovation & Drug Policy Workshops held in July and October 2009. More such Workshops will be held. The dialogue has focused on how BNHI could incorporate innovation as a factor in its pricing and reimbursement policies so as to facilitate patient access to new and better treatments.

To test potential new approaches, the International Research-based Pharmaceutical Manufacturers Association (IRPMA) co-sponsored a project to produce an economic model for exploring the impact of various scenarios on patient access, the manufacturers, and the health insurance budget. Analysis of the resulting data shows that under most of the scenarios the BNHI budget over the next six years would be sufficient – without undertaking any additional major price cuts – to provide new innovative drugs with reimbursement prices at levels sufficient to encourage companies to launch in Taiwan the products currently in their development pipeline. Another finding of the study was that the periodic price cuts undertaken by BNHI in the past have not in fact contributed to holding down drug expenditures.

The industry hopes to achieve acceptance of the following guiding principles:

- Reward new drug innovation with fiscal responsibility.
- Utilize the A10 median as a reference.

The government has relied on the PVS mechanism as a key tool to try to eliminate the longstanding "pharmaceutical price gap" (the difference between the after-discount actual transaction price at which healthcare providers buy drugs and the much higher price at which they are reimbursed by BNHI). In the six PVSs and follow-up price adjustments carried out in the past, the magnitude of the price cut has grown 40-fold from NT$500 million (US$15.9 million) in 2000 to NT$20 billion (US$635 million) in 2009. In comparison, the drug budget over the same period has not even doubled. The PVS mechanism is extremely disruptive to the drug companies, healthcare providers, patients' access to drugs, and drug quality.

Following each reimbursement price adjustment, the hospitals continue demanding discounts from drug suppliers – as they seek to retain at least the same margins as they enjoyed previously – leading to a renewed price gap. The current PVS/price cut policy is therefore not the solution to minimizing or eliminating this problem.

As an alternative, the industry recommends amending the National Health Insurance (NIH) Law to set an annual Drug Expenditure Target and negotiated expenditure growth rate, which would become the basis for any price adjustments under the Pharmaceutical Benefit Scheme (PBS). The recently developed economic model co-sponsored by IRPMA shows that the need for a PVS can be eliminated under various scenarios. In addition to solving the "price gap" problem, the Expenditure Target approach will also save all stakeholders the resources spent in collecting and processing PVS data and

provide greater predictability for everyone.

Recommendations:

1. Revise the drug pricing categories now in use in line with IRPMA's proposal, so as to allow greater market segmentation based on innovation.
2. Exempt products newly added to the reimbursement list, particularly on-patent drugs, from price adjustments.
3. Eliminate the use of price volume agreements (in which companies are asked to rebate revenue to BNHI/DOH for sales exceeding an agreed-upon target for a given drug). Such agreements severely restrict market access for innovative medicine and penalize drugs that are successful in the market.
4. Amend the NHI Law to set an annual Drug Expenditure Target based on the actual drug expenditure in the previous year plus a negotiated growth rate. The law should also stipulate a rebate mechanism whereby excess expenditure would be clawed back by BNHI.
5. Involve the biopharmaceutical industry in negotiating the annual Drug Expenditure Target together with other stakeholders.
6. Before the NHI Law is amended, BNHI/DOH should take administrative approaches to bring the PBS price adjustment in line with the industry proposal.

Issue 2: Liberalize procedures for Certificates of a Pharmaceutical Product (CPP) and accelerate the regulatory approval process.

DOH has agreed to relax the CPP requirement for new drug registration, as Taiwan's competent review agency has already been established for over 10 years.

For many years, the pharmaceutical industry has urged that Taiwan's regulatory system adopt international norms – simplifying the CPP requirements and streamlining the entire administrative process. The aim is to provide patients with earlier access to new drugs. Since CPPs are required to be notarized by the Taiwan representative office in the issuing country, it adds considerably to the time needed to complete the processing. As a result, new-drug registration in Taiwan takes much longer than in the 10 reference countries or nearby Asian countries. The average approval time in Taiwan is 668 days, compared with 450 days in Singapore, 405 days in the European Union, 400 days in South Korea, 390 days in the United States, 360 days in Hong Kong, and 299 in Australia. Shortening that timeframe would significantly improve the attractiveness of the Taiwan market and manufacturers' ability to meet the needs of health providers and their patients.

DOH is now conditionally allowing manufacturers to file a New Drug Application for a New Chemical Entity without having a CPP in hand, but before license approval the manufacturer must either submit a source CPP together with two to three reference CPPs, or only the source CPP if it complies with the requirements under Drug Review Guideline Article 38-1. But those requirements are extremely strict and entail a high degree of risk for the companies if not followed correctly.

In addition, to renew the product license every five years after the initial marketing authorization has been granted, the manufacturer is required to submit the source CPP or the manufacturing certificate from the source country plus a reference CPP. However, the CPP and manufacturing certificate may be unobtainable if the drug has been discontinued in the source country due to commercial considerations and the marketing authorization consequently withdrawn. This situation would necessarily lead to withdrawal of the marketing authorization in Taiwan.

Recommendations:

1. Speed up the regulatory approval/registration process. It would be helpful to create a TFDA/industry taskforce to identify solutions and develop a roadmap for achieving them.
2. Liberalize the CPP requirement:
   - Approve the New Chemical Entity without any source or reference CPP if in compliance with the requirements under Drug Review Guideline Article 38-1.
   - Accept one CPP or alternatively an approval letter from the regulatory agency in one of the 10 reference countries, which should be sufficient evidence of the quality, safety, and efficacy of the drug and its use one of the reference countries.
3. Remove the requirement that the CPP must be notarized by the Taiwan representative office in the issuing country.
4. Establish a system of fast-track designation and review for new drugs aimed at critical unmet medical needs or treating orphan diseases.
5. Ensure transparency through:
   - Face-to-face communications at review meetings.
   - Creation of a transparent review process, including Bridging Study Evaluation (BSE) reviews.

Issue 3: Strengthen post-approval drug quality requirements to ensure consistent drug quality delivered to patients.

In order to deliver to patients a drug with consistently good quality, a comprehensive post-approval regulatory system exists in most developed countries. The system includes advanced GMP (Good Manufacturing Practice) regulations and routine inspection, an active pharmaceutical ingredient (API) management system, and controls on any changes in the manufacturing process that might impact drug quality.

Taiwan has already established a good foundation in drug manufacturing standards by implementing GMP and cGMP (Current Good Manufacturing Practice) regulations, as well as a bioequivalence requirement before drug approval. But the current post-approval regulatory system is not sufficient to ensure drug quality compared to the well-established practices in advanced countries – for example, with regard to governing

changes in API sourcing. We urge DOH to strengthen the local regulatory system on post-approval variations in order to ensure patients' access to good quality medicines.

Recommendations:

1. Establish an API registration system.
2. Adopt international practice on regulations governing API source changes.
3. Strengthen the current drug-quality management system.

Issue 4: Strengthen IPR protection through Patent Linkage and Data Exclusivity.

Effective Patent Linkage and Data Exclusivity (DE) are critical components of an IPR protection regime for pharmaceuticals. With clear patent and DE expiry dates, both research-based and generics companies can make better decisions on investing in R&D and manufacturing, save resources otherwise wasted on unnecessary litigation, and continue the flow of innovative drugs to patients.

Patent Linkage

Taiwan still lacks an effective Patent Linkage system – a mechanism for taking the patent status of the drug into account when issuing regulatory approval to generic versions of this drug. In 2009, at least 35 patent-infringing drugs were approved in Taiwan, and many of them were subsequently included on the reimbursement lists. To date, only one element of Patent Linkage has been implemented – patent registration upon receipt of a product license by the originator. Other crucial elements, such as a certification process, notice to the originator of a generic filing, and automatic stay of drug approval, have not yet been adopted. These shortcomings undercut Taiwan's international reputation as a country committed to IPR protection and cause stakeholders to bear unnecessary costs.

For the past several years, the biopharmaceutical industry has called for legislation to establish an effective Patent Linkage system. The government has been reluctant to take this step, however, thereby failing to fulfill the requirements of Articles 28 and 41 of the TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights) under the WTO.

Furthermore, proposed changes to the Intellectual Property Law to permit generics companies to conduct registration trials without penalty for infringing on originators' patents would only exacerbate the issue. A more hostile IPR environment will increase the risk of litigation, reduce originators' willingness to introduce new drugs to the Taiwan market, and jeopardize patients' right to have access to innovative medications.

Data Exclusivity

The regime in Taiwan for Data Exclusivity – a system whereby the regulatory authorities refrain from granting approvals to generic versions of an original drug for a limited period of time – also has a number of shortcomings. It covers only New Chemical Entity, or small-molecule, products, and not new indications and biologic, or large-molecule, drugs. Also, the period of protection is tied to the first approval granted outside Taiwan, not to the timing of the product's approval in Taiwan. These problems must be fixed if Taiwan wishes to encourage R&D in new indications (the extension of a drug to additional medical conditions) and new uses (e.g. new forms or dosages) of drugs.

When benchmarked against A10 countries, Taiwan is at the very bottom in terms of DE protection. For instance, the European Union provides 10 years of DE for both new chemical and biologic drugs and for pediatric applications of off-patent drugs, plus an additional one year for new indications, two years for orphan drugs, and six months for pediatric indications of a new drug. Canada provides eight years of DE for chemical drugs, six years for biologics, and an additional one year for pediatric indications. Japan provides eight years of DE through the "re-evaluation" period, and the United States provides five years for chemical drugs, 12.5 years for biologics, and an additional three years for new indications and one year for pediatric indications.

In considering modernization of its DE law, Taiwan can draw on the following two lessons. First, one of the major reasons why Canada amended its legislation in 2007 to increase DE from five to eight years was to remain competitive in the global R&D investment arena. Second, biologics are the next generation of life-saving and life-improving drugs, but because their development requires a longer time and greater R&D investment than small-molecule drugs, they need a longer DE period – hence, the 12.5-year DE for biologics in the United States.

Recommendations:

1. Enact laws and establish procedures to support implementation of Patent Linkage through NDA (New Drug Application) guidelines to effectively protect innovators' IPR.
2. Incorporate the following into the Patent Linkage system:
   a. Certification process – whereby a generic applicant certifies the grounds for a claim of patent invalidity.
   b. Notice to the originator of a generic filing – a requirement that the originator be notified by the generics company and DOH when an application is filed.
   c. Automatic stay of drug approval – in case of a dispute, a mechanism to suspend the approval process is suspended for a stated period of time (30 months in the United States) until the parties reach agreement or the generic company proves the patent right is not affected or not valid.
3. Taiwan should provide DE for new drugs and indications as follows:
   a. For Small Molecules (NCE)
   - five years.
   - three years for new indications / new uses.
   b. For Large Molecules (New Biologics)

- at least eight years.
- three years for new indications / new uses.

Issue 5: Implement a rigorous system of Separation of Dispensing from Prescribing (SDP).

The existing system at Taiwan hospitals requires staff physicians to prescribe medicines listed in the hospital formularies, which are selected through a process heavily influenced by the amount of profit to be gained by the hospitals. The government should build an environment in which hospital-staff doctors and pharmacists are able to make professional judgments based purely on the welfare of the patient without being restricted to choosing from among drugs procured for financial considerations. To accomplish that, DOH and BNHI should consider how hospitals and general practitioners can be compensated well enough so that they do not have to rely on profits from drug dispensing. The role of dispensing should be primarily in the hands of community pharmacists, who can provide consultation to patients on medications and healthcare.

Implementation of SDP is crucial to improving the quality of pharmaceutical care to patients. It would empower physicians to prescribe the most appropriate medications based on their professional expertise. It also creates a mechanism to ensure that pharmacists review patients' prescriptions to prevent any duplication or contraindication between prescriptions from different physicians or hospitals. Recognizing the difficulty of making an abrupt change in current practices, the industry supports the idea of implementing SDP in phases, and it offers to aid this process by developing the necessary distribution systems to ensure that the community pharmacies are properly served.

Good progress has been achieved in the ongoing project to release prescriptions from DOH hospitals and Taipei Municipal hospitals to the community pharmacies. This program has provided an excellent model for building cooperation among the medical, pharmaceutical, and pharmacy sectors, and we hope to see it more widely adopted.

Recommendations:

1. As AmCham has requested for several years, an SDP roadmap should be adopted, so that the direction of implementation is clear, even it must be carried out in stages. An integrated implementation plan should include measurements of SDP compliance as part of the hospital accreditation system. In addition, hospital fees should be adjusted to eliminate reliance on profits from drug dispensing, and the release of hospital outpatient prescriptions to community pharmacies should become mandatory.
2. More extensive education should be provided to the general public about the benefits of implementing SDP. Patients should be helped to understand the crucial importance of SDP in improving the quality of medical care and decreasing the wastage of healthcare resources by reducing the volume of unnecessary medication – resulting in long-term savings for the NHI budget.
3. The government should provide sufficient funding to improve the community-pharmacy infrastructure in preparation for meeting SDP demand.
4. Clear regulations should be adopted to ensure good dispensing practice by the pharmacies and to prevent drug substitution without the doctor's consent.
5. The government should periodically publish data on the amount of prescriptions released by individual hospitals.

REAL ESTATE

The Real Estate Committee respectfully submits the suggestions of our members on how to attract investment into the property market and stimulate urban regeneration. We request that the government actively consider the views of the real estate community, so as to create a vibrant real estate market that serves the interests of the public and also provides investors – including foreign investors – with a fair level of return.

The Committee looks forward to developing meaningful dialogue with government agencies to further improve the market.

Issue 1: Ease regulations affecting real estate acquisitions by overseas Chinese from Hong Kong and Macau.

Financial Supervisory Commission (FSC) regulation #770259495 is still on the books regulating applications by overseas Chinese from Hong Kong and Macau for consumer mortgage loans in Taiwan. The regulation stipulates the borrower qualifications, application process, loan amount, loan-to-value ratio, loan tenor, and the amount of security to be provided by overseas Chinese from Hong Kong and Macau – terms normally governed by individual commercial banks' credit policies in accordance with their credit appetite.

In the 2009 *White Paper*, we urged the government to abolish the 80% ceiling on the loan-to-value ratio and the maximum NT$5 million (US$159,000) loan amount under this regulation, as these limit the willingness of overseas Chinese from Hong Kong and Macau to invest in the Taiwan property market. The FSC responded that after consulting with the commercial banks, it would initiate a proposal to abolish those restrictions. But since the limits remain in place, we again call on the FSC to abolish regulation #770259495, so that overseas Chinese from Hong Kong and Macau may be treated as ordinary foreigners, thus encouraging property investments from Hong Kong and Macau.

Issue 2: Allow Chinese capital to be invested in commercial properties.

Cross-Strait relations have improved greatly in the past several years. Taiwan and China signed a series of agreements in 2009 and are currently negotiating an Economic Cooperation Framework Agreement (ECFA). The Committee

welcomes these developments, and believes that further communication and cooperation between the two sides will bring fresh impetus to the Taiwanese economy.

In June 2009, the Ministry of Economic Affairs opened the Taiwan market to mainland Chinese investors by announcing the "Regulations Governing Permission for People from the Mainland Area to Invest in Taiwan" and the "Regulations Governing the Establishment of Branches and Representative Offices in Taiwan by PRC Profit-Seeking Enterprises." The Committee also notes that several proposals made in this position paper last year – to allow PRC companies to set up subsidiaries in Taiwan and to extend the period of stay for PRC property buyers – have been adopted by the government. We would like express our gratitude for that action.

Nevertheless, according to Article 7 of the "Regulations on Permitting People of the Mainland Area to Acquire, Create or Transfer the Property Rights of Real Estate," PRC enterprises are only permitted to acquire real estate for their own use, whereas Article 19 of the "Land Act" stipulates that aliens may acquire real estate for various purposes including self use, investment, and public welfare. Considering the potential impact of investment in the commercial property sector on the general economy, the Committee urges the Taiwan government to allow mainland Chinese property investors to purchase commercial real estate (though not housing units), so as to stimulate the development of the commercial property market in Taiwan.

Issue 3: Review regulations governing building usage and set up a single contact window for advice on business registration.

Until the system was revised last year, applications for business registration were jointly approved by the various relevant government agencies. Part of the process was to determine whether the company's business-operation categories were in compliance with zoning and building regulations. Only after completing that process was the enterprise allowed to register its business at the new location.

In response to criticism that Taiwan's business registration process was overly complex and time-consuming, the government simplified the procedure, significantly improving Taiwan's ranking in the "Starting a Business" index of the World Bank's annual *Doing Business* report. Under the new system, the Commerce Department of the Ministry of Economic Affairs is solely responsible for registering a new company (and does so quite speedily). After registration is completed, the Department notifies the local units responsible for fire prevention, urban planning, construction administration, health, and other relevant matters. But since the authorities no longer scrutinize whether the company's business categories match the zoning and building regulations prior to issuing the business license, companies now face potential risk and uncertainty when choosing their business location.

To solve this problem while preserving the efficiency gains of the new system, the Committee suggests that the Taiwan government set up a single contact window to provide consulting service and a preview mechanism for companies having difficulty determining whether their business categories match the relevant zoning and building usage regulations.

Also, pursuant to the recommendation raised in the 2009 *White Paper*, we urge the authorities to review the existing zoning and building usage codes and to simplify the application process for changes in building-occupancy permits.

Issue 4: Establish a non-profit agency to facilitate urban renewal and speed up the urban renewal development.

As reported on the website of the Ministry of Interior's Construction and Planning Agency, currently 661 urban renewal projects are underway around Taiwan, though most of them are still at a very early stage of development. So far, there is no successful project available for reference for future investors. In addition, even for projects spearheaded by the government, there is no clear source of information on the current status of projects in terms of raising investment capital.

The Committee urges the government to accelerate the implementation of existing urban renewal projects and to provide potential private-sector investors with definitive project timetables and investment information to facilitate the process of investment evaluation.

Article 36 of the "Urban Renewal Act" obligates the government, upon the request of the urban renewal developers, to enforce the demolition of existing enhancements on the subject site so as to expedite redevelopment work. Since the "Urban Renewal Act" came into effect in 1998, however, the article has never been put into practice; the urban renewal process consequently can be held up by a small group of landowners or even a single individual. Even though the Article's supplementary regulations set a timeline for the developers and land owners to reach agreement, it has not been effective due to the passive role taken by the government in enforcing Article 36.

The Committee strongly urges the government to strictly enforce the measures stipulated in Article 36 in order to facilitate urban renewal, bringing such benefits as economic stimulation, improvement of the environment, and enhancement of Taiwan citizens' quality of life.

Issue 5: Encourage the opening to foreign enterprises of public tenders for projects valued below the GPA threshold.

The World Trade Organization's Government Procurement Agreement (GPA), which Taiwan joined on July 15, 2009, only applies to projects above a certain monetary threshold. Since many consulting and research projects designed by the government are relatively small-scale and therefore not covered by GPA protection, foreign enterprises are often excluded from these bids. This restriction deprives Taiwan of the experience and expertise that these foreign enterprises can offer.

The Committee strongly urges the Taiwan government to encourage the various procuring entities among public

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, suncare 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

individual income tax rates will mean that salary earners will now contribute more to tax revenue than corporate taxpayers. That condition would be extremely unusual in other countries of the world, and is not considered a healthy phenomenon for a national tax structure.

Issue 2: Treat true-up and true-down adjustments consistently in accordance with Transfer Pricing Rules.

Under the Taiwan Transfer Pricing Rules, taxpayers are required to submit contemporaneous documentation to prove that related-party transactions were conducted at arm's length, as well as to make any necessary and appropriate true-up and true-down adjustments on their corporate income tax returns. In practice, the factors that multinational companies must take into consideration in setting their transfer pricing structures are extremely complicated, and given the many market variables, it is extremely difficult to accurately estimate actual operational results in advance. Hence, at the end of a tax period, it is necessary to conduct a one-time adjustment in accordance with the results of the transfer-pricing study.

But the practice adopted by the Tax Office is to treat true-up adjustments as taxable income, while denying tax deductions for true-down adjustments. This practice conforms with neither Taiwan's own Transfer Pricing Rules nor the tax practices commonly adopted in OECD countries. Although downward adjustment was accomplished in some cases in the past by obtaining advance approval from the MOF, the advance approval process may not be suitable for multinational companies operating under strict time constraints. The Committee urges the MOF to look into this inconsistent and inequitable taxation treatment on transfer pricing adjustments and to provide clear guidelines for both the Tax Authorities and taxpayers to follow. Furthermore, in order to reduce tax uncertainties and create a more favorable investment environment for international companies, penalties should not be imposed due to a difference in interpretation when the tax authorities disagree with the transfer-pricing adjustments taken by the tax-payer.

Issue 3: Mitigate the adverse tax impact from applying the AMT Law to expatriates in Taiwan.

The current Income Tax Law defines a foreigner staying in Taiwan for more than 182 days in a calendar year as being a Taiwan resident. As the Taiwan Alternative Minimum Tax (AMT) Law refers to that definition of Taiwan residency, the application of the AMT regime to individual overseas income will also extend to foreign nationals whose stay in Taiwan has exceeded the 182-day threshold. This change will subject expatriates in Taiwan to 20% AMT on their non-Taiwan-source investment income, such as interest, dividends, and capital gains from the disposal of overseas investments (stocks, real estate, etc.), although this income is unrelated to their work assignment in Taiwan.

The adverse tax impact on expatriates stationed in Taiwan is expected to discourage international companies from sending senior executives and other talented personnel to Taiwan – inevitably undermining the government's policy of trying to attract talent to the island and to promote Taiwan as an operations center.

The Committee urges the MOF to carefully re-assess the definition of "Taiwan resident" for AMT purposes to exclude foreign nationals without dual citizenship who stay in Taiwan for a period of over of 182 days in a tax year.

Issue 4: Re-consider taxing foreign enterprises for drop-shipment transactions in Taiwan.

Taiwan's success in developing the high-tech sector has led many foreign companies to contract with Taiwan enterprises for manufacturing, testing, assembly, or other activities before the finished product is delivered to buyers overseas. It is common in this business model for the foreign companies to ship semi-finished goods to the Taiwan contract manufacturers for further processing, after which the products are shipped directly to the buyers outside Taiwan in what is known as a "drop shipment." When it comes to whether the value added in the drop-shipment process should be taxed in Taiwan, the MOF takes the position that it depends on whether the sale was completed in Taiwan.

As there is no clear definition of "sales completed in Taiwan" in tax laws and regulations, the MOF has interpreted it to mean that the buyer and the sales terms have already been determined and the sales orders received before the products leave Taiwan. If the sales are considered to be completed in Taiwan, the foreign enterprises will be deemed to have Taiwan-sourced income, which is calculated according to the proportion of contribution to the transaction attributable to activities in Taiwan (for example, procurement, testing, and/or storage functions). To calculate the business profit attributable to Taiwan, the taxpayer needs to provide the enterprise's global transfer pricing report analysis or other documentation.

The overall tax rate for drop shipments will therefore be: Contribution rate x actual profit x 17% corporate tax rate. But the definition of "sales completed in Taiwan" that has been applied seems unreasonable in the context of the drop-shipment business model. In practice, foreign enterprises will not place orders with Taiwan contract manufacturers for further processing before having already secured the buyers to whom those processed products will be delivered. Thus, drop-shipment transactions inherently fall within the definition of completion of sale.

In addition, the definition that has been applied would tend to encourage foreign enterprises to insert their overseas warehouses as intermediary stops in the delivery process, even though the buyers had been identified from the beginning. "Completion of sale" should actually refer to the moment at which delivery is made, and under the drop-shipment business model, it takes place overseas, not in Taiwan. Since the sales are not completed in Taiwan, there is then no convincing

basis for treating the added value made by Taiwan contract manufacturers as Taiwan-sourced income.

Moreover, Taiwan contract manufacturers have already paid or will pay income tax for the added value by reporting their remuneration – that is, the service fees obtained from their foreign customers – on their tax returns. To tax the foreign enterprises for the same value added creates double-taxation issues, and deviates from international tax practice.

If other countries were to apply the same tax treatment on the drop-shipment business model as Taiwan does, Taiwanese companies would certainly complain of unfairness.

In the interest of reciprocity, the smooth promotion of international trade, and Taiwan's reputation as a competitive place with which to do business, the Committee urges the MOF to revise its method of taxing foreign enterprises under the drop-shipment business model.

Issue 5: Clarify whether the transfer of securities for purposes other than sale is subject to securities transaction tax.

According to Article 1 of the Securities Transaction Tax Act (STT Act), the sale of Taiwan securities is subject to securities transaction tax (STT). Accordingly, the transfer of securities as a gift, inheritance, or capital contribution, or for any purpose other than sale should not be subject to STT.

In addition, the Mergers and Acquisitions Act (M&A Act) prescribes that the transfer of securities in a merger, de-merger, or a qualified business and assets transfer in an M&A transaction is exempt from STT. However, because the M&A Act applies only to M&A transactions in which at least one party is a Taiwan company, the tax authorities seem to be of the opinion that the transfer of Taiwan securities in an M&A transaction between two foreign companies should be subject to STT. Moreover, a transfer of Taiwan securities, such as the transfer of securities as capital contribution or the distribution of residual assets to shareholders upon a company's liquidation, must be conducted in accordance with the Company Act in order for such transfer to be exempt from STT.

Because of the different opinions between the tax authorities and taxpayers over which transfers of Taiwan securities are subject to STT, the Committee urges the MOF to issue a directive to explicitly confirm that the transfer of Taiwan securities for purposes other than sale should not be subject to STT.

Issue 6: Clarify "hire of work" contracts under the Stamp Tax Act.

Under the Stamp Tax Act, the parties to a "hire of work" contract signed within Taiwan are subject to stamp tax. A contract for "hire of work," according to the Civil Code, is a contract under which a party agrees to complete a specific piece of work for the other party in return for remuneration. As the Stamp Tax Act does not include a definition of "hire of work," the tax authorities have tended to treat the majority of contracts as contracts for "hire of work," as most contracts involve one party completing certain work for the other party. An example is the MOF tax ruling issued September 22, 1999 concerning a contract for cleaning and maintenance as well as security services. The MOF stated that because the contract stipulated the items to be cleaned and maintained, and provided that the remuneration would be paid only if certain work was completed, the contract (except for the portion dealing with security services) constituted a "hire of work" contract and was thus subject to stamp tax.

The tax authorities' broad definition of "completion of specific work" has led to difficulty in distinguishing "mandate" contracts from "hire of work" contracts in terms of substance. Both types of contracts involve one party performing certain work for the other party in return for remuneration. Under the tax authorities' interpretation, virtually all contracts would be deemed "hire of work" contracts and thus subject to stamp tax if signed within Taiwan.

In view of the increasing confusion regarding whether or not a contract is subject to stamp tax, the Committee urges the tax authorities to issue a clear and specific definition of "hire of work" contracts under the Stamp Tax Act. As cases in point of "hire-of-work" contracts, the authorities may refer to three examples cited under Item 4, Article 5 of the Stamp Duty Act: contracts for construction, printing, and contract manufacturing.

Issue 7: Remove obstacles to income payers' following the tax ruling on Taiwan-source income.

The Committee appreciates the tax ruling issued by the MOF on September 3, 2009 to clarify the scope of Taiwan-source income. Although the tax ruling provides guidelines for determining Taiwan-source income, in tax practice income payers have not been following this tax ruling to determine the Taiwan-source income on payments to foreign entities. Instead, the income payers have continued to take a very conservative approach in treating the payment as Taiwan-source income, withholding 20% on the gross payment. This practice is mainly due to the income payers' fear of incurring a tax penalty if it is considered to have under-withheld tax.

If the income payer follows the tax ruling and judges that any payment (or a portion of it) is not Taiwan-source income and therefore does not withhold tax upon the payment, but the tax office later disagrees with the income payer's decision, the income payer will be regarded as having failed to withhold tax and will be subject to a severe penalty. As a result, the income payers, notwithstanding the tax ruling, are still deducting the 20% withholding tax on the payment.

Further, since the income payer still continues to withhold 20% on all payments to foreign entities, the foreign income receivers may be forced to file tax refund applications and/or seek private rulings from the tax office on specific transactions – creating an administrative burden for both the taxpayer and the tax office. In essence, the above-mentioned

income payers' fear of being subjected to a penalty has hindered the application of the tax ruling, preventing the MOF from accomplishing the intended objective of providing clear guidelines for taxpayers and withholding tax agents to follow. To resolve this problem, the Committee suggests that the MOF provide a penalty waiver in cases where the income payer has made a reasonable effort (such as collecting relevant documents, seeking professional opinion, etc.) to determine whether the payment is Taiwan-source income under the terms of the tax ruling.

Issue 8: Classify capital income from registered offshore funds as domestic income.

Registered offshore funds represented in Taiwan by master agents and overseas funds launched by Securities Investment Trust Enterprises (SITEs) are both important investment conduits for Taiwanese investors to participate in worldwide economic growth and diversify their investment portfolios. Considering the identical nature of these two products, the Tax Committee shares the position of the Asset Management Committee that they should receive equal tax treatment, ensuring a fair competitive environment.

But as a result of an MOF circular on September 3, 2009, capital income from registered offshore funds – though not from SITE overseas funds – has been excluded as domestic income and starting this year has become subject to the Alternative Minimum Tax system. As the Asset Management Committee notes in its paper, this interpretation has not only jeopardized the interests of investors purchasing registered offshore funds, but is also inconsistent with the view of the Financial Supervisory Commission (FSC), which has defined both registered offshore funds and SITE overseas funds as "securities" under Article 6 of Securities Exchange Law. Additionally, the MOF has categorized capital gains from foreign exchange-traded funds (ETFs) listed on Taiwan Stock Exchange as domestic income even though, like registered offshore funds, they are launched outside Taiwan. We therefore urge the MOF to revise Article 8 of its circular to specify that capital income from securities listed or launched or registered in Taiwan is regarded as domestic income.

TECHNOLOGY

The Committee would like to express its appreciation for the government's efforts to develop Taiwan as an operations headquarters and to further spur the transition of the economy from a primarily manufacturing base to one emphasizing R&D and the service sector. Investments in technology, services, and intellectual capital will be crucial for Taiwan's transformation into an attractive and competitive location for both domestic businesses and multinational corporations.

One of the necessary measures for achieving this goal is the provision of a comprehensive set of preferential tax incentives to encourage businesses to conduct R&D, design, and other service functions within Taiwan. Although investment tax credits are available, the implementation details need to be further clarified. In addition, the amount of investment currently going into software, services, and training is insufficient to support the desired transformation.

Although Taiwan's R&D expenditure has grown steadily over the past years – from 2.4% of GDP in 2004 to 3% in 2008 – the Committee recommends that the government consider even higher goals, emulating countries that lead the world in R&D expenditures. Israel, for example, has the highest R&D expenditure as a proportion of GDP (4.8%), followed by Sweden, Japan, and Korea. Increasing public expenditures on R&D would facilitate the government's goal of upgrading Taiwan's economy and also help strengthen Taiwan's competitiveness.

Further, the Committee encourages the government to share its long-term plans to boost investment in green energy and energy conservation. That information will allow corporations to work hand-in-hand with the government in developing new solutions in support of those goals.

In line with the objectives of promoting Taiwan's development as an operations and R&D hub and furthering the transition to a services-based economy, the Committee presents the issues below and looks forward to discussing them with the relevant government agencies, offering our assistance in identifying possible solutions.

Issue 1: Increase government spending on software, services, and intellectual capital.

Development of an information society has been widely accepted as the most important tool for meeting the "Millennium Challenge of Human Needs" set by the United Nations (UN). That development must be anchored not only in the availability of relevant hardware, but also of software and technology-related services.

In Taiwan, production of Information and Communications Technology (ICT)-related hardware – currently worth NT$3.6 trillion (US$114 billion) annually – is the major contributor to the export economy. That success has led many observers to assume that Taiwan's software and technology-related service industries, which only contribute NT$200 billion-$300 billion (US$6.3 billion-$9.5 billion) annually to GDP, are also in good shape.

According to an International Data Corp. (IDC) report in 2009, software and services account for up to 61.3% of global IT spending, and each year the growth rate for software and services exceeds that of hardware. The same report, however, shows that Taiwan's expenditure on software and services stands at only 37.7% of total IT spending. In addition, according to Bank of Taiwan data, software made up only 20% of government IT procurement over the past two years. In the Taiwan government's economic stimulus program carried out in 2009, software and services spending represented less than 10% of the total. Taiwan clearly has not caught up with the global trend in

the IT industry to concentrate on software and services development.

The software and service sectors, which are high-margin and knowledge-intensive businesses, should constitute the core of the manufacturing-to-service transition and serve as the key to Taiwan's economic and social transformation. Though Taiwan enjoys the benefit of ICT hardware exports, it is far from reaching the potential value that software and services could deliver. What steps are needed to close the gap?

1. ***Strengthen government organization and leadership in IT.*** The government is in the process of carrying out a reorganization plan, which – the Committee is pleased to note – will include the establishment of a Ministry of Science & Technology when it comes into effect in 2012. In addition, the reorganization plan will reduce the number of civil servants from 173,000 to 160,000 in five years. Following that significant decrease in personnel, the effective use of IT equipment will be critical to ensure government efficiency. However, the Information Restructure report published by the Executive Yuan's Research, Development and Evaluation Commission (RDEC) shows a lack of focus on strengthening the government's IT capacity. Moreover, the government plans to eliminate IT departments at the third- and fourth-tier level within each ministry. We are concerned that this move will hinder the government's IT capacity and put the nation's information security at risk. We therefore ask the Government to strengthen IT-department capacity and competitiveness in the course of the reorganization process. The government should also recruit experienced IT professionals and entrust them with adequate authority to have an impact in promoting development of Taiwan's software and technology-related services sectors.
2. ***Improve the government procurement environment.*** Current government procurement laws and regulations need to be revised to properly recognize the value of software and services. Specifically, we ask the government to: 1) set up a database to provide regularly updated man-month market value data for IT professional services; 2) adopt a most-favorable bid system without setting a bottom price on bids for professional, technology, and information services; and 3) mandate the adoption of model contracts published by the Public Construction Commission (PCC) on bids for professional, technology, and information services. The Committee is pleased to see that amendments to Articles 11, 52, and 63 of the Government Procurement Act, now being reviewed by the Legislative Yuan, have incorporated the above principles and we support the passage of these amendments.

   In addition, a longstanding issue on the Committee's agenda is the practice of some government agencies to ask vendors to assign to them all relevant intellectual property rights and trade secrets related to the procurement contract, regardless of the nature of the project. Frequently such demands deter multinational companies from bidding on government contracts in Taiwan. We once again urge the government to set a clearer policy allowing vendors to retain ownership of IP rights and to adopt measures to ensure that such a policy is clearly conveyed to all procuring public entities. The government should, except in the case of military weapons development programs, be satisfied with a royalty-free, perpetual license of the relevant IPR, with ownership remaining in the hands of the contractor. If other countries applied the same rule that certain Taiwan government entities apply, Taiwan would be unable to access any IPR developed by multinationals in countries other than Taiwan.
3. ***Set clear goals for governmental IT spending.*** The government should set up qualitative and quantitative goals on IT expenditure by referencing the "Declaration of Principles" and "Plans of Action" published by the UN-sponsored World Summit on the Information Society (WSIS) and taking the recommendations of industry professionals and academic experts into consideration. The objective should be to increase government investment in software services and intellectual capital, contributing to the upgrading of Taiwan's overall competitiveness and improvement in the Taiwan public's qualify of life.

Issue 2: Provide more government subsidiaries and incentives to encourage renewable energy development in Taiwan.

The Committee urges the government to develop more integrated policies and incentive programs for renewable energy applications through greater coordination among the Environmental Protection Administration, Ministry of Economic Affairs, and Ministry of Transportation & Communications. Considering Taiwan's excellent technical expertise in this field and good market potential, the government should make every effort to grasp this opportunity. Recent policies adopted in Europe, Japan, the United States, and China – as well as the minutes of the Taiwan 2009 National Energy Conference – can be good reference for the government in developing long-term strategies for developing renewable energy. For example, China introduced a policy in February 2009 to encourage the use of energy-efficient vehicles through very attractive subsidies for the use of hybrid, electric, and fuel-cell vehicles in 13 major cities, in line with the Chinese government's strategic goal for renewable energy to constitute 10% of the total energy profile in 2010, and 12-16% in 2020. In comparison, the Taiwan government's current goal for renewable energy development (8% of total energy profile in 2025) is quite conservative.

The Committee recognizes that the government has made good progress in some subsidization programs for the installation of photo-voltaic (PV) facilities in houses and factories as well as rewards for reduction in electricity consumption. But a more aggressive target should be adopted for the number of PV installations in housing units, as the

Bureau of Energy's goal of installation in 100,000 houses in this decade is only one-tenth the level set by Korea.

We also suggest that the government undertake a broader public communications initiative to promote PV applications. In addition, from the supply chain perspective, the provision of more preferential customs duties for critical components for PV facilities would help spur the development of this sector. These steps would enable Taiwan to secure a competitive position in the global market in this increasingly important business sector in the coming decades.

Issue 3: Improve the effectiveness of the review and approval process for the R&D Investment Tax Credit programs.

In order to promote continuous investment in R&D in Taiwan, the government has set up a Research and Development Investment Tax Credit (RDITC) program. Currently, all RDITC applications are reviewed and approved by the tax authorities, but tax-agency personnel usually lack sufficient expertise and experience to evaluate the applicability of technology-specific research programs. Disputes therefore often arise between the tax authorities and companies applying for tax credits.

So as to improve the effectiveness of the RDITC program, we recommend that applications first be reviewed and/or endorsed by the competent regulatory agencies in the applicant's industry, such as the Science Park Administration or the Industrial Development Bureau. That system would help minimize disputes and enable the RDITC program to better achieve the government's goal of encouraging investment in R&D activity.

Issue 4: Continue to support WTO initiatives to uphold Information Technology Agreement commitments.

The Information Technology Agreement (ITA) is an agreement under the World Trade Organization (WTO). Countries joining the ITA commit to eliminate customs duties on the IT products covered by the Agreement (such as personal computers, computer printers, computer monitors, semiconductors, and telecommunications apparatus). The ITA currently has more than 70 participants, representing an estimated 97% of global trade in the high-tech sector. This landmark agreement has spurred innovation, productivity, trade, and investment among its participants. In so doing, it has helped Taiwan become one of the leading high-tech centers for global manufacturing.

Since the Agreement came into force in 1997, more sophisticated or technologically advanced versions of ITA products have entered the marketplace. In recent years, the European Commission (EC) has taken to pushing technologically advanced or more sophisticated versions of ITA products outside the Agreement, subjecting them to duty rates as high as 14%. Despite bilateral and multilateral efforts to engage the EC on this issue with requests that the ITA commitment be honored in letter and spirit, the EC has not changed its practice.

On May 28, 2008, the United States and Japan formally requested consultations with the European Union and its member states with respect to their tariff treatment of certain IT products, and on June 12, 2008, Taiwan's Permanent Mission to the WTO joined in that effort. The 2008 consultations with the EC did not resolve the matter, however. As a result, Japan, Taiwan, and the United States jointly requested that the WTO establish a dispute settlement panel, which was done in September 2008. The case has already been heard. The confidential interim report was issued on June 11, 2010 and the public report is expected in the fall.

This issue remains important to the global high-tech sector. The Committee applauds the Taiwan government's steadfastness in seeking to uphold the ITA and ensure that member countries respect their commitments.

TELECOMMUNICATIONS & MEDIA

Telecommunications and media is an important sector that can contribute significantly to a country's long-term economic progress. A study by the London Business School, for example, showed that every 10% increase in mobile penetration leads to a 0.6% increase in GDP growth. But while Taiwan was once the information and communications "tiger" of Asia, leading virtually all neighboring countries in the development, deployment, and rapid adoption of advanced communications and media services, this position of distinction has been lost. The Committee believes that an overly constraining regulatory environment has been mainly responsible for this stagnation and that this problem requires urgent attention from the government.

In any nation, the telecommunications and media sector is essential to a vibrant and successful economy. Taiwan's current practice of implementing restrictive and outdated regulations must therefore give way to more open and progressive policies, so as to steer the nation towards a convergent communications future with cutting-edge services. Failure to do so will see Taiwan lose the race with other neighboring markets for the flow of funds for infrastructural investment and product development into Asia. Conversely, success in reinvigorating the telecoms and media sector would substantially boost investment in Taiwan, leading to greater job creation and an enhanced quality of life for its citizens.

The Committee has highlighted six critical areas of needed improvement for the government of Taiwan to consider.

Issue 1: Create a progressive regulatory environment embracing an open-market approach.

In this critical industry sector, what is needed above all is the creation of a more liberalized "light-touch" regulatory approach. The Committee recommends that Taiwan's regulators adopt the following directions in terms of process and policy:

1. ***Engage in open and two-way communications with industry participants.*** The regulatory body, the National Communications Commission (NCC), should establish

an open and substantive dialogue with both consumers and industry participants. Such active engagement with industry representatives could develop common objectives to stimulate economic growth, technological advancement, consumer choice, and long-term customer satisfaction. Some regulators appear to hold the misguided view that they should refrain from meeting directly with industry participants in order to maintain their independence and objectivity. But as the practices of other regulatory bodies both in Taiwan and internationally have shown, other means are available to ensure the attainment of that goal.

In the rapidly changing telecommunications sector, more so than in most others, regulatory isolationism makes it impossible for the government to keep up to date with industry developments. This problem is exacerbated by the fact that most NCC commissioners lack any operationally-based industry experience. The result is creation of a significant barrier to the formation of truly effective regulatory policies aimed at spurring growth in the sector. Meetings between industry and government should be encouraged, not avoided, and made part of the public record as a means of monitoring progress and success.

2. ***Focus on industry development and building Taiwan's competitive advantages.*** A regulatory agency should have four primary areas of focus: industry policy-making, liberalization, enforcement, and development. Since its establishment, however, the NCC has concentrated its efforts almost exclusively on consumer protection. As a result, it has been occupied primarily in enforcing outdated policies and imposing new conditions and restrictions on service providers. The unfortunate absence of regulatory focus on industry growth and development has led to a drop in domestic content development – despite Taiwan's potential for becoming a world-class producer and exporter of Mandarin and English content. To help turn this situation around, the NCC should encourage substantive discussion on how industry and government can work together to establish benchmarks and build Taiwan's capabilities. Regularly benchmarking Taiwan's telecom and media progress against that of other nations would help to identify current and future development opportunities to be considered for Taiwan.
3. ***Develop a fair and level playing field for all competitors.*** In Taiwan as elsewhere around the world, a massive convergence of media and telecommunication services is underway. This trend brings consumers the benefit of choice among multiple service providers, new offerings, and price competition. But the trend has also made clear the existence of major inequities in the rules and conditions by which various industry participants can conduct their business. It is important for the regulators to ensure a fair and level playing field for all market participants, whether their origins are in telecommunications or media, and regardless of their size or the composition of their ownership.
4. ***Use more "carrots" and fewer "sticks."*** The policies and enforcement practices of Taiwan's regulators tend to be restrictive in nature, with "failure to comply" consequences that are highly punitive. Regretfully, this invariably places industry participants as well as future investors in an unnecessarily adversarial relationship with regulators. It would be far more constructive for the NCC to seek more of a "growth partnership" with industry participants, offering positive motivations for achieving common objectives. As a means of fostering technological development, market growth, and customer satisfaction, regulators should creatively establish incentives and rewards for all investment and development activities that advance Taiwan's goals in the area of telecommunications and media. Industry growth and accomplishment of the national agenda for telecom and media are more likely to be attained if policies based on punishment give way to those based on rewards.

Issue 2: Reposition the NCC for the betterment of industry and the economy.

The composition of the NCC will change this July as some incumbent commissioners reach the end of their term of office and are replaced by newcomers. This is thus an opportune time to review the role of the Commission and its progress in facilitating industry growth. Such a review is critically important given that competing Asian economies are aggressively pursuing measures to facilitate growth and development in their telecommunications and media sectors.

According to the NCC's Organization Act, the commission's charter is to promote the sound development of the communications sector, effectively exercise regulation, ensure fair and effective competition in the market, and protect consumers' interests. Since its inception, however, the NCC has adopted a far narrower focus than what was intended, seeing its role mainly as a consumer protection commission rather than an enabler of sector growth. Instead of liberalization and long-range development, it has concentrated on short-term decisions, often in ways that stifle growth and innovation.

The NCC's decision to mandate an across-the-board rate reduction for the telecom industry is one of the most flagrant recent examples of this disconnect between industry and government (see Issue 4 below for more details). There is a pressing need to draw the Commission's attention back to one of its fundamental original purposes – industrial development – through well-reasoned regulation that strengthens Taiwan's international competitiveness.

Several of the current impediments to the NCC's effectiveness could be corrected by amending the NCC's Organization Act. For example, Constitutional interpretation No. 613 by the Council of Grand Justices states that the NCC should serve as an independent and non-partisan media watchdog body, but the commissioners have deliberately misinterpreted that ruling. The Grand Justices' use of

the term "independent" should not be construed to mean that NCC is a totally separate entity from the Taiwan government or that it is not accountable to both governmental and non-governmental stakeholders. The intent was simply to ensure that the commission is objective and non-partisan when dealing with each specific case it is involved in. For the NCC to divorce itself from contact with stakeholders, as it has done repeatedly since its inception, is a recipe for regulatory failure. All policies, regulations, or decisions made by the NCC must be done through a transparent and consultative process that ensures an optimum outcome for consumers, industry, and the country as a whole.

Another obstacle to an effective NCC is the lack of industry expertise among the commissioners. The last two sets of appointments were heavily skewed toward academics, leaving a paucity of commissioners with actual practical experience in the telecom and media sector. The NCC should seek to fill commissioner as well as staff openings with a balanced and diverse set of talent, including people who bring first-hand industry experience to the task, as is done with the U.S. Federal Communications Commission (FCC). The long-term goal should be to establish a regulatory organization whose makeup reflects a strong cross-section of industry work experience.

We recommend amendment of the NCC Organization Act to clearly stipulate the proportion of commissioners to be drawn from academia and the proportion composed of communications specialists from the private and public sectors. This change would help ensure the NCC's ability to collaborate with other government agencies and with industry.

A third consideration is the lack of leadership within the NCC. Instead of being appointed, the NCC Chairman and Vice Chairman are elected by their fellow commissioners, and the Chairman has no authority to make decisions on any matters brought before the NCC. Instead, all decisions are made by majority vote. To ensure clearer accountability and stronger leadership in the NCC, the Organization Act should be revised to specify that the Chairman and Vice Chairman be nominated by the EY and approved by the Legislation Yuan (LY). The Chairman should also be given the autonomy to make final decisions. Besides providing accountability in the NCC's decision-making, the change would also clearly establish the link between the NCC and the rest of government, ensuring that the commission's policies and regulations are in step with broader national objectives such as economic growth. A bill to revamp the NCC Organization Act along the lines discussed here is currently being discussed in the Legislative Yuan. We urge lawmakers to speedily enact that legislation.

Issue 3: Relax foreign investment restrictions for the telecom and media industry.

Given the dynamic development of the telecommunications and media sector on a global level, it is important to ride on potential growth opportunities across the region. Limitations on inbound foreign investment (especially for capital investment from China) and on outbound investment by Taiwan companies across the region must be removed in order to provide greater scale for operators in Taiwan. Currently, only some general Type-II telecom businesses are opened for cross-Strait investment, and the existing restrictions on investor qualifications and the imposition of a shareholding cap create a barrier to further cross-Strait cooperation.

As an illustration, opening up telecom-sector investment in both directions with China would help strengthen not only the telecom business but also such upstream and downstream industries in Taiwan as IC design, handset manufacturing, software development, value-added supply chains, and mobile content creation.

We realize that government's major concerns about cross-Strait investment may be national security and other non-economic issues. But measures could be put in place to address any such concerns, as they have been in banking and other sectors being opened to cross-Straits investment, without impact on Taiwan's sovereignty or security. In line with the Taiwan government's policy of "Rooted in Taiwan, Connecting the World," the government should take a more positive attitude toward promoting investment in media and all types of telecommunications across the region, including China, thereby helping Taiwan to fully exploit the growth potential of the digital era.

Issue 4: Minimize or remove pricing regulation.

A key role for regulators in a fully competitive market is to create a level playing field to ensure sustainable market growth. Examining the regulatory practices of other countries that have successfully shepherded in the era of convergence and promoted the advancement of information and entertainment services, it is clear that a "rational" approach to regulation is the common denominator. Regulators in these more progressive nations have recognized that by allowing market forces to guide the development of competitive offerings, domestic as well as foreign investment occurs and innovation follows. This, in turn, leads to job creation, economic growth, and an improved quality of life for users of these services.

For the past decade, and even more so in the past 12 months, decisions on Taiwan's rate regulations have been made based on the "one-size-fits-all" approach and "cheaper-is-always-better" philosophy rather than on well-reasoned economic analysis for economic growth and job creation.

Examples are the NCC's recent decisions on price regulations for both telecommunications and cable TV. Currently, a nation-wide price cap of NT$600 per month is imposed on what cable operators can charge for their service, and telecommunications operators were recently forced to reduce tariffs in line with the NCC's policy of using an "X value" formula to calculate and adjust fee rates and tariffs. Throughout history, price caps have always proven to create unfavorable economic results by depressing willingness to engage in new investment and discouraging innovation. The cap on cable TV services and the NCC's policy of requiring annual tariff reductions by telecom operators have no basis in modern economics. Market forces rather than the regulator should set prices for various services.

The experience of Korea and the United States in this regard should be instructive. In 2006, the U.S. Congress, in recognition of the emergence of IPTV, passed an amendment to free cable operators from rate regulation. Similarly, in 2008 the Korean regulator allowed cable operators to increase their rates, resulting in the deployment of digital set-top boxes in one million homes. The Committee strongly encourages the NCC to actively engage in dialogue with the FCC and other regulators to learn from their experiences. To minimize or remove pricing regulation is a critical step to encourage long-term infrastructural investments for Taiwan.

Issue 5: Actively support the development of innovative technologies and services.

To encourage innovation and product development, the government needs to develop a specific set of regulations to facilitate the licensing and testing of new technologies and services. This will enable new ideas and technology to be launched without unnecessary delays, especially when such innovative technologies and services have already been widely adopted in other countries. The focus of such regulations should be to enable the launch of new services, rather than to police or validate product technology.

For the past two years, for example, femtocell has been promoted by the telecommunications and network equipment industry. It has already been introduced by three major mobile carriers in North America – Verizon, AT&T, and Sprint Nextel – while Japanese carriers such as NTT Docomo and Softbank have also started implementing it, and European carriers such as those in France, Norway, and the United Kingdom have also announced their intended launch. While Chunghwa Telecom has imported femtocell to Taiwan since 2008, however, this service has not yet been launched commercially, mainly due to the absence of supporting regulations.

Femtocell is considered as one way to improve poor indoor coverage in homes or businesses for 3G, WiMAX, and future 4G networks, and also serves as a means of implementing network convergent services. It is thus highly regrettable that Taiwan's regulators are not facilitating femtocell development, which has already been widely deployed worldwide, and that they have treated it as a type of base station when it is actually an end-user device.

We urge the government to establish telecommunications regulations in a timely manner to support the development of innovative technologies and services, as this would bring significant benefits to Taiwan in terms of raising the competitiveness of its communications industry.

Issue 6: Protect intellectual property rights for video content.

Recognizing Taiwan's continued efforts to improve IPR, the Office of the U.S. Trade Representative (USTR) removed Taiwan from its "Special 301 Watch List" in January 2009. But the Committee would like to draw attention to an area of IPR enforcement that requires additional effort by the Taiwan government – that of legal protection for video content in the pay TV/video industry.

Currently Taiwan lacks an effective legal framework to protect the IPR of video content transmitted via cable networks. Dishonest consumers are able to access Cable TV for free by simply connecting their TVs to the cable network without subscribing to it. When such signal theft is discovered, cable operators are prevented from effectively pursuing these violators, given that this form of piracy is not treated as a criminal offense. Under Taiwan law, operators may only seek civil remedies against those who access cable signals without authorization. Since civil judicial proceedings are ineffective as a deterrent and time consuming, cable operators have been unable to adequately protect themselves and their content partners against cable piracy.

Cable piracy has remained widespread because of this lack of legal deterrent. While such cable piracy is not unique to Taiwan, many countries have already recognized the extent of the problem and have put a strong legal framework in place by criminalizing signal theft so as to give cable operators and content providers sufficient legal protection.

Cable piracy causes a great loss to Taiwan's cable industry and impedes the healthy development of the video content industry as a whole. In September 2007, Tseng Yi-Hong, then head of the Government Information Office's Radio and Television Affairs Department, estimated that around 15% of total households in Taiwan engage in cable piracy, which would mean that approximately 1.14 million households were illegally watching cable TV. There is no reason to believe that the situation has improved since then.

Based on an average annual subscription fee of NT$6,480 per household (NT$540 per month), the annual revenue loss in Taiwan from cable piracy would exceed US$230 million. Such a significant shortfall not only discourages cable operators from further investing to upgrade networks and services, but also discourages content providers from creating new digital content. This sets in motion a vicious cycle that eventually erodes the entire industry. It is not surprising then that Taiwan has lagged behind other leading Asian economies in the introduction of new services such as digital TV.

Although Taiwan's cable and content industries have raised their concerns to the government for many years, this issue remains unresolved. To stop cable piracy and provide rightful IPR protection to video content owners and developers, we strongly urge the government to make signal theft a criminal offence, as has been done effectively in many developed markets, including Australia, Singapore, and the United Kingdom. Even less-developed economies such as Indonesia and the Philippines have already made more progress than Taiwan in IPR protection for the pay-TV industry.

In an era of digital convergence, strong IPR protection for video content will benefit not only the cable industry, but other industries as well. A healthy video content market ensures a supply of related quality content to drive the

adoption and growth of such platforms as online, mobile, and wireless. If Taiwan is to remain competitive among Asian peers like Hong Kong, Singapore, and Korea in the areas of high-quality content production and state-of-the-art network investments and innovation, it must face the piracy problem head on and find a solution.

TRANSPORTATION

The Transportation Committee believes that a well-designed transportation system with a global perspective will be a key asset for the continued growth of Taiwan's economy. This Committee includes four arms of the transportation service fields: Express Cargo, Automobile, Aviation, and Shipping. While each of these industry sectors has its own priority issues, the goal of these recommendations is the same – to help cultivate a modern and advantageous transportation and logistics platform that can contribute to Taiwan's overall competitiveness.

The multinational companies in these industries have witnessed rapid improvement in other neighboring countries. If Taiwan is not to be left behind, the government needs to quickly recognize areas of potential weakness, devise feasible strategies, and ensure swift implementation of solutions.

The Transportation Committee looks forward to cooperating closely with the Taiwan government and domestic non-governmental organizations to develop solutions to specific transportation and traffic issues, so as to help make Taiwan more attractive and competitive as a business environment.

EXPRESS CARGO

The volume of express cargo shipments is often used as a benchmark to gauge international trade activity in a given country. Unlike air cargo transportation, the global express cargo industry plays four different roles – international air transportation, customs clearance, ground transportation, and warehousing or logistics. Since the 1980s, Taiwan has made good progress in developing the global express cargo industry, but what is the game plan for its further growth? At a time when the Taiwan government is putting a great deal of effort into the Taoyuan Aviation City project, it is worthwhile to examine how to further enhance the business environment in Taiwan for the global express cargo industry.

Issue 1: Cultivate a sound regulatory environment for development of the express cargo industry.

A regulatory environment that is contrary to the trend in the worldwide express cargo industry not only restricts the development of the industry but also impacts the global logistic capability of Taiwanese companies. Currently, only one set of regulations has been drafted specifically for the express cargo industry, the "Regulations Governing Customs Clearance Procedures for Express Consignments." The overall regulatory approach in Taiwan is still to view the express industry as part of air cargo transportation, but such treatment discourages the healthy, long-term development of the express cargo industry. We suggest the steps below as a means of cultivating new ground in this regard.

1. Express Clearance

- Revise the laws and regulation governing the collection of authorization letters from the express shipment's consignee for the import of low-unit-price goods.
- Implement a system of Export Post-Entry Manifest Declarations.
- Remove the weight limitation on express clearance.
- Totally implement cross-border clearance.
- Collect VAT on imports at the point of sale instead of the point of clearance.
- Streamline the Customs export inspection process for high-value express shipments, for example replacing the "warehouse received" reporting step with "shipment received by the express company" while the shipment is en route to the airport.
- Introduce a paperless process for import duty/tax receipts.
- Eliminate the requirement that express warehouse operators share the cost of Customs overtime pay, as no such burden is imposed on airlines in the passenger terminal.

2. Import and Export Express Warehouses

- Deregulate the Cargo Terminal License requirements or develop a set of requirements specifically for express cargo warehouses.
- Reduce the frequency of X-ray inspections for suspected or selected shipments.
- Set up proper warehouse processes specifically for express shipments (instead of following processes designed for air cargo in the current one-size-fits-all approach).

3. Regulatory Positioning

- Place the express cargo industry under a clearly identified single authority, instead of the current interface with several different ministries, so as to create a more efficient regulatory environment and facilitate the development of the industry.

4. Laws and Regulations

- Because of the nature of the business, express companies have to be close to their customers. In Taiwan, express companies' customers are usually located in urban and industrial areas, but it is not easy for express couriers to find locations for pick-up/delivery stations that are completely in compliance with warehouse storage and parking regulations. We urge the government to review and liberalize current regulations to enable the express cargo industry to establish a sounder foundation in Taiwan.

Issue 2: Take the express cargo industry's needs into account in designing the Taoyuan Aviation City infrastructure.

The Taoyuan Aviation City project – one of the i-Taiwan 12 Infrastructure Projects that President Ma Ying-jeou committed to during his 2008 election campaign – has entered the planning stage, with full details yet to be disclosed. We urge the government to devise a plan to accommodate the infrastructure demands of the express cargo industry in relation to the Aviation City project. Our specific recommendations are as follows:

1. Airport Express Park

- Offer a dedicated space, sufficient to accommodate future growth, to enable the fastest possible turnaround of express shipments.
- Provide world-class airport services including Customs, security, and aviation services.

2. Ground Transportation

- The government should carefully consider ground transportation demand when mapping out the overall plan of the Taoyuan Aviation City's transportation network. Besides addressing the commercial needs of the express delivery business, a well-designed transportation plan would improve the overall efficiency of Taiwanese companies' global logistics, enhancing their business competitiveness. Although access to many cities and townships in Taiwan is available only by ground transportation, the current highway systems remains inadequate to business needs.

AUTOMOTIVE

The automobile industry is grateful to the government for implementing the commodity tax reduction (NT$30,000 per vehicle) that helped stimulate car sales in 2009. The Committee urges the government to learn from other countries' practices and continue various measures designed to maintain growth and stability in this key industrial sector.

We are also concerned about maintaining the Taiwan industry's competitiveness within the region. Aside from the current negotiations for a cross-Strait Economic Cooperation Framework Agreement (ECFA) that hopefully will include the auto sector in the Early Harvest list, we hope that Taiwan will also be able to begin negotiating free trade agreements with ASEAN countries in the near future to eliminate tariff barriers, expand Taiwan's whole-vehicle and component exports, and in general enable the Taiwan auto industry to exploit its regional competitiveness. Furthermore, Taiwan should avoid adopting unique regulations that create technical barriers to trade and pose obstacles to technology-transfer alignment with parent companies and other technical resources. We also strongly recommend the homologation of vehicle regulations and simplification of the certification process to achieve cost and time savings for the industry.

In addition, the government has announced new incentives for hybrid and LPG vehicles. It also has a promotional plan for electric vehicles, which includes commodity tax exemption for a period of three to five years, a cash rebate, as well as income tax credits for both corporations and individuals. We welcome any policy initiatives for the automotive sector that aim at greenhouse gas reduction and the development of carbon-reduction technologies. At the same time, we believe that any government incentives should be based on emission-reduction performance and effectiveness, not limited to any specific technology.

Issue 1: Broaden the incentives for environmentally cleaner vehicles.

Climate change is an extraordinarily serious challenge because of its broad implications: ecological, economic, social, and health-related. In line with the Taiwan government's energy-saving and carbon-reduction policy, as well as the draft Greenhouse Gas Reduction Law, the Committee once again urges the government to broaden its incentives policy, currently limited to electric-battery, hybrid, and LPG vehicles. Instead, similar incentives should be offered to other alternative-fuel vehicles with the same greenhouse gas (GHG) emissions performance, including direct injection diesel, hydrogen fuel-cell, and biofuel vehicles. For example, a vehicle with lightweight body complemented by advanced diesel and transmission technology can achieve GHG emissions performance comparable to that of a hybrid vehicle and superior to an LPG vehicle. By broadening the incentives program to include all technologies, the government will facilitate the introduction of clean vehicles to the market and achieve a better GHG reduction target.

Issue 2: Replace older, higher emission vehicles.

The NT$30,000 commodity tax reduction program in 2009 was very effective in boosting the automobile market. To continue the momentum, we recommend that the government establish a system to encourage the replacement of older, higher-emission vehicles. Besides the environmental benefits, the measure would also help create a more viable domestic auto industry and provide additional tax revenues.

The Committee specifically suggests that the government:

1. Promote new vehicles that have much better emission quality and higher fuel efficiency (EURO IV standards).
2. Offer a commodity-tax refund when old vehicles are phased out, with the refund usable only to purchase cleaner vehicles. The aim would be to phase out at least half the cars that are at least 10 years old, since their emission levels are usually five to ten times higher than what current regulations allow for new vehicles.
3. Spur the replacement of outdated higher-emission

vehicles through an integrated energy-tax/commodity-tax scheme that rewards cars with high fuel economy and lower CO2 emissions.

Issue 3: Help Taiwan automakers take advantage of their regional competitiveness.

To stimulate Taiwan's economic growth and employment, the government should assist in developing export opportunities for built-up (BU) vehicles so as to take advantage of the Taiwan auto industry's mature industrial base, manufacturing capabilities, and excess capacity. We urge the government to do its best to sign trade agreements with China, ASEAN, and other emerging markets to eliminate tariff barriers and expand export growth for both vehicles and components.

Besides negotiating ECFA with China and including the automobile industry in the Early Harvest list, Taiwan should also set up a system for the harmonization of vehicle safety regulations with China and implement a BU-vehicle complementation program between China and Taiwan to maximize economies of scale. This program could provide for a mutual quota system or a duty differential that phases out over time as full complementation is reached.

Issue 4: Align vehicle regulations and certification with international standards.

UN/ECE vehicle regulations have been introduced to Taiwan for some years, and we appreciate the Taiwan government's efforts to harmonize its vehicle regulations and minimize deviations. Starting from the next stage, some of Taiwan's emission standards and procedures will be in line with UN/ECE regulations, such as evolution coefficient and ki coefficient for particle filters of diesel product. On the other hand, Taiwan still has some standards that are not in line with UN/ECE regulations. This increases the difficulty for businesses to introduce new cars to Taiwan and even forces some businesses to withdraw from the Taiwan market.

For example, European ECE certification is still not accepted by the Taiwan government. As a result, companies must send sample cars to labs certified by the Taiwan government or to Taiwan's Automotive Research & Testing Center for testing. This substantially increases the time and cost needed for compliance. In addition, the Environmental Protection Administration adopts unique diesel smoke procedures and criteria that are not aligned with any international standards, and the Bureau of Energy (BOE) restricts the sale of any vehicle if the fuel consumption level does not comply with Taiwan's standards. In most advanced countries, the fuel consumption level is only taken as a reference, whereas the BOE uses it as one of the ways to monitor the country's overall energy consumption.

Further, Taiwan's restrictions on vehicles homologated according to U.S. FMVSS (Federal Motor Vehicle Safety Standards) specifications not only result in heavy added cost and time in regulatory homologation, but will completely bar FMVSS-specification vehicles from import into Taiwan after January 1, 2013.

The Committee urges the government to take swift action to bring Taiwan's vehicle regulations in line with UN/ECE standards and to provide more flexibility regarding FMVSS-homologated cars in order to create a more vibrant business environment in the Taiwan auto market.

SHIPPING

In the wake of the global financial crisis that erupted in late 2008, the Taiwan government provided various economic stimulus measures for the shipping industry in 2009. For example, the various harbor bureaus offered terminal operators a one-time 40% rebate on port/terminal land leases. It was an effective scheme that benefited both ocean carriers and terminal operators, and we applaud the government for the initiative.

Going forward, we would like to make the following recommendations:

Issue 1: Continue relief efforts for the shipping sector and reduce management fees.

Although signs of economic improvement have been seen since the beginning of 2010, full recovery is still some time away, and conditions in the shipping industry remain fragile. It is therefore too soon to pull the "support" plug for companies in the shipping sector. The Committee strongly urges continuation of the 2009 port/terminal land-lease rebate scheme – though perhaps with a lesser discount if necessary – to allow operators to ease out of this difficult situation. Many other countries are continuing to provide incentives to support ailing or recovering industries, and Taiwan should do the same.

In addition, Taiwan recently announced a revised corporate tax structure for shipping companies that register their vessels in Taiwan, providing the option of being taxed according to the tonnage of the fleet. The new structure departs from the traditional form of taxation based on declared operating profit, but this brings little benefit to foreign carriers that either operate here with branch status or have reciprocal tax treaties with Taiwan for internationally sourced income. As this change will not serve to significantly lift up Taiwan's shipping sector, it is important for the authorities to find other ways – such as continuation of the land-lease rebate – to provide relief to the industry.

Issue 2: Provide incentives to spur growth in the shipping sector.

Business conditions in the world of ocean transport are changing rapidly. Idle ship capacity is being redeployed

to existing services at slower service speed and with calls at more ports added. In addition, the market focus has moved away from the traditional consumption markets of the United States and Europe and is shifting to Asia. In the coming years, Asia is bound to see the introduction of more routes and greater frequency of service.

If Taiwan wishes to expand its role in the shipping industry, the government needs to consider: 1) What is the attraction of Taiwan ports and how can that comparative advantage be optimized? and 2) What incentives are being made available to encourage carriers to call at Taiwan ports, to engage in more transshipment, and to load more cargo into and out of Taiwan?

As it reviews the content of its incentive programs, MOTC should engage in extensive dialogue with the carriers to understand their market focus, ship deployment, and new service orientations. Only by taking such input into consideration will the government be able to set practical and effective policy directions.

TRAVEL AND TOURISM

Following his inauguration in May 2008, President Ma Ying-Jeou announced that Taiwan would promote the development of Six Emerging Industries, including travel and tourism, as part of his administration's plan to drive economic growth in the coming decades. To support that initiative, AmCham last year formed a Travel and Tourism Committee made up of industry professionals, with the aim of offering insights and advice to help stimulate the sector's development.

The Committee's mission is not to promote specific policies for the benefit of our member companies' business operations. Rather, the objective is to help increase the number of international visitors to Taiwan and to enhance its overall reputation as a travel destination. To achieve that end, our members seek to offer direction and assistance based on their practical international experience, so that Taiwan may build on effective best practices and proven methods for success.

It is from that perspective that we provide our views on the following critical issues in hope of creating a working dialogue with the Taiwan government.

Issue 1: Strengthen government efforts to promote Taiwan as a tourism destination.

The Committee appreciates its recent opportunity to meet with Minister without Portfolio Ovid Tseng to learn about the Taiwan government's master plan for tourism industry development. We were gratified to hear that the government has set forth a comprehensive plan and established a cabinet-level task force to oversee its implementation.

In line with the master plan, the Committee offers these suggestions on how to better promote Taiwan as a tourism destination:

Positioning & Branding

A. Devise a New Travel Theme.

In order to brand itself as a tourism destination, Taiwan must first determine how it wishes to position itself to potential international visitors. The current theme seems largely to feature Taiwan's Aboriginal culture. While this indeed is one of Taiwan's special attractions, there is so much more that is worth promoting about the island, including its natural beauty, excellence and variety of cuisine, biking and other recreational activities, shopping opportunities, and the friendly and hospitable people.

Japan, Korea, Hong Kong, Singapore, Thailand, and other countries and cities in Asia all have a clear and recognizable identity that people can associate with, helping these destinations attract visitors from half way across the world. Taiwan needs to find a new theme that fits its core values and to develop that theme in all its promotional activities, and leverage available resources in the movie, publishing, architecture, food, arts, and music sectors to showcase Taiwan through that theme.

B. Adopt the "Big Bang" Approach.

Whatever new travel theme is devised, it should be accompanied by a "Big Bang" approach, meaning a worldwide publicity campaign with deep and broad enough impact to reach all corners of the globe. Just as one example, the government plans to develop the rugged island of Little Liuqiu off Taiwan's southern coast as a place for eco-tourism. Inviting the famous "Survivors" TV series to film on that island would immediately and significantly bring Taiwan to the attention of a large audience.

Marketing Measures

A. Devise a New Tourism Slogan.

Hand-in-hand with a new travel theme should be a new tourism slogan to replace the ones currently in use: "Naruwan, Welcome to Taiwan" and "Taiwan, Touch Your Heart." The practices of other Asian countries can be taken for reference. Their active media marketing is built around slogans such as "Hong Kong – Live It! Love It!" / "Uniquely Singapore" / "Malaysia – Truly Asia" / "Amazing Thailand" / "Incredible India" / and "Korea – Sparkling." Appointing a capable professional marketing company with a good track record will be crucial to this endeavor's success and eventual lasting impact.

B. Enhance the Government's Tourism Marketing Practices.

1. Stress Internet Marketing

Revise the content and style of the current tourism website to reflect the newly adopted travel theme and tourism slogan and to bolster the ability of the site to attract and retain an audience.

2. Provide Incentives to Travel Agencies and Event Organizers

Government incentives are needed to encourage travel agencies to develop new products and packages as

well as to come up with better approaches for tourism promotions. Similarly, Taiwan should establish and maintain regular contact with international professional conference and event organizers, and provide them with appropriate incentives to assist in bringing in MICE events (Meetings, Incentives, Conferences, and Exhibitions), large-scale groups, and high-profile events. The Japanese government's Japanese Tourism Agency, for example, conducts an annual B2B travel mart in Japan, inviting inbound tour operators from all over the world. In Hong Kong, the government stages an annual event to provide a platform for tour operators and retail businesses to conduct business with overseas counterparts. For MICE, the Hong Kong government earmarks additional funding and has established a dedicated office to cultivate contacts with overseas MICE groups.

3. Organize More International/Mega Events in Taiwan

While we fully applaud the government's efforts to stage such international events as the 2009 World Games in Kaohsiung and 2009 Deaflympics in Taipei, as well as the 2010 International Flora Expo later this year, we believe that more activities of equal or even bigger scale can be conducted here.

Considering that Taiwan is a world-renowned manufacturing site for bicycles, for example, and is already promoting "Cycling in Taiwan" on the Tourism Bureau's website, this would be an excellent place to host an international cycling competition at the highest professional level – similar to the Tour de France. Such an event would surely draw a multitude of cyclists, sports fans, and international media, raising Taiwan's international image and familiarizing more people around the world with the beauty of the island as seen along the competition's cycling routes. Holding such an event next year in conjunction with the country's 100th birthday would make it even more effective to market.

4. Integrate the Government's Efforts

Greater coordination is needed among the various government agencies with responsibilities related to tourism or associated events, including trade shows. The Civil Aeronautics Administration, for example, should work more closely with the Tourism Bureau to establish enlarged, well-staffed, eye-catching Travel Information Centers in both terminals at the Taoyuan International Airport, as well as the other international airports in Taiwan. The re-launch of such Centers should be heavily promoted.

In addition, we recommend that the authorities reexamine visitor traffic flows and space allocations for all travel-related industries (including hotels, airlines, and transportation companies) at the international airport to help establish a favorable "first impression" for inbound travelers. Many current facets of the international airport operations could be greatly improved, starting with the meeting-and-greeting process for visitors.

Another suggestion is for the Tourism Bureau to work more closely with the Taipei International Convention Center (within the Taipei World Trade Center complex) to attract regional and global conventions to Taiwan.

The Committee further recommends that the government carry out more comprehensive promotional campaigns domestically to ensure that the public is aware of the government's objectives in enhancing tourism to Taiwan. Continuously educating Taiwan's citizenry about the unique aspects of the country is a way of instilling national pride and enthusiasm. All of Taiwan's outbound travelers should also think of themselves as "Tourism Ambassadors" who can directly promote Taiwan while traveling abroad.

Issue 2: Advance the training and development of tourism-industry talent.

Tourism industry executives have long voiced concern over the quality and quantity of prospective employees in Taiwan. If the tourism industry is to flourish here, it is necessary to build a pool of highly-talented, well-trained individuals who can serve to push the industry forward. The Committee encourages the government to focus more attention on the training and development opportunities available for personnel in this industry.

Domestic Training

Additional investment is needed in local colleges and universities to modernize and improve their tourism-industry educational programs. Many of the programs offered in local schools are rather antiquated, providing training that is not entirely relevant to the current demands of the tourism industry. The government should also encourage these colleges and universities to establish links with overseas schools that could bring in highly qualified faculty on exchange programs so as to enrich the content of the curriculum. It should also invite prominent overseas schools to establish campuses in Taiwan to offer training in the travel and tourism sector.

Overseas Training

Numerous excellent academic programs in tourism, hotel management, and the culinary arts have been set up in other countries, some at a degree level while others offer junior/community college certificates or diplomas. The Committee recommends that the government offer appropriate incentives to encourage talent in this industry to take advantage of training opportunities overseas, whether it on a degree level or a certificate/diploma level.

In addition, the Ministry of Education recognizes overseas four-year undergraduate and graduate-level programs, but does not currently have a similar mechanism for diploma and certificate programs in community/junior colleges

and universities. As many tourism-related study programs fall within the latter category, the Committee joins the Education Committee in urging the Ministry to set up such a system so as to encourage local students to pursue studies in this area.

Issue 3: Upgrade the Tourism Bureau and redefine its goals and mission.

The Committee was disappointed to learn that the government's forthcoming restructuring plan does not call for upgrading the agency with responsibility for tourism to cabinet-ministry level, instead retaining the Tourism Bureau as a subordinate unit under the Ministry of Transportation & Communications. Only a cabinet-level ministry would have the budget, personnel, and authority necessary to support a full-fledged marketing and promotion plan. It would also be in a position to undertake more professional, focused, and systematic communications with the public and other public and private organizations, for the benefit of the long-term development of the industry.

In other Asian countries where tourism promotion is seen as an important arm of the government, it is often set up at a cabinet level. South Korea, for example, has a Ministry of Culture, Sports and Tourism responsible for the areas of tourism, culture, religion, and sports. Subsidiary entities include the National Museum, the National Theater, and the National Library. In Thailand, the Ministry of Tourism and Sports looks after the promotion of both tourism and sports.

Taiwan's government restructuring plan has been approved by the Legislative Yuan and is slated to come into effect in January 2012. But we would still urge the government to consider upgrading the Tourism Bureau – perhaps creating a new ministry simultaneously responsible for sports and cultural affairs – at the earliest opportunity in the future. Such a step would not only represent a firm commitment to the tourism portion of the Executive Yuan's Six Key Emerging Industries Development plan but would also make available the resources necessary to enable Taiwan's tourism sector to fulfill its excellent potential.

農化委員會

農化委員會肯定農委會在提升台灣農產品品質及確保食品安全無虞等方面的積極作為。本委員會特別希望感謝動植物防疫檢疫局的不斷努力，提升國內產銷之農化產品的品質與安全。

但委員會失望的是，2009年《白皮書》的關鍵議題之一，即偽劣農藥的查緝，在過去一年進展有限，因此偽劣農藥問題仍將是2010年的重點。

另一個與提昇農民生計、確保蔬果安全品質息息相關的議題是，整合作物分群標準的農化新產品登記規範。台灣農民要有更好的收成及獲利，就必須能取得新的技術與農化產品。

要打擊偽劣農藥，建立完善法規與嚴格執法同樣重要，如此才能確保台灣的食品符合品質及安全的最高標準。委員會相信，政府如能採納下列兩項建議，將可有效防堵非法交易、改善食品製造過程，以造福國內眾多小農。

議題一：嚴格查緝偽劣農藥

委員會必須失望地指出，偽劣農藥在台灣仍然非常猖獗。雖然政府試圖查緝這類非法交易，但未經登記及可能有害的偽劣產品仍然普遍可見，而且情況還持續惡化。雖然部分違法者去年已經遭到起訴，但法院尚未正式審理，因此是否會被判刑還不得而知；而且就算被判有罪，也難以確定刑度是否足以產生嚇阻效果。

台灣市場及銷售管道中的偽劣農藥，其數量之多已嚴重威脅食品安全。偽劣農藥主要來自中國，這類未經檢測的產品，對消費者及農民都是極大的健康隱憂，特別是以蔬果為主要產業的雲林、彰化等地。

市場消息指出，才剛完成登記的新農藥「剋安勃（Chlorantraniliprole）」，去年第四季可能已有大量仿製品流入台灣；這些走私進口、未經檢驗的偽劣農藥，可能已經被廣泛用於蔬果生產。這類未經查驗、甚至有毒的產品，不但嚴重影響食品安全，導致消費者質疑台灣的農業產品，更讓原生產商及守法業者處於不公平競爭環境，迫使跨國企業放棄引進新產品，農民因而失去改用創新技術農藥的機會。

委員會瞭解農委會過去一直積極處理偽劣農藥問題，但市場跡象顯示政府還得再加把勁。我們呼籲農委會應該拿出辦法，揪出走私、經銷、販賣偽劣農藥的不法業者。農委會的可行之道包括：一，強化與海關、執法機關的橫向聯繫，以遏阻偽劣農藥的走私及販售，特別是在重要蔬果產地的中台灣；二、強化教育及宣導，提高農民對食品安全的認知。

農委會致力提升台灣的食品安全標準，也為此投入眾多資源。委員會不希望見到徒勞無功的結果，也不願意看到偽劣農藥仍然猖獗。

偽劣農藥問題亦需要政府高層的重視。馬英九總統今年初曾經要求政府嚴格查緝偽裝成「台灣製造」的中國走私商品，經濟部很快就組成專案小組處理。但中國走私進口的偽劣農藥問題更為棘手，因為它們連商品標示都沒有，經濟部想查都很難下手。委員會認為，政府應更為警覺，偽劣農藥對公共衛生與安全的影響，並考慮成立專案小組，以徹底掃除偽劣農藥。

議題二：整合作物分群的新產品登記制度

委員會樂見政府決定將作物分群納入農藥登記制度，也感謝動植物防檢局邀請委員會加入工作小組，研商新規定的細節。在現行登記制度下，要引進新技術既費時又花錢。台灣從北到南的作物種類繁多，業者要引進可使用於多種作物的新產品，不但非常困難而且成本昂貴。因此，外國廠商申請新產品登記時，往往只選定最具市場潛力的數種主要作物，或甚至乾脆放棄引進台灣，導致農民失去使用創新產品的機會。

納入作物分群概念可以讓農民更易於使用合適的技術，也能讓跨國廠商更願意引進創新、具成本效益、及更安全的有效成份（AI）與技術，整體來說，更有利於台灣的農業生產力。

但要發揮預期效果，新的登記制度必須妥善制定，且具備下列要素：

- 務實、明確，且符合各方需求；
- 登記程序所需成本，應符合台灣市場環境；
- 納入特定作物的農藥最低殘留量。

資產管理委員會

本委員會對於金融監督管理委員會（金管會）合理化資產管理業之法令規範，以及建立保護投資人良好制度之持續努力，表達讚許。更健康、更具彈性之法令架構，是台灣資產管理業者所關切的，最終也將有利於台灣投資大眾。有鑒於去年全球股票市場反彈，本委員會預期台灣投資人將益發急切地尋求更佳的財富管理服

務，以及更多元化的投資商品。

去年金管會正面回應業界長期的呼籲，放寬證券投資信託事業（投信）所發行基金之投資管理委外限制；雖然只是局部放寬，但仍已向前邁進一步，本委員會期待，金管會能儘速完全放寬此一限制。此外，金管會與盧森堡金融監理機構簽署雙邊合作備忘錄（MOU）亦有所進展。金管會所展現之開放及具建設性的態度，值得鼓勵，且將強化業者與金管會的合作關係。

同時，本委員相信仍有部分法規限制需被鬆綁，以更有效率地促進台灣與全球金融市場接軌。我們的建議包括改善境外基金與投信基金之登記流程、解除對於境外基金與投信基金投資策略及投資標的之限制、增加境外基金與投信基金投資產品之多元化，以及放寬對於投信基金投資程序要求之管制。本委員會期待與金管會繼續進行建設性的對話，使得我們重視的議題，得以早日獲得圓滿結果。

議題一：加速與盧森堡金融監管委員會簽署備忘錄

我們建議金管會與盧森堡金融監管委員會（Commission de Surveillance du Secteur Financier, CSSF）簽署雙邊合作備忘錄（MOU），以解決關於放寬境外基金註冊限制所存在已久的問題。本委員會促請金管會持續與CSSF協調，以加快協商及簽署的程序。我們建議應移除或放寬的法規限制如下：

A. 境外基金資格

1.免除或豁免一年之績效記錄要求

現行法規下，境外基金經金管會專案核准或基金註冊地經台灣承認並公告者，得免受境外基金必須成立滿一年始可申請於台灣銷售之限制。然而，實務上，由於缺少豁免相關的實行程序，從未有此類豁免的申請、或金管會的核准成立，使註冊於台灣承認並公告之管轄為唯一取得豁免的方式。簽署雙邊合作備忘錄將使盧森堡為金管會承認之基金註冊地，在盧森堡註冊的基金因而將有資格免受該限制。

2. 衍生性商品限制

儘管持有衍生性商品未沖銷部位之總值已從基金資產淨值的15%提高至40%，我們建議與盧森堡簽訂雙邊合作備忘錄的第一階段應包括雙方接受並承認他方相關管轄法律及標準的條款，以使台灣適用歐盟UCITS III（可轉讓證券集體投資計劃III）之標準。UCITS已被視為穩定、高品質、有規則的投資商品，並附有重大投資人保護機制，盧森堡基金可因此豁免於衍生性商品之投資限制。

B. 基金登記程序

現行新的境外基金登記要求總代理人每次僅可提交一份申請書。原先每次申請可包括五檔新基金，但近期證券期貨局（證期局）降低申請數量為每次申請最多不得超過三檔新基金。此外，申請程序需經過兩階段之審核，先由中華民國證券投資信託暨顧問商業同業公會（投信投顧公會）審核，再轉由證期局核准。此漫長程序實為阻礙並延長新商品引進台灣市場之時程。在簽署雙邊合作備忘錄下，CSSF與金管會間的資源分享將有助於克服證期局目前資源不足之困難，並使證期局能追上資產管理產業的快速發展，並協助擴展台灣基金市場。

C. 洗錢防制問題

歐盟先前針對不同國家防治洗錢相關規範，與歐盟指令（EU’s directive）對等與否，發布了一份合格名單（White List），但台灣並未被列入其中。未被列入名單中的國家將受到更嚴格的洗錢防制限制規範，譬如，揭露持有超過25%綜合帳戶部位的受益人，以及更複雜的新申購程序。儘管合格名單事後遭廢除，揭露規定卻仍然適用（除非CSSF恢復風險基礎方法（risk-based approach））。如果銷售機構被要求遵守此規定，在該規定與台灣法規相衝突下，將會對於在台銷售之盧森堡基金有重大影響。

簽訂雙邊合作備忘錄將可解決此部份的問題。在洗錢防制目的下，台灣得與盧森堡分享客戶資料，尤其是確認持有超過25%綜合帳戶部位的受益人身份，台灣可能因此而被視為擁有與歐盟指令相等之洗錢防制規定。

議題二：將已登記之境外基金的資本利得排除於最低稅負制外，以確保公平之稅賦待遇

為維持各種共同基金業者公平之競爭環境，對於在台灣登記銷售的境外基金、掛牌之指數型基金，以及由投信所發行的海外基金，應提供一致的稅賦待遇。但由於財政部的函令將已登記境外基金之資本利得定義為海外所得，致使境外基金之資本利得－非其他二種基金之資本利得－將於今年開始適用於最低稅負制，而被課稅。

金管會於2009年十月指出，已登記之境外基金與投信之海外基金均屬《證券交易法》所定義之「有價證券」。但縱使台灣登記的境外基金與投信海外基金具有相同本質，財政部卻僅將投信海外基金的資本利得視為「國內所得」，而不納入最低稅負制所得的課徵基礎。再者，財政部亦將在台灣證券交易所掛牌之指數型基金的資本利得視為「國內所得」，即使事實上該指數型基金屬境外發行。依此相同邏輯，已登記之境外基金應受到相同待遇。我們對於財政部繼續堅持採用此一無根據的差別性政策感到沮喪，而該政策也將削弱境外基金之於其他種類基金的競爭地位。本委員會再次促請財政部就此一議題，採取與金管會相同之立場：將在台灣登記並銷售之境外基金的資本利得劃歸為與投信海外基金及指數型基金一致之「國內所得」。

議題三：促進國內投信基金法令的發展

本委員會的目標之一，是藉由引進全球最佳的實務運作，以及迅速發展的國際業務機會，以促進本地投信產業的成長及發展。要達到這個目標的關鍵要素之一，台灣必須有能力吸引資產管理領域世界級的人才到台灣，以便協助培養台灣本地的專家及人力資本。然而，要建立一個能吸引全球投信基金業者的環境，並願意於台灣境內基金市場貢獻他們珍貴的經驗，關鍵在於台灣必須鬆綁現行相關法規，以提升競爭力。我們強烈建議金管會及證期局採行下列建議：

1. **准許基金經理人同時管理境外基金及證券投資信託事業（投信）基金**

現行法令下，境外基金之基金經理人不得同時管理國信投信基金。然而這項法令不必要地限制了專業知識的交流。台灣境外基金的業務一直在迅速發展中，因此投信基金可藉由這個機會，使其本身能跟世界趨勢相符及聘任具備全球經驗的基金經理人。本委員會強烈要求金管會能開放國內投信基金經理人在符合特定條件下，得同時管理境外基金，或在管理投信基金的同時，也能提供與境外基金相關之投資顧問服務。此外，我們也請求金管會能刪除投信基金經理人必須專任的規定。

2. **准許同時管理獨立帳戶**

現行法令下，投信可經由全權委託從事海外集體投資業務的投資管理。但是由於利益衝突的考量，個別基金經理人並不能同時提供投資管理服務予國內投信基金及全權委託經營之獨立帳戶。這樣的利益衝突考量跟主要金融中心（包括香港及新加坡）所適用的國際產業規範正好相反。在香港及新加坡等區域，資產管理公司與他們的個別基金經理人是被證照制度所規範的，而自律規範下之日常資產管理的運作，和已建立的最佳產業準則一致；然而，對於可以同時管理的集體投資種類則沒有限制。台灣應該遵循最佳產業準則所建立的自律規範，因為這樣的國際實務已足以保護投資人的利益。我們強烈主張金管會刪除現今之限制，准許投信基金經理人可以同時管理投信及海外基金。

3. **准許將投信運用基金資產複委任予第三人**

一直以來，投信不被允許將投信基金之投資業務複委任予第三人。然而金管會於2009年十二月廿一日函釋，在符合一定要件下，投信可將資金投資於亞洲及大洋洲以外之海外投資業務複委任第三人處理。我們極力主張金管會應將法規全部鬆綁，進而包括亞洲及大洋洲之海外投資業務，皆可複委任第三人處理，以增加國內投信基金之全球投資機會。

4. **准許聯接基金業務**

許多鄰近國家，包括韓國、香港及新加坡，皆已准許聯接基金（只投資於其他基金之基金）之銷售。本委員會建議金管會採取相同的方式，刪除台灣限制聯接基金業務的相關規定。對投信而言，發行聯接基金可以提供個人投資者更多國外投資商品的選擇，並且可以保護台幣計價之投信基金免於海外投資匯率波動的風險。聯接基金也可以減少投信管理及維持新基金的相關成本，也可以幫助增加投信基金之規模。此外，根據其他國家的經驗，聯接基金的費用架構通常比其所連接的其他境外基金更具競爭性。我們相信無論是投資人，或是本地的資產管理業者，皆可自連接基金的引進中獲利。

議題四：近一步放寬對中國投資的限制

本委員會對兩岸在簽署金融監理合作備忘錄（MOU）後，兩岸之間的互動的進步，甚感欣慰。本委員會要求政府進一步廢除台灣境內/境外基金投資中國上市證券市場10%的上限規定。此舉能讓所有台灣人民能與世界上其他國家的公民一樣，享有投資中國公司的權利。

現今，很多台灣人透過香港或其他國家進行投資，以規避投資中國市場的限制。若能取消投資限制，台灣人民便能透過國內管道，直接投資大陸證券市場，許多台灣本地的資產管理公司便能因此受惠。台灣政府也能因此對於投資的金流能有更好的管理。

另外，外界對於台灣投資人是否能從大陸的帳戶贖回QFII（合格境外機構投資者）仍有疑慮。我們的瞭解是，QFII本身對於基金的匯款有所限制，但此限制並非特別針對台灣的投資人，而基金經理人目前已經可以解決這個問題。

銀行委員會

本委員會首先感謝金融監督管理委員會（下稱「金管會」）過去一年來採取措施解決去年《白皮書》中提及之問題。我們特別注意到金管會就增加法規制訂過程之透明度及意見諮詢所作之努力，例如在制定《境外結構型商品管理規則》及修正《銀行辦理衍生性金融商品業務應注意事項》及《信託業營運範圍受益權轉讓限制風險揭露及行銷訂約管理辦法》等法規前，舉辦一系列之公聽會以徵詢金融業界的意見。本委員會相信，增加法規制訂過程之透明度將促成更健全之法規環境。我們亦肯定金管會對簡化呈送主管機關報表程序所作之努力，這些作為減輕了銀行必須提交重複資訊之負擔。本委員會期待這些作為能持續，並朝著報表例外管理的方向進步，而非要求銀行提交營業或交易統計等細部資料。

本委員會樂見台灣與中國可望簽訂《兩岸經濟合作架構協議》（Economic Cooperation Framework Agreement，簡稱ECFA）。雖然金融服務業在ECFA下之細節仍未臻明確，本委員會期許簽訂ECFA後，台灣主管機關將確保其法規架構平台得容許金融業者間公平競爭。此外，我們鼓勵政府放寬中國商業人士來台之限制以增進台灣金融業與中國金融業之交流。

最近修正之《國際金融業務條例》允許境外結構型商品免扣繳所得稅，是另一項值得肯定的作為，本委員會相信此舉將增加台灣在亞太地區之競爭力。我們特別感謝行政院、金管會、財政部及中央銀行之合作，使本次修法得以迅速地送交立法院審議。

本委員會並肯定金管會目前正就跨境金融服務（特別是加強跨國交易境內服務之規定）與業界展開討論，由於這是為業界最關切之議題，本委員會期待盡快看到解決方案。

最後，有鑑於台灣已安然度過全球金融風暴，本委員會建議政府的金融監管機制應著重在投資產品之風險揭露之控管，而非限制產品得銷售之種類，此舉可提供投資人足夠保護，並有利於金融機構提供投資人多樣化的產品以符合投資人需求。我們也期待政府持續催生健全的《金融服務法》，為所有形態的金融機構建立一致的法規架構。本委員會將持續觀察金融服務法草案之進展，並樂於在必要時提供意見。

本委員會謹於今年之《白皮書》提出下列各要點供政府機關參考：

議題一：促進《境外結構型商品管理規則》及與其相關規定之合理化

在2008年的全球金融危機後，金融監督管理委員會（金管會）投注了相當多心力制定《境外結構型商品管理規則》及其相關規定，這些規定的立意在於保護因購買某些結構型商品而遭受財物損失之投資人。本委員會非常支持保護投資人權益的目標，惟我們亦擔憂目前台灣已實施之境外結構型商品法規，不但會讓投資人無法依其投資喜好來分配資產及分散風險，更可能會損害投資人之權益並阻礙台灣金融市場之發展；尤其是目前新投資型商品之種類有諸多限制，且申請及核准過程十分冗長，此舉似乎與馬政府執政以來宣示要讓台灣成為亞太金融中心之目標相違背。

為了預防台灣之金融市場再進一步的萎縮，並避免資金外流，亦即造成台灣投資人將資金轉移至相關法規較鬆散之鄰近國家，本委員會強烈建議政府，應該詳細檢視目前之《境外結構型商品管理規則》及與其相關之規定，並在修改相關法規時，將下述提議列入考慮：

1. 以同類產品方案或以產品架構為基礎的核准方式，取代對每一檔結構型商品逐件審核的作法。
2. 移除境外結構型商品在台灣市場成長之障礙。
   (1) 針對非專業投資人
   - 移除針對發行機構/保證機構及境外結構型商品本身都需要進行信用評等之雙評等要求。
   - 將最低信用評等之要求從AA- 降低至 A+。
   - 移除當信用評等被調降時，必須取消商品發行之規定。
   - 移除銷售機構每年收取費率範圍不得超過受理投資該商品總金額之0.5%，全部年限收取之費率合計不得超過受理投資該商品總金額之5%之規定。
   - 移除當國外發行機構及商品註冊地亦以非專業投資人為受託或銷售對象，其當次發行之受託或銷售條件訂有交易條件者，於中華民國境內亦應為相當之交易條件之規定。

   (2) 針對專業投資人
   - 移除三天審閱期之規定。
   - 放寬錄音方式保留紀錄之規定。根據《境外結構型商品管理辦法》第二十二條，應向投資人宣讀該境外結構型商品之投資人須知之重要內容，並以錄音方式保留紀錄。
   - 移除針對專業投資人發行之商品在推出時須公告及將資料上傳至集保公司之規定。
3. 針對行銷文件之建議（產品說明書及投資人須知）
   (1) 移除將稽核意見、律師意見、本金虧損之機率及平均年報酬率放在產品說明書之規定。
   (2) 移除須將整份發行機構最近期並經會計師查核簽證之財務報告翻譯成中文之規定。
4. 針對報告/公告之建議
   (1) 將發行人/總代理人須每日及每月提供境外結構型商品購買及贖回相關資訊之責任改由受託或銷售機構來負責。
   (2) 加強集保公司上傳系統之功能（允許能在單一網頁中，上傳發行機構總行之財務及重要資訊，而不用跟著每一檔境外結構型商品逐項上傳相同之資訊）。

議題二：支持財富管理及信託業務之發展

發展台灣為區域性資產及財富管理中心雖然是政府的政策目標，惟目前在台灣可供投資之基金仍有限，引進新投資商品之速度亦甚慢，使台灣市場之競爭力仍不如香港及新加坡。

本委員會謹提供以下建議，盼有助於增進台灣財富管理及信託業務之競爭力：

1. **對僅供專業投資人投資之基金，放寬投資限制並簡化基金登記程序**
   在香港，僅供專業投資人投資之基金不需經過登記或核准。在新加坡，此類基金僅需簡單之申報，且如已於認可之國家註冊，則不須適用新加坡任何與基金相關之規範。然而，在台灣，《境外基金管理辦法》之規範及限制適用於所有基金，不論其銷售對象為一般或專業投資人。即使在私募辦法下，境外基金之引進仍有許多限制(如衍生性商品比例、投資黃金及商品現貨之限制)，無法滿足有不同資產規劃需求之專業投資人，不利台灣發展為區域財富管理中心。本委員會建議政府能比照香港及新加坡之法規，對於僅供專業投資人投資之基金放寬投資限制並簡化登記程序。
2. **降低單獨管理運用金錢信託得投資私募基金之門檻**
   依現行主管機關認定，委託人與信託業訂定單一全權委託信託契約，須一次交付高達新台幣五千萬元之信託財產，始可投資私募境外基金。惟承作單獨管理運用金錢信託之客戶，多以高淨值單一自然人為主，其投資往往分散於各種標的及帳戶，因此單一信託契約金額須達新台幣五千萬元始為適格投資人之規定並不符實際。

另一方面，證券投資信託事業向特定自然人進行基金之私募，其條件為本人淨資產超過新臺幣一千萬元或本人與配偶淨資產合計超過新台幣一千五百萬元，或最近兩年度平均所得超過一定金額。因此，建議單一全權委託信託適用購買私募基金資格應以新台幣一千萬元為基準，或委託人本身如已符合證券投資信託事業私募境外基金之應募人資格，則該委託人所成立之信託應可投資私募境外基金。如此始有一致性規範而不致阻斷單一自然人利用全委信託管道投資私募基金之機會，使其信託投資標的更為多元化。

議題三：排除外國銀行於「反自有資本稀釋課稅制度」之外

立法院審議中之「反自有資本稀釋課稅制度」係於《所得稅法》增訂營利事業對關係人之負債占業主權益超過一定比率者，超過部分之利息支出，不得列為費用或損失。一般營利事業之負債占業主權益比率擬設訂為三倍，金融機構則為六倍。本委員會建議應將外國銀行排除於此條例之外，原因如下：

1. 銀行間之拆放款為銀行業主要經營業務，而外銀分行一般必須自總行或其他分、子行拆借，使總行得以集中管理外匯、利率及流動性風險。若對外銀在台分行之關係人負債占業主權益設定比率，將對其資金管理作業造成困難及不利之影響。
2. 外銀在台灣之資本結構與本國企業不同。本國企業得發行股本以募資，外銀則須仰賴總行支應其營運所需資金，因此要求外銀尤其分行適用相同之關係人負債占業主權益比率並不公平。此條例將嚴重影響外國銀行尤其分行在台灣之業務發展及成本。
3. 銀行業普遍已經以資本適足率管理其資本之適足性，且《外國銀行分行及代表人辦事處設立及管理辦法》亦已對外銀在台分行之淨值、存放款、授信及合格資產比率加以規範，實不須再增加其它之營運比率限制。

綜上所述，本委員會謹敦促政府將外國銀行排除於此條例之外。

議題四：促進外國金融機構在台百分之百持股子公司之法規與資訊揭露規定之合理性

本委員會在去年的建議書中曾建議政府重新檢視外國金融機構在台百分之百持股子公司之法規與資訊揭露規定之合理性與適用性問題。由於近來以子型態式在台營運或即將子行化的外商銀行數量越來越多，因此，我們認為此議題有必要被進一步檢視。

雖然我們同意健全的公司治理架構及實務運作相當重要，然而，我們並不認為有一套放諸四海皆準的公司治理守則，因此，公

司治理之規定及原則不應毫無區別地適用在各種公司。巴塞爾銀行監理委員會在2006年二月所提出之「強化銀行機構公司治理」報告清楚的指出，公司治理原則之實施應視銀行及所屬集團（如有）之公司規模、複雜程度、組織結構、商業規模、風險結構等差異情形而有所不同。由於外商銀行所百分之百持股之本地子公司，其公司規模及股權結構複雜度與一般之公開發行公司明顯不同，因此，若將公開發行公司之相關申報/揭露規定適用於此等外商銀行百分之百持股之本地子公司上，就其公司規模或股權結構複雜度而言似並不相稱。

我們了解確保銀行體質的完整健全是社會大眾的一致期待 — 即使是對非公開發行的銀行亦然。因此，對於可明確促成確保健全之風險及會計實務及保護金融體系與市場等監理目標的公司治理規定，我們完全支持。然而，我們認為，某些規定對於非公開發行的外商銀行子公司既非必要也不實際，因為這些銀行的股權結構單純，並無保護一般股東或少數股東權益的問題。因此，諸如為保護一般多數股東權益有關之董事及高階經理人薪資酬勞揭露之相關規定，即不應等同地適用到外商銀行所百分之百持股之子公司。

我們極力敦請相關主管機關就可能適用至外商銀行所百分之百持股子公司之相關公司治理規定，逐一審視其利益及成本；只有當相關規定已充份考量此類外商銀行子公司之公司規模及股權結構差異，並有助於達成主管機關或相關法規監理目的時，這些規定始適用在外商銀行所百分之百持股之子公司。

資本市場委員會

本委員會感佩主管機關為提昇台灣資本市場以及維繫市場秩序所作之持續努力。 我們尤其感謝金管會長期聆聽本委員會的種種關切及議題。

由於全球資本市場高度相互關聯，要評價台灣的進展必須參考其他國家之發展。考量其他亞洲市場進展之速度及廣度，我們認為，台灣仍須努力強化其國際競爭力。資本市場的持續發展端賴妥善調和、思慮周詳的藍圖及政策，這需要視野以及政府各行政單位的相互協調。 從這個角度，本委員會希望呼應稅務委員會提出的數個議題：這些議題說明行政單位相互協調之必要性，以更進一步提昇台灣資本市場之競爭力。

一如以往，本委員會隨時願意提供建言，協助台灣政府發展功能強勁的資本市場。 本著這樣的精神，本委員會提出下列建言：

議題一：增加交易制度合理化及彈性化以達到已開發市場之最佳實務

為確保台灣市場保有競爭力，我們必須持續以市場改革之方式達到最佳實務。儘管政府單位多年來在此領域做了許多正面的努力，然而在採納國際最佳實務的部分還有許多努力空間，如此台灣才能到達已開發市場的地位。

1. 差異化機構投資人及散戶投資人法規
   機構投資人擁有較充分的知識、風險承擔能力及信用，因此，保護散戶投資人所制定之法規及規範，對於機構投資人而言並無必要。套用這些規範於機構投資人，確實使他們立於相較於散戶投資人更顯不利之地位。以警示股票交易於交易前是否應預收款券為例，此舉應為證券商依據機構投資人之信用狀況自行研判後所做成的決策，而非一成不變且全面性之強制規定；相同地，證券商於執行鉅額交易前檢查客戶是否持有足夠的款券，應為選擇性而非強制性的要求。因為許多外國及本國機構投資人之款券都存放於保管銀行，在現行的監管制度下，機構投資人為預收或預查款券需要花費比散戶投資人更多的時間和更高的成本，此等規範會為機構投資人帶來不便。
2. 開放市價單
   即便市價委託單在國際主要證券市場上是一種常見的接單型態，目前外資在台灣證券市場，仍只能以限價委託。市價委託單可以免除投資人因為價格波動而必須多次更改限價委託單的情形，且開放市價委託單能提供投資人在瞬息萬變的交易市場建立部位或者結清部位的彈性，尤其有助於身處於不同時區的投資人進行交易。我們認為，適當的教育及宣導市場波動可能產生的風險(例如買高賣低)，有助於減少投資人及證券商之間可能的誤解。
3. 開放外國有價證券信用交易
   國內證券市場信用交易已經施行達二十年之久，然而，依據《證券商受託買賣外國有價證券管理規則》，外國有價證券信用交易仍為禁止之交易型態。信用交易能為投資人提供更好的機會提高投資報酬，並且使證券商在可控管之風險範疇下增加收入。台灣有許多經驗豐富的投資人十分熟悉信用交易的機制及可能涉及的風險，因此我們建議解除外國有價證券信用交易之限制。
4. 允許人員跨業登記及跨金融產業業務外包/內包
   具備資格的人才能夠在不同的金融服務產業之中自由轉換，是金融中心的特色之一。為達到使台灣成為區域性的金融中心及已開發市場此一目標，台灣應允許符合法規規定資格之金融專業人才，可以被登記在金融業的數個領域並且執行業務。台灣目前對於人才流動的僵固限制，阻礙了金融業實現共同合作及增加效率的潛在機會。舉例來說，一個熟練的風險或財務主管，任職於全球性金融服務公司，本於法規之規定，只能登記在此金融服務公司所涵蓋的金融事業之一，例如僅登記在銀行或者只登記在證券商，這樣的制度不只阻礙金融服務業進行整合，同時也造成金融服務集團對於其全體事業所執行整體風險控管的困難。此外，嚴格的業務外包/內包規定更是無法紓解此一議題。此一限制若不加以解除，則以全功能的銀行組織結構或者「一次購足」的企業模式之全球性金融服務公司，將不願在台灣市場擴展其事業，進而影響台灣成為區域性之金融中心。
5. 闡明結構型商品發行人/保證機構之身分
   《境外結構型商品管理規則》第六條規定，境外結構型商品應由該發行人或該商品保證機構在中華民國境內之分公司或子公司擔任總代理人。前項所稱子公司以外國銀行、外國證券商或外國保險公司經行政院金融監督管理委員會核准直接或間接轉投資在臺設立且持股逾百分之五十之銀行、證券商或保險子公司為限。換句話說，只有銀行、保險公司或證券商可以擔任發行人/保證機構。
   雖然金融控股公司的組織型態因地而異，但是金融控股公司擔任發行包括結構型商品等有價證券的保證機構卻是常態，依據台灣法規之規範，只有直接持有證券、銀行或者保險執照之金融控股公司才能擔任發行人/保證機構，這代表著透過其子公司間接持有相關執照的美國式金融控股公司將無法擔任境外結構型商品的發行人/保證機構。本委員會強烈建議修訂相關法規，允許非直接持有證券、銀行或保險執照的金融控股公司擔任境外結構型商品之發行人/保證機構。這樣的改變可以提供投資人更廣泛的產品選擇，同時也與國際間投資人享有相同的保障。
6. 放寬結構型商品發行人及保證機構信用評等之規定
   《境外結構型商品管理規則》第十八條規定，以一般投資人為銷售對象之境外結構型商品，其發行人或保證機構之長期債務信用評等須達S&P AA-或者以上，然而，此一高標準的信評規定，排除了許多信用評等維持在A或A+的發行人或保證機構。而且《境外結構型商品管理規則》及《信託業營運範圍受益權轉讓限制風險揭露及行銷訂約管理辦法》(《管理辦法》)，兩者對於信用評等之要求有著顯著的差異，《管理辦法》當中規範兼營信託業之銀行，銷售境外非結構型商品或公司債予一般投資人，其發行人或保證機構之債務發行評等須達A-或以上，但是就投資人而言，發行人或保證機構的信用風險，並不會因該商品為結構型商品或純粹債券而有不同。

議題二：擴大證券研究及交易範圍以促進產業競爭力

1. 開放證券商受託買賣大陸地區及非大陸地區掛牌上市之大陸相關有價證券
   為提昇國內投信產業競爭力、滿足國人多元化的投資需求，行政院金融監督管理委員會已於2008年七月開放國內證券投資信託基金投資於大陸地區A股由原來之基金總淨值之0.4%至10%，於非大陸地區掛牌上市之大陸相關有價證券限制則完全取消。於2010年三月二日，行政院金融監督管理委員會已核准於證券商從事受託買賣大陸地區紅籌股業務，但仍規範在台之證券商不得受託買賣其他與大陸地區有關之有價證券，此舉實不利於國內證券商與其他業者之公平競爭。因此，為提升證券商業務競爭力，建議將大陸地區有關之有價證券(包括大陸地區股票、H股及大陸地區註冊公司於其他證券市場掛牌之股票等)列入證券商受託買賣外國有價證券之交易市場範圍及標的。
2. 加強投資人教育以解決媒體在未經外資證券商同意下即引述或摘譯外資證券商研究報告而衍生之問題
   長久以來媒體在未經外資證券商同意下即逕自引述或任意摘譯外資證券商研究報告之內容，造成證券交易市場大盤或個股股價之波動，而主管機關每接獲投資人陳情後，會對證券商作相關之查詢。投資研究報告一向僅供客戶參考，客戶之下單決策純屬客戶自行判斷之結果。一般而言，投資研究報告不會由外資證券商主動發給媒體，任何與媒體之互動及新聞稿之發佈，也依其內部程序，取得核可後方可進行。所以，關於媒體在未經外資證券商同意下即引述或摘譯外資證券商研究報告而衍生

之問題，建議台灣證券交易所及櫃檯買賣中心等主管機關，應以舉辦研討會、印製宣導手冊等方式告知投資人，外資證券商無須為媒體未經授權同意，即引用或摘譯外資證券商研究報告於報章雜誌之行為負責；而現行採公告於證券商同業公會網站之做法，不僅無法有效防範任意引用或摘譯之行為，更成為券商在行政工作上的負擔與成本的增加；同時，亦應加強對投資人之教育，宣導正確之投資觀念，方為解決之道。

議題三：放寬期貨及期貨交易相關之外匯規定

台灣期貨交易所自1997年成立以來，雖已有顯著的發展，但制度的更新將能為機構投資人帶來更大的動機以參與台灣市場，進而為台灣期貨交易市場創造更多益處。

- 取消機構投資人預收保證金的規定，另以經紀商依據自有之信用政策， 自行制定預收保證金支付規則之方式替代。
- 開放建立give-up機制，以提供投資人於不同期貨商之間進行期貨交易時更多彈性及選擇，然而，取消預收保證金之規定應為建立give-up機制之前提，此後投資人將不必分別在give-up及full-service期貨商存放兩筆保證金。
- 開放外資得以新台幣從事期貨交易，現行外國機構投資人從事期貨交易僅得以外幣為之，並受相關新台幣換匯之規範限制，對外國機構投資人從事期貨交易造成不便，建請開放外資得以新台幣從事期貨交易，以刺激期貨市場交易活絡化。

議題四：進一步開放有價證券借貸市場

台灣是亞洲區有價證券借貸最重要的市場之一。台灣證券交易所、財政部及金管會近年推動的改革與進步值得稱許，同時，我們相信市場及作業程序之效率應可進一步強化，進而提昇證券借貸使用度及流動性。

為促進台灣有價證券借貸市場實質成長，以下為市場參與者提出之相關建議：

1. **創立「最終融通者」機制**
   在南韓，南韓證券集保公司提供有價證券借貸市場之「最終融通者」之機制。 此機制運作方式是，若出借人要求提前還券，確保有機制得以借券因應還券。由於這個機制之成本及抵押擔保均較一般借券高，因此無法取代現行提前還券之運作模式，但此機制使南韓有價證券借貸市場交割違約之發生可能性幾近於零。這個機制目前於台灣僅適用於出借人，如可擴及適用於借券人，將可鼓勵更多出借人加入有價證券借貸市場，達到正面之功效。
2. **議借方式下有價證券出借或返還之撥付，應視為有價證券之交割**
   目前法規允許出借人與借券人依照自行議定之借貸條件進行交易。由於議借交易已經「撮合」，不必再經證券商輸入借貸資料至證交所借券系統進行撮合。保管銀行撥券的動作實質上是執成交割。因此，我們建議相關單位取消出借人與借券人需向證券商「下單」、再經證交所平台進行撮合的規定，以簡化作業流程。交易雙方可遵行標準交割程序，將交割指示傳給保管銀行。保管銀行再將細節申報至證交所以便管理。由於證交所仍需管理保管銀行申報之交易資訊，因此，目前收取之處理費用仍可維持。
3. **改善議借方式下提前還券之流程，允許出借人與借券人在交割失敗時，能依借貸條件解決相關費用問題**
   在證交所新的交易機制下，出借人得在符合某些前提之下要求提前還券，並於同日（T日）賣出且能在T+2日交割。然而，此一新的機制並未考慮借券人可能無法從市場上買到或借到券，導致出借人於 T日所賣之券無法交割、受到違約的處分。在多數市場中，若借券人收到提前還券之要求，借券人有義務在市場交割期限內返還出借人，否則借券人需負擔相關費用。我們建議免除出借人在此情形下之違約處分，至於相關費用處理方式，由雙方依借貸條件自行協商。
   同樣地，因缺乏「最終融資者」機制，出借人要求提前還券時，借券人可能無法返還，此時，借券人應為此引起之交割失敗負責。為提供議借交易在此狀況下的解決方法，我們建議允許交易雙方依借貸條件協商解決相關費用問題。
4. **允許借券人得出借所借入之證券之可能性。**
   因為在證券借貸中，有價證券所有權已轉讓於借券人為借券人所有（依規定，若借券人所持有之有價證券，包含借入部分達10% ，即為該證券之大股東，並應依大股東申報規定辦理），借券人因此應該被允許出借所借入之證券。

化學製造商委員會

過去幾年，化學製造商委員會白皮書的首要議題向來是「維持台灣在兩岸與區域貿易中的關稅競爭力」。隨著兩岸關係的正面發展，台灣目前正與中國進行《經濟合作架構協議》（ECFA）的協商；根據目前的進展，石化工業可望列入ECFA的「早期收穫」清單，被列為享有優惠關稅的產業之一，此舉將可確保台灣化學產品在大陸市場的持續競爭力，因此，今年的《白皮書》中不再列入此項議題。

我們亦敦促政府在簽署ECFA之後，繼續和其他國家簽署協商簽署雙邊自由貿易協定 — 包括亞洲地區的主要貿易夥伴，因為更廣泛的區域性經濟整合將在未來幾年發生，為了保持貿易競爭力，台灣必須成為其中的一員。

此外，本委員會在此感謝政府以及台灣電力公司的努力，對化工業者提供可靠穩定的電力。雖然仍有些不預警的停電和電壓不穩定的問題尚未完全解決，但是已有明顯的改善，因此這議題也不列入今年的《白皮書》中。

2010年的《白皮書》議題重點在於：確保產業未來發展所需的原料供應充足；整合化學品單一機構的監管制度管理；推廣使用遠端操控中心；暫停徵收土壤及地下水污染整治基金；建立社區諮詢委員會，以提升化工業者與社區之間良好溝通；以及高壓容器管理法規應符合國際趨勢。

本委員會期待與政府相關機構就這些議題交換意見，共同為促進台灣的經濟發展和社會福祉努力。

議題一：確保產業發展所需的原料供應充足

台灣石化產業未來的生存與發展有賴於上游供應商供應充足原物料，目前石化產業有中油及台塑兩大系統。過去幾十年，由於國營的台灣中油公司不斷投資新的輕油裂解設備，加上近幾年民營台塑集團的石油供應，直至目前為止，台灣石化業者從未擔心基本原料的供應不足。

然而，情況即將改變。由中油主導投資的國光石化計劃案，原定目標是在雲林縣離島工業區蓋一座新的石化園區，卻因環評未通過，中油另規劃在彰化大城鄉取得廠址用地，目前環評工作尚在進行，惟這個計畫的未來發展仍是未知數。若缺少這個包括乙烯廠、芳香烴廠及其配套煉油廠的建設計畫，可能將會造成業界原物料供應的重大缺口。

台塑擁有六輕及中下游石化廠，為一獨立的產業鏈。但中油只有裂解廠，長期以來與民間石化廠各自分工，結合為完整的產業鏈。據統計，高雄煉油廠供應45%以上的石化基本原料，但由於中油五輕遷廠的承諾，以中油為主的石化產業鏈可能因此土崩瓦解。下游數十家石化廠將面臨走入歷史的危機，仁武、大社石化專業區也會跟著關閉，屆時台灣石化產業將垮掉半邊天。

石化工業曾替台灣創造出經濟奇蹟，一直以來大高雄地區被視為石化工業重鎮，石化工業的產值，直到現今仍是台灣重要的財源之一。中油五輕的遷廠承諾，牽動全台的重化工業佈局，依據台灣經濟研究院產業關聯評估報告的資料顯示，2015年高雄煉油廠一旦關廠，全國經濟總產值及附加價值將損失四千二百五十六億元（約一百三十五億美元），並且喪失十六萬三千個就業機會，這項數據令人觸目驚心，恐將引發下游產業龐大失業潮，嚴重衝擊國內經濟發展與社會安定。

據了解，中油公司曾對五輕去留進行過兩次民調，顯示同意留下的居民比反對的多，證明認同留下五輕的居民多為沉默的大眾。因此，我們建議五輕的去留應由當地（後勁地區）居民表決，或委託學術機構調查居民意願，讓民意決定是否遷廠。然而，由於種種複雜因素，中油與當地居民無法進一步溝通，雙方關係極度緊繃，我們建請政府相關主管機關主動介入協調，將這個地方政府視為「燙手山芋」的問題轉由中央解決，而非讓中油自生自滅。

有鑑於化工產業對國內經濟的重要貢獻，以及與其他產業的高度關連性，本委員會請求政府除了應主動協助解決中油五輕遷廠的問題外，亦應加速國光石化計劃案的推動。

議題二：精簡化學品生命週期管理的監管制度

政府正在進行中的組織改造計畫，正是整合負責化學品控管相關單位的好機會。目前包括勞委會、環保署、環保署協助成立的毒災應變諮詢中心(ERIC)、衛生署及消防署等單位，都分別負責控管化學品。本委員會認為，應將這些單位整併成單一的政府單位，以便更有效地控管化學品來 — 特別是當國際相關法規的要求越來越嚴苛，如「歐盟新化學品政策」(REACH—化學品的註冊、評估、授權和限制)、「化學品全球調和制度」（GHS—全球化學品統一分類和標籤的系統)、控管持久性有機污染物的《斯德哥爾摩公約》、減少含氫氯氟烴/氫氟烴的《蒙特婁議定書》等。此外，台灣本身的法規管制也趨於嚴格，例如對毒性化學物質提出緊急應變的要求和「現有化學品通報/新化學品通報計劃」（ECN/NCN)等。

從化學品緊急應變措施的觀點來看，本委員會認為整合現有的各種資源以達組織精簡的目的，將會大大提高效率和效益。目前ERIC的毒性化學物質緊急應變服務已被公認為亞太地區表現最好的，我

們建議將ERIC正式納入環保署的組織架構中，成為新組織的核心，使ERIC之有毒化學物質緊急應變服務，擴展至所有化學品。

議題三：建立透明的溝通機制，以利企業與社區進行良性互動

多年來，本委員會白皮書一再提出廢除地方回饋金的訴求，因為工廠即使繳交了所謂的地方回饋金，仍須面對社區民眾非理性的要求，如工程的延攬、各項臨時活動的贊助等。

近年來情況稍微好轉，因為地方回饋金使用的透明度已大幅提升。業者堅信，實現企業社會責任的方式包含適當地支持鄰近社區，致力於工廠的工安、衛生以及環保績效表現的提升，秉持與社區雙贏的態度進行溝通與交流，但我們同時也堅決反對社區民眾使用正規程序以外的脅迫方式要求回饋金。

地方回饋金的問題雖已稍有改善，但化工業者卻仍持續被少數不肖個人假借團體名義者騷擾，向環保單位提出業者違反環保法規的不實指控，實際上卻是為了向業者訛詐金錢或索取好處，諸如取得供應商合約、承包工程、土地買賣、請民意代表介入處理、或是關說雇用親友等。

對於上述業者與社區溝通不良事例，我們呼籲政府主管機關建置正式且透明的溝通機制，以有效處理社區民眾的不滿與疑慮。本委員會建議參考國外化工業者普遍採行的社區諮詢委員會(Community Advisory Panel, CAP)方式，由政府主管機關協助籌組，定期安排業者與社區召開公開會議，由業者說明環安衛績效，並適時對社區民眾相關疑義提出說明。

對於目前回饋金的作法，在無法徹底廢除之前，建請由政府主管機關、工業區服務中心、廠商聯誼會以及社區共同研擬出合理且可行作法，擬訂規範作為廠商與社區共同遵循的依據。相關規範內容建議可要求社區於每年年底前提出與廠商相關之活動規劃經費需求，以利相關廠商擬定年度預算支應，而非臨時性且漫無底線的要求廠商負責所有活動經費。

議題四：推動空氣分離廠/現場供應遠端操控中心系統

我們感謝政府機構努力增進與化學製造商之間的合作，積極推動產業自動化、輔導產業創新、精進製程能力以降低產品製造成本，提升產業競爭力。

我們希望政府進一步推動遠端操控中心系統。目前遠端操控中心系統已廣泛應用於國內外相關工業多年，例如台北捷運木柵線即利用無人列車操控機制。然而，台灣政府從未就此建立任何相關標準與規範要求。我們建議政府積極擬定相關標準與規範，以期與國際先進技術接軌，進而提升國內相關產業在國際的競爭力。

空氣分離廠/現場供應遠端操控中心有下列幾項優點：

1. 專家系統集中管理，提高供應可靠度，與國際先進技術接軌。
2. 強化人員管理，提升生產力，達到生產管理最佳化目的。
3. 符合現有法規的要求，並滿足原有操作需求。

我們建議政府在制訂相關規範時，廣納國際經驗為參考，例如，歐洲、美國及日本等先進國家的工業氣體協會均已認同的這類管理機制。我們希望政府准予丙類危險性工作場所或新設工廠內，執行遠端操控系統作業，並允許既有現場人員操作的管理模式改為遠端操控管理模式，以期與國際先進技術接軌，達到生產管理最佳化的目的。

議題五：暫停徵收土壤及地下水污染整治費，並將現行環境稅費改革為綠色稅收

依據「污染者付費」的原則，環保署徵收各種不同的環境稅費，包括空污費、土污費、資源回收管理費、和未來預備徵收的水污費，舉凡付費者與徵收物種的選定、徵收費率與收費標準的合理性、以及徵收的基金如何使用與分配等問題，在在引起廣大的爭議。

依據《土壤及地下水污染整治法》（SGPRA）所徵收的土壤及地下水污染整治費，就是這個體制不公平的例證之一。97.95%的土污基金來自石化業者繳交的整治費，而實際污染較大或具有潛在污染責任之重金屬製造或電鍍業，卻遲遲未負擔其應負擔之比例。

況且，現有土壤及地下水污染場址係過去環保署疏於管制所致，政府理應編列一定比例預算來整治，而非讓少數企業負擔。雖然環保署認為全國污染場址面積40%為石油系，但其中加油站、列管工廠以及儲槽大致上皆為有主之場址，根據現行法律須自行負責整治自有場址。而土污基金主要的目的卻是用於整治無主場址；也就是說，對目前公告整治的大多數場址而言，土污基金全無用武之地。

此外，2010年公告修正之《土壤及地下水污染整治法》雖然擴增了基金使用的範圍，但將部分原應從政府預算支付的項目，改由基金撥付。我們認為，利用應專款專用的特別基金來負擔政府預算的不足，實有悖於當初設立此基金的基本原則。由於政府財政收支年年赤字，環保預算嚴重不足，環保署似乎因此忽略了土污基金當初立法的初衷，而以土污費支應農地、加油站、大型儲槽、非法棄置場址、廢棄工廠、軍事老舊儲槽等高污染潛勢區域的監測、調查、查證等工作，然而，此種調查工作，實際上應該由各負責的主管機關進行及負擔，而非一味的由土污基金包山包海的支應。

土污費徵收迄今收入遠大過於支出。自2001年開徵至2009年十一月底，整治費總徵收金額到達五十九億元，其中，石化業者每年繳交六到七億元的土污費。但總累積支出僅約十九億餘元，累積剩餘基金高達四十億元。

本委員會同意，支付土污費為石化業者負起企業社會責任的表現，但該基金的徵收應「量出為入」較為合理 — 而非讓基金不斷累積。依據剛修正公告的《土壤及地下水污染整治法》規定，徵收對象已不僅限於化學物質，但因其他物質之收費項目及費率之辦法尚未訂定，如仍繼續僅徵收化學物質的土污費實屬不公。本委員會呼籲環保署立刻停止這種幾乎只向石化業者徵收土污費的作法，在環保署擴大徵收範圍、並對所有潛在污染者開徵土污費之前，應停徵化學物質之土污費。

最後，本委員會呼籲政府開始著手將台灣目前依不同政策目的而徵收的能源及環境相關稅費，如空污費、土污費、石油基金等多達十三項相關稅費整合為「能源及環境稅」，作為我國綠色稅制架構。我們建議政府參考OECD國家的作法，將現行混亂的制度變成簡單明瞭的稅制，成為政府預算的一部份，作為整體租稅一環；此舉主要目的並非加稅，而是讓政府以「統收統支」取代現有「專款專用」的方式，以免財富集中於行政機關，無法有效率的配置。綠色稅制改革對國家財政可進行完整的評估與運用，將綠色稅收納入國民所得帳，擴大稅基並降低民眾稅負負擔以及業主擔負的社會福利捐。

議題六：高壓容器管理法規應符合國際規範

台灣高壓氣體容器法規並未與國際公認標準接軌。事實上，聯合國、歐盟、美國甚至是中國，都已採納相關國際規範，唯獨台灣尚無高壓氣體容器特定檢驗標準。因此，當製造商進口容器至國內實施檢驗時，屢屢遭遇困難，已嚴重影響國內製造商的競爭力及經濟前景。例如，前年數家化學品製造商共進口二十多個美國DOT規格（美國DOT規格為國際公認規格）容器時，被延宕一年餘始通過檢驗，造成化學品製造商的損失。

現今勞委會仿效日本作法，限制聯合國ISO容器於國內檢驗與使用。日本政府通常容許以ISO容器進口其國內未生產之化學產品及或出口化學產品至其他國家，但並不鼓勵其國內業者同時充填與使用這些容器。勞委會仿效日本作法已經傷害台灣的化學品製造業者；這些法規禁止特殊化學及氣體製造商在國內市場使用高壓氣體容器，因此，化學品製造商只好向國外製造商採購進口，而需要使用這些化學品的國內電子業者則必須負擔更多成本，並迫使他們購買更貴的進口品，造成他們的供應鏈更加不可靠。

現行《危險性機械及設備安全檢驗規則》第六條規定，外國進口者，得採用該國外標準實施檢驗之規定執行，然而相關政府單位並未落實這項規定，仍要求進口容器符合台灣之CNS國家標準及其他運輸規定，經常造成進口容器無法在台灣檢驗及使用。

我們建議勞委會參考南韓經驗。南韓原先亦沿襲日本法規系統，但歷經變更後已採納國際標準，南韓的化學品製造業多年來已使用聯合國ISO容器。

聯合國ISO規格與美國DOT規格，已廣泛受世界各國公認及採用，事實上，聯合國ISO規格容器檢驗及再檢驗，已有一套完整管理制度，即「聯合國橘皮書」。我們建議台灣政府採認此制度而不再另外要求符合國內標準。若台灣製造商得使用聯合國ISO容器出口化學品及供國內使用，將可協助提高業者之國際競爭力。

教育及訓練委員會

發展中的國家的經濟模式，正迅速地從工業時代轉變到數位時代。在這新經濟秩序中，台灣政府將如何幫助人民和企業認定、保衛和善用自身競爭優勢？

在過去五十年來，台灣的經濟表現已超過了美國，中國和香港。但在過去五年，當其餘的亞洲地區正在強勁成長時，台灣卻遠遠落後其大部分鄰國。

在80和90年代，隨著勞力密集產業的發展，台灣發展出世界一流的製造業；在這個轉變中，政府和學術界皆擔任了重要的角色。但當年若沒有正確的基礎設施—包括教育和訓練，台灣不可能有機會成為亞洲經濟和民主發展的典範。

現在，台灣再次處於十字路口，政府是否能對教育模式再次作出必要的調整，成功地幫助人民與其他國家競爭？

過去，透過教育和訓練所學習的特殊技能，幾乎一輩子都受用。然而，在這個快速變遷的數位時代中，情況已大不相同。台灣的學術機構是否能夠協助人民迎接新環境中的新挑戰？

雖然教育部近年已經展現較為開放的態度，願意與業界溝通，但在過去五年裡，台灣對於國際趨勢的應對速度，遠遠慢於其他亞洲已開發國家，主要是香港、新加坡和韓國。因此，相較於其他亞洲

國家所擁有的個人成長和發展機會，台灣人民被剝奪了這些機會。

以下為本委員會所特別關注的三個議題：

議題一：持續鬆綁國外大學及學歷的法規

本委員會對於政府近年努力推動法規鬆綁，移除外國學校在台設校的部分障礙表示感謝。例如，2007年十二月修正通過的《私立學校法》，允許外國人擔任私立學校的校長或董事長，並刪除外國人在同一所私立學校董事名額限制。本委員會並樂見遠距教學課程學分可佔畢業總學分之一半。這些都是邁向正確方向的進展。

儘管有這些正面發展，其他鄰近國家如馬來西亞、香港、新加坡和中國對於國外大學的相關法規，仍比台灣先進。在這些國家，國外大學可到當地設立分校，並且開放由國外教授執教的課程，而學員所拿到的文憑學位也都是完全被當地政府認可。

台灣現行法規仍規定，國外大學僅能申請來台設立完整的分校，但不能設立辦事處或衛星校區。然而，台灣大學卻可以輕易地在美國或其他國家建立辦事處或衛星校區，進而提供學位課程。此外，學生在台灣參加雙聯制碩士課程，將會面臨到一個問題：學生未實際在國外大學校本部上課並取得之學分，將不被承認。由於上述種種障礙，對於許多已在其他亞洲國家經營的美國商學院及其他專業學校，台灣並無吸引力（例如：芝加哥大學商學院新加坡分校、新加坡國立大學與加州大學洛杉磯分校的雙聯制EMBA課程，或是約翰霍普金斯大學在中國設立南京辦事中心）。容許高品質、信譽佳的美國教育機構進入台灣教育市場，將可刺激台灣本土教育體系的改革創新，並且提供台灣學生更多豐富多元的選擇。

因此，委員會呼籲台灣政府秉持自由化和國際化的精神，允許正當合法的外國大學在台灣經營，避免受到過度的法令限制。本委員會敦促台灣教育部：

- 允許合格的台灣學校與教育部所認可的美國或其他外國教育機構，合作雙聯制碩士學位課程，並且不受限於所修得學分以及所授予學位地理位置的限制，皆認可其所取得的學分以及學位。
- 允許所有教育部認可的美國和其他外國大學在台設立辦事處或衛星校區，並且提供證書和學位課程給台灣或來自世界各地的外籍學生。不論是遠距教學或是在台灣授課，只要這些課程內容與其校本部所提供課程一致，且由其合格師資群透過遠距或親赴台灣授課，本委員會認為沒有理由不讓此類課程在台招生，並且開設教育部認可之學程。

本委員會認為，台灣應修法，允許美國和其他國外大學在台灣提供學位和非學位的課程，並以外國學位課程的品質為認可標準，而非限制授課地點。

議題二：消除現行體制障礙，促進學生的國際化流動

現行體制的障礙限制了台灣中等學校以上學生的國際交換及流動。目前，如果台灣學生欲前往國外教育機構進行為期一年或一學期的交換學生計畫，台灣校方必須與國外學校簽署姐妹校合作協議，國外學分才能受到台灣校方的認可。此項政策造成了以下的問題：

- 學生選擇國外學程時，只能在台灣母校核可的學校中選擇。然而教育部所認可的所有具品質的國外學校數量，卻遠大於單一學校的國外合作學校數量。
- 排名較佳的國外學校未必有興趣與單一台灣學校簽署合作協議，但卻有可能願意接受單一學生交換一年的申請。目前的政策限制了台灣學生的選擇。同樣地，上述問題也發生在想要申請來台交換的學生身上。

為了促進學生的國際化流動，本委員會建議政府建立全新體制，讓台灣學生能夠自由選擇教育部所認可的所有國外學校，不再需要由台灣校方與國外學校簽署姐妹校協議。至於個別學分的認可是否符合畢業標準，則由台灣學生的母校審核。

議題三：承認國外文憑和證書課程

教育部認可學生在國外大學/學院所修習大學與研究所課程的學士/碩博士學位，但卻缺乏類似制度，將學生在國外社區大學/專科學校/大學所修習之副學士學位、文憑與證書課程，列入同樣的學歷認定法規。

文憑與證書課程大都以應用或技職教育為主，著重在高度專業技能的工作訓練，而擁有這些專業技能的學生，正是台灣就業市場炙手可熱的人才。在過去十年中，隨著大多數的專科學校升格為四年制的大學，現今擁有專業技能的人才已出現短缺現象。然而，由於文憑與證書課程不被列入學歷認定法規內，讓有興趣的學生對於修習此類課程不免望之卻步。無庸置疑，認可國外文憑與證書課程，將有助於舒緩就業市場人力短缺現象，也提供台灣學生更多選擇國外教育的機會。教育部現行的國外學歷認定法規，無異於不合理的輕視這些短期的技職或應用課程，並忽視當前就業市場的人力需求。

環境保護委員會

如同世界上許多其他國家，環境議題在台灣的公共政策領域中已逐漸成重要的元素。我們希望這些關鍵的議題能在台灣得到更廣泛的注意和討論，以便形成有效共識，並在確保台灣的永續發展時，亦保護環境和發展經濟。

今年本委員會主要持續關注兩個去年提出的議題：改善台灣的污水處理系統，以及以實際和理性的方式處理溫室氣體排放的挑戰。此外，今年我們提出一項新議題，希望政府擴大綠色環保標章的認證範圍，亦即除了回收產品製品外，其他符合環保作法的產品也應被納入。

此外，我們也希望利用這個機會，呼籲政府著手提倡如何減少建築物的能源消耗，包括「綠建築」的宣導。我們亦在此呼應化學製造商及基礎建設委員會所提出的議題：提高環評審核程序的效率。在目前的體制下，許多未來的建設計畫經常延宕多年，只因環評審查遲遲未能通過。這種情形不僅對建立清楚的環境政策毫無助益，也忽視企業迅速做出投資決策和行動的需求。

本委員會期盼能有機會與相關政府機關分享資訊及想法。

議題一：加速公共汙水下水道建設計劃

雖然台灣擁有高度的經濟發展，污水下水道的接管普及率卻仍遠低於其他國家。目前台北市污水下水道普及率高達98%，高雄也有60%，但根據最近的統計數字，台灣整體的汙水下水道接管普及率卻低於24%。相較之下，鄰近的日本和南韓普及率分別高達70%和80%。

馬政府在「愛台十二建設」中承諾，未來五年將投資新台幣九十二點六億元，朝向污水下水道接管普及率每年增加3%的目標邁進。雖然我們很樂見這樣的發展，但是依照政策所宣布的時程，要將台灣提昇至與其經濟地位等量的水準，將是一個漫長且昂貴的工程。

由於中央政府預算有限，最好的情況是吸引更多民間企業參與污水處理廠的營運。事實上，「愛台十二建設」的污水下水道計畫，就需要新台幣十三億的民間資金，投入相關計畫；但這些計劃若要成功，政府就必需打造更有利的投資環境，才能鼓勵投資者參與。目前而言，由於政府的價格管制政策、限制廠商獲取合理的利潤，使得潛在投資者卻步。此外，在台灣，管理污水處理廠的營運廠商，必須為連接家戶和汙水下水道系統的工程自籌財源，但在多數其他國家，建設污水下水道系統和連接網絡的責任，由政府負責。

另一個關鍵是，執行污水下水道建設的地方政府機關缺乏相關的經驗和專業，再加上中央政府和縣市政府的法規政策經常相抵觸，使得問題更加嚴重；因此，政府亟需設立一個具有明確權責的全新機關來監督整個過程，並建立更透明和一致的法規制度。

此外，即使新建污水處理設備，若政府未能分配合理預算以維修現有的處理設備，則效果可能十分有限。維修資金不足的主因是污水處理的成本並沒有轉嫁到消費者身上；然而，除非資金來源有合理的基礎，台灣將永遠無法解決污水處理的問題。

本委員會呼籲政府迅速採納政策及實際作法上的改變，以確保「愛台十二建設」中污水下水道接管普及率及污水處理建設的成功。

議題二：重新評估溫室氣體及能源相關法令

本委員會肯定台灣政府致力於建立溫室氣體登錄機制，及鼓勵企業從事溫室氣體減量的努力，其中碳交易機制的建立（無論是自願性或強制性），是對於溫室氣體減量很重要的方法之一。此外，對於交通運輸及建築物能源效率計算的配套機制也非常重要，以利鼓勵更多新技術的研發及投資。本委員會支持溫室氣體減量的目標，但針對目前正在立法院審議的《溫室氣體減量法》草案，提出以下幾點建議：

- 從總溫室氣體排放的計算中，扣除非直接排放的部分，已避免電力供應商重複計算。
- 對於每種產品的效能標準，依照全球氣候變遷小組（IPCC)的指引，作更明確的界定。事實上，有些產品如水泥、鋁等，其業界已開始制定相關自願性效能標準，可提供參考。
- 刪除「最佳可行性技術」的字眼，因為草案並未提供客觀的方法，以作為清楚的界定。當企業可以提供具體的數據，來證明溫室氣體減量的成效，即可取得相關碳交易權，而無需證明使用所謂的「最佳可行性技術」。
- 刪除碳交易權溯及既往年限的要求，讓企業可以提供具體的數據，來證明溫室氣體減量的成效，即可取得相關碳交易權。因為有許多跨國企業早已在1990年以後，便致力於溫室氣體減量。
- 依據明確的溫室氣體排放基線盤查，來設定溫室氣體減量目標。
- 溫室氣體減量應由所有利害關係人一起努力。
- 企業內部的溫室氣體排放盤查頻率，可訂為每年一次。但外部

盤查則應延長為三年一次，並建議應依其溫室氣體排放的總量多寡，來決定盤查頻率。溫室氣體排放愈多者，應增加盤查頻率。

- 政府應保留一部分之碳交易權，來支持一些策略性的發展目標，譬如一些對於經濟發展非常重要，但又大量增加溫室氣體排放的工業發展專案。不過，政府必須建立一套健全的機制，來聽取所有利害關係人的意見。
- 在法令開始執行最初幾年，應盡量以教育宣導來取代處罰，以鼓勵不遵守的企業透過更多的經驗學習，來改善他們的績效。

如果本法案預期還要一段很長的時日才能通過實施，本委員會建議政府應同時加快腳步，來鼓勵企業從事溫室氣體自願減量的工作。

議題三：將國際負責任管理林木認證之原生紙漿製成之衛生用紙，列入綠色環保標章系統

據統計，因森林的破壞所釋放之溫室氣體達全球總排放量的五分之一，這個排放量比起來自汽車、飛機、火車等運輸工具的總排放量還高。因此，保護森林以降低全球暖化效應是政府及產業界一個共同而且必須面對的重要議題。台灣每年的林木需求約為五百五十萬立方米，其中約95%須仰賴進口，主要的來源是鄰近的東南亞等擁有珍貴熱帶雨林的區域，但這正是被國際環保團體 — 如綠色和平組織及世界自然基金會 — 指為有嚴重的雨林破壞及非法濫伐情事之區域。

國際的綠色環保趨勢是藉由促進永續管理林木及產銷監管鏈的認證，如Forest Stewardship Committee（FSC）森林管理委員會，來保護森林。先進國家如歐盟及紐西蘭的現行環保標章採取同時鼓勵永續林木認證產品，並鼓勵回收紙的雙軌制度。然而，縱使西方國家普遍採取提倡永續林木認證系統，台灣環保署推動多年的綠色環保標章系統仍僅採納再生紙製品。

本委員會感謝台灣政府發展綠色環保標章以鼓勵產品回收和再利用的作為。然而，要降低對環境的衝擊永遠不會只有單一的解決方案，我們因此期待政府能更廣泛地考量其他選項。以衛生用紙為例，即便台灣每年從海外進口七十五萬噸的廢紙以滿足回收紙的需求，市場上原生紙銷售量仍有高達95%的市佔率。由於缺乏一套適當的制度來評估原生紙的對環境的影響，並鼓勵以負責任的方式使用如紙纖維等原物料，因此，市面上大多數流通的產品仍舊無法被妥善的監督與管理，以確保不使用來自瀕臨絕種森林的木漿。

本委員會呼籲政府迅速擴大綠色環保標章制度的認可範圍，除回收紙以外，亦將國際永續林木系統認證的原生纖維產品列入環保標章。此舉不僅能夠減少因氣候變遷帶來的負面影響，也能終止台灣目前獨厚對回收紙製造商的不公平貿易現象 — 依《政府採購法》規定，只有已取得環保標章的回收紙製造商，才能向政府機關銷售產品。此外，此作法能進一步提供消費者清楚的資訊，了解其購買產品的纖維來源，同時提供多樣化的綠色產品選擇；最重要的是，藉此提升產業界致力於環境保護的層次，以期對有效減少非法砍伐及降低全球暖化做出貢獻。

人力資源委員會

本委員會欲借此機會盛讚台灣政府過去數年來的努力，使國外專業人士更容易進入台灣就業市場。本會期盼能持續放寬有關國外和中國大陸專業人士來台之限制，為台灣就業市場創造更具競爭力、全球化、更有吸引力的工作環境。本委員會明白開放台灣就業市場和修訂相關勞動法規間必須維持平衡，才能提升競爭力，同時保障國內勞動人口。然而，在以下提出之各項議題中，本會特別希望就目前審查中之《勞動基準法》和《工會法》部分修正草案可能產生之影響表達關切。

議題一：重新考量《勞動基準法》修正草案，兼顧勞動保障與企業衝擊。

本委員會有幸能有機會與行政院勞工委員會（勞委會）就《勞動基準法》（《勞基法》）修正草案進行公開對話。我們呼籲勞委會慎重考量以下建議，因為這些建議對保障勞工而不致損害企業競爭力之最終目標，具有關鍵重要性。

<u>勞動派遣</u>

1. 「勞動派遣」是指將某一事業聘僱之勞工派遣至其他事業以提供勞務，並接受後者監督管理。《勞基法》修正草案欲管制台灣之勞動派遣活動，但卻未明確定義何謂勞動派遣。例如，當公司將其總機服務或客訴處理服務外包時，該公司是否應視為從事勞動派遣活動，因而應受修正後法律所載限制之約束？本委員會建議改寫修正案內容，將勞動派遣與人力資源和其他商業服務外包明確區分。
2. 定期契約和勞動派遣均為台灣所常見，因為目前《勞基法》就資遣或終止聘僱對雇主設下過度的限制，剝奪雇主在現今競爭市場中求生存而必需具備的人力資源管理彈性。本委員會建議勿對定期契約或勞動派遣設限，此舉有助於維持台灣之競爭力。
3. 修正草案第九條之一規定，要派單位使用派遣勞工，應經工會或勞資會議同意，且派遣勞工不得超過該事業單位受僱員工總額之百分之十。但代表員工之工會或其他團體本身有其利益考量，無法客觀評斷勞動力方面的問題。另外，修正草案對製造業衝擊最大，因為製造業一般均聘僱大量派遣勞工，若企業無法使用派遣勞工，可能將工作機會轉至外勞或將訂單轉至國外；無論結果為何，均將導致台灣之工作機會減少，失業人口增加。另，跨國企業往往施行員工總額限制，如台灣之聘僱彈性縮減，跨國企業可能會將工作機會轉移至其他國家。
   本委員會建議刪除應經工會或勞資會議同意之規定，並取消草案中派遣勞工佔公司員工之百分比限制，或放寬之（無論是全面適用或針對特定類型之派遣服務）。例如，如派遣勞工人數不超過員工總額百分之十，則不需經工會或勞資會議同意；於特定情況下，例如季節性勞工或特別計畫，雇主應可申請較高比例之派遣勞工。
   另，該修訂條文第二款規定要派單位應將所需勞工之人數、派遣期間及相關工作內容等詳情公告之。因本項規定之理由不明確，更容易激起勞資糾紛，反而不具正面作用。本委員會建議刪除本項規定。
4. 修正草案第九條之一第三項規定，要派單位不得使用派遣勞工替代參加罷工中勞工之工作，然罷工為勞工爭議行為，且罷工要件於《公會法》草案中已放寬標準，在此情況下，若派遣勞工不得替代罷工中勞工，則企業如何能營運？此限制將導致企業無在台灣投資意願，反而造成失業率上升。本委員會呼籲刪除本項規定。
5. 修正草案第九條第二項規定，除第九條第一項所列之少數特殊情況外，派遣單位不得與派遣勞工訂定定期性與暫時性定期契約，然此限制卻不適用其他企業，此舉似乎造成對派遣行業之歧視。建議至少應准許就短期計畫訂定一年期定期契約。
6. 修正草案第七十四條之一就派遣業採登記制，而未採許可流程以確保其符合特定條件。此制度並無法適度保障派遣員工之權益。本委員會建議對派遣業之參與設定基本資格限制（例如申請人須有優良實績、提供完整員工訓練、設置營運計畫等），且派遣業者亦須定期向主管機關報備以防範違法情事。
7. 修正草案第九條之三規定，要派單位不得「指定」派遣特定勞工。這是否意謂要派單位完全不能設定勞工之條件、不能要求更換派遣勞工？由於派遣勞工於要派單位提供勞務，要派單位應有權選擇派遣勞工。建議本條應刪除，而所謂「指定」之定義應明確化或於修法理由中說明之。
8. 草案中並未說明，修正案通過立法後會對現存之派遣勞工有何影響。本委員會建議明訂過渡期間，使企業有合理期間處理現存之派遣關係，並避免法律關係及法適用之紊亂。

<u>勞動契約之終止</u>

1. 有關現行《勞基法》第十一條中的資遣要件，在實務上，勞資雙方經常因資遣是否因未符合特定資遣理由而應屬違法，產生諸多爭議 — 即使雇主願意支付資遣費。目前的修正草案似再將資遣要件作更嚴格之規範。例如，第十一條將「無適當工作可供安置」之要件適用於所有資遣事由。此一要件是否包括企業歇業、因不可抗力暫停工作、企業虧損或業務緊縮等情況？發生以上情況時，均無「適當工作可供安置」。此外，所謂「適當工作」究竟指企業內之工作，或得擴張解釋為包括該企業外之工作（例如關係企業，甚至與該企業毫無相關之其他工作）？上述問題應有更明確之解釋。
2. 修正草案對於不能勝任工作、因循怠惰不認真之員工亦增加「無適當工作可供安置」之要件。本項應刪除才不致課予企業主過重之負擔。

<u>*提前離職之資遣費*</u>

1. 修正草案第十七條第二項規定：「勞工於預告期間內提前離職者，雇主仍應給付資遣費。」但此資遣費之計算應算至原訂之終止日或勞工提前離職日方為合理，然草案條文就此並未作明確規定。本會建議修訂本項之資遣費計算方式明訂為「以實際離職日計算資遣費」。
2. 預告期間內，勞工仍有辦理交接之義務。如勞工提前離職，則勢必影響職務交接，因此，應適當衡平雇主之權益。
   本會建議增訂勞工如提前離職而未符合草案第十五條第二項準用第十六條之預告期間時，雇主得要求勞工應給付違約金（違約金計算方式得依第十五條第三項之規定），並得直接從資遣費

中扣除。

最低服務年限

1. 第十八條之二規定，雇主須「有為勞工進行專業技術培訓，提供專項培訓費用者」，始得約定最低服務年限。實務上，勞雇雙方約定最低服務年限之原因，並非僅限於提供訓練，亦有基於雇主支付簽約獎金或海外工作機會等情形，因此似不宜以法律限制此類約定，應將其自第一項之兩款中刪除。
2. 草案規定勞工在未屆最低服務年限前，「非基於可歸責於勞工之事由」而提前終止勞動契約者，勞工不負違約金及損害賠償責任。觀諸勞委會對草案之說明，「非基於可歸責於勞工之事由」係指勞工依《勞基法》第十四條或《民法》第四百八十九條終止勞動契約之情形。本委員會建議將該兩情形直接於法條中明確規定以避免爭議。同條第三項亦同。

競業禁止

1. 第十八條之三處理的是勞動合約中競業禁止條款之執行力，但未將細部之審酌要件納入法條中。如欲以法律直接規範競業禁止，則就何謂「競業禁止條款禁止之期間、區域；職業活動之範圍、就業對象」之「合理範圍」，應再作細緻化處理，以資遵循。由於這類細部規定應明訂於施行細則或立法理由中，因此本委員會要求能有機會提前對施行細則之草擬表示意見，待法令通過後並將持續監督其發展。

買賣不破僱傭

1. 修正草案第二十條規定：事業單位有合併、分割、概括承受或概括讓與、讓與全部或主要營業或財產等轉讓情事時，勞動契約對於受讓人仍繼續存在。但勞雇雙方另有約定或勞工聲明不同意隨同移轉時，不在此限。然而，《企業併購法》已規定企業併購活動後之僱傭問題，且該法已行之有年，今《勞基法》修訂草案規定企業須留用全部員工，勢必影響企業併購意願，不利於提升台灣整體競爭力。本會建議修訂《勞基法》第二十條，使其與《企業併購法》第十六條及第十七條之規定一致化。

   對於企業分割或讓與主要營業或財產之情形，草案對應移轉之員工範圍未明確定義。為避免兩法出現歧異，本會建議將草案修定為與《企業併購法》一致。草案至少應明確定義移轉之勞工限於與分割部門直接相關之員工，至於後勤單位之員工，應容許轉讓公司及受讓人決定應移轉之員工。

延時工作

1. 《勞基法》第三十三條規定：「第三條所列事業，除製造業及礦業外，因公眾之生活便利或其他特殊原因，有調整第三十條、第三十二條所定之正常工作時間及延長工作時間之必要者，得由當地主管機關會商目的事業主管機關及工會，就必要之限度內以命令調整之。」

   本條和勞工主管機關規定各行業應經由工會或工商協會表示意見，但就國營事業或企業數目有限的行業（如發電設備），要提出代表整個行業的意見是極為困難甚至毫無可能的事。本會建議修訂第三十三條，刪除有關提出代表整個行業意見的規定，及第三十條之一，使正常工作時間及延長工作時間能以年平均值計算，而非現行之月平均值。

計算平均工資

1. 《勞基法》第二條規定之平均工資係以前六個月內所得平均工資為計算基準。這對於聘僱員工特別具有季節性需求，或農曆春節時提供優渥獎金的企業相當不利，因為若員工退休或解雇時間點緊接在薪資高峰期後，所計算的退休金或資遣費會變相膨脹。計算資遣費和退休金時所用的平均工資基準應以前十二個月內所得平均工資為依據。

議題二：進一步開放中國商務旅客進入台灣從事商業活動

針對來台從事商業目的中國大陸專業人士，本委員會提供了以下的建議，盼協助精簡程序並增加彈性，消除不必要的人為障礙：

1. *建立海峽交流基金會駐中國的辦公室*

   當一個在中國大陸的申請人因業務目地，希望訪問台灣時，在台的邀請單位（以下簡稱「 邀請人」）需要以他或她的名義代向內政部入出國及移民署（以下簡稱「移民署」）提出申請案；邀請人還必須提出相關必要的佐證文件。所有這些文件，最後需要送交在台灣的移民署審核，由於台灣在中國並沒有任何代表處，這些文件郵寄給台灣的主管機關的程序延長了處理時間。這往往造成部份中國訪客在時間配合上的問題。 例如，對於首次提出申請者和那些之前在台灣停留期間曾違反有關規定的申請人而言，在台邀請人必須在申請人出發前至少十個工作日，遞交所有申請的文件給移民署。

   有關互設代表處之議題，已在近日的兩岸會談中被提出。如果相關協議能夠順利達成，在中國的台灣辦事處將可增進從中國大陸到台灣訪問的旅客在申請程序上的便利，並為申請人節省大量的作業時間。
2. *建立多次入境簽證的機制*

   目前，除了已在兩岸設立分支機構的跨國公司之中國大陸籍員工，可取得多次入境許可證外，其他的中國大陸訪客來台從事商務活動，台灣僅給予有效期三個月的單次入境許可證，或可以選擇申請逐次加簽的入境許可證。雖然逐次入境加簽的程序不太繁重，但該過程仍然是相當費時的，因為它需要每次重新獲得在台邀請人的同意書，編訂新的行程表，並提交這些文件給移民署。我們建議放寬有關多次入境許可證的核發資格，減少了旅客耗費大量時間精力在申請單次入境許可證或逐次加簽入境許可證的程序。
3. *延長停留的最長期限*

   中國大陸人士來台從事商務訪問，商務考察或調查，召開會議，演講，參加商展或參觀商展等活動，可以在台灣停留的最長期限為一個月。另外對於來台從事相關履約的活動，如商務研習、驗貨、售後服務和技術指導等，則可以在台灣停留最長達三個月。基於申請過程需要十到二十個工作天準備文件和從事入境證的申請，限制申請人最多僅能停留在台灣一個月似乎很不合理。有鑑於兩岸之間的交流業務量不斷增加，我們建議延長前述一個月的期限至二個月，三個月的期限至六個月，以便更符合雙方實際業務之需要。
4. *刪除在台邀請單位每年邀請人數的上限*

   雖然政府去年放寬了各別邀請人每年邀請人數上的限制，本委員會仍在此敦促主管機關能完全取消這項限制。目前，當邀請人是本國企業，年營收在新台幣 三千萬元以下者，每年可以邀請的大陸商務人士不得超過五十人。當邀請人是外國公司（包括台灣子公司、分公司、外國公司代表人辦事處）或本地公司，年營收超過新台幣三千萬元以上者，每年可以邀請的最高人數增加到二百人。有鑑於兩岸日益頻繁的商業交流和兩國政府之間關係的逐漸改善，加上台灣政府渴望促進會展產業及相關業務的發展，上述限制似乎已經過時。完全刪除這些限制將有利於相關業務的業務擴張和發展。

議題三：修正《工會法》以制定合理的工會代表規則

《工會法》賦與工會權利以代表其工會成員和管理階層協商，例如處理工會事務的公假、職工福利委員會代表人數、勞工退休金監督委員會代表人數、以及在未來可能進行勞動派遣的人數等，工會代表的人數佔了絕大多數。但是，如果工會的實際成員未超過所有員工的半數，不管是否工會入會為強制性或是自願性，工會都不能訴求其代表大部分的員工。

在近日對《工會法》修法過程中，勞委會應設法解決以上議題。如果工會成員少於所有員工總數的一半，法律應該規定職工福利委員會與勞工退休金委員會的代表數按照比例計算，且其法律權利應受限制。除此之外，《工會法》應該明確指出是否「所有員工」意指在「單一工作地點」或「一家公司」的所有雇用員工總數。

議題四：移除外籍專業人士來台工作的兩年工作經驗限制

現行法規規定，除了科技相關產業外，所有外籍專業人士（具大學學歷者）欲來台工作，必須擁有兩年以上工作經驗的限制。

鼓勵外國人才來台灣工作，是一個為台灣本地人才提供更國際化工作環境的有效方法；此外，當鄰近國家都在極力吸引全世界最優秀、最聰明的人才時，台灣政府的保守和保護主義作法非但不必要，對於行政院推動之「營造國際化生活環境」政策，可能還會產生反效果。我們再次呼籲政府盡快修法刪除上述限制。

基礎建設委員會

自從去年七月台灣參加WTO之下的《政府採購協定》（GPA）以來，政府招標案大量地對GPA會員國公司開放，本委員會特別讚許此良好績效，亦感謝公共工程委員會積極努力落實台灣加入GPA之承諾。本委員會並樂見公共工程委員會以開放的態度，定期與委員會成員溝通交流，以便共思解決方案。我們期許此具建設性之溝通關係能持續進行。

然而，本委員會深信，要能吸引美國公司來參與台灣政府採購市場，許多事項仍需要改進。有鑑於美國歐巴馬政府最近提出了「國家出口倡議」，盼在五年內實現美國產品出口增長一倍的目標，美國政府應會持續追蹤美商參與台灣政府採購市場的情形。我們也認為，吸引更多國際公司來參與、開發台灣的基礎建設，對台灣是有利的，因此建議此議題可納入下一次美台雙邊貿易會談中。

在去年的《白皮書》中，我們曾提醒，由於政府提出極具野心的

二氧化碳減碳時程，使得要通過建造可提供廉價電力的燃煤電廠計劃案，面臨極大困難。很可惜的是此一現象並未改進，而許多燃煤電廠預定的商轉時程，都已延遲超過四年。

本委員會也曾指出，如果燃煤電廠計劃一再延宕，為應付未來的電力成長，台電將不得不提前興建十分昂貴的燃氣電廠。該預言不幸言中。目前通宵燃氣電廠將提前在原規劃的彰工、深澳燃煤電廠之前商轉。燃氣的成本比燃煤要來的高，以一部燃氣機組取代一部八十萬瓩的燃煤機組，每年所增加的發電成本超過新台幣一百億元（相當於美金三億一千七百五十萬元），取代四座燃煤機組加起來的額外成本，將高達每年美金十二億元，嚴重影響台灣的國際競爭力。今年，本委員會再度呼籲，台灣政府重新檢討其近程二氧化碳減碳政策。

議題一：採行務實的二氧化碳減量目標

在去年哥本哈根會議後，台灣政府修訂二氧化碳之減量目標，即在2020年回歸2005年之排放水準，並於2025年回歸2000年水準。然而，若以台電公佈的長期電源開發方案計算出未來十年至十五年時的二氧化碳排放量，我們可以很肯定的說，這些減量目標是不可能達成的。

一座電廠的建廠時程耗時極長，以火力發電廠言，從場址選擇、可行性研究、環境影響評估到商轉，就要花上至少十年的時間。核能發電廠需時更長。因此，為了應付未來十年至十五年的電力成長，台電必須規劃長期電源開發方案，考量因素如供電能力、區域供需平衡、電力負載特性、基載／中載／尖載機型配比，及民營電廠電力狀況等；每年對現有的發電系統做通盤的檢視，再就產業結構變化，負載管理預估電力成長、各種發電方式及發電技術（核能/火力/再生能源）做出綜合評估後，方能提出電源開發方案。這個程序十分專業及嚴謹，由電源開發方案可輕易計算出未來十年電力業將排放的二氧化碳量。

再者，由發電所排放的二氧化碳量超過全台灣排放量的一半，檢視發電所排放的二氧化碳量，便能驗證政府所訂定的減量目標是否可行。從簡單的演算，將發現電力業在2020年之二氧化碳排放量將比2005年增加40%，從2000年到2025年，二氧化碳排放量將成長一倍。如此一來，為了達到2025年減至2000年的二氧化碳排放水準，則其他部門包括交通、工業、商業、及住宅等的二氧化碳排放量將必須降至零，這無疑是不可能達成的。

此外，台灣再生能源如風力發電及太陽能發電的總潛力，只能提供3%的電力需求，對於要達成政府的減碳目標值，幾乎是毫無助益。

在去年哥本哈根會議商討失敗後，取代《京都議定書》（2012年將失效）的新條約前景更不確定。目前認為能讓二氧化碳減量的技術－再生能源、核能、二氧化碳捕獲及儲存－都不能解決台灣在未來十年至十五年二氧化碳的排放困境。若是將來國際間有新條約付諸實行，台灣唯一的選項就是碳交易。

政府宣示一項達不到的政策，不僅無法實行，並將重創台灣的經濟。我們很誠懇的建議台灣政府採行較務實的長程二氧化碳減量政策，並重新檢討當前的短程減量目標。

議題二：解決電源開發困境

幾乎所有從2000年到2015年的十六年間所完工或預計完工之電廠，都是在2000年以前即已動工或已進入工程設計階段。在2000年到2007年，每年都有新電廠完工，以應付每年約4%的電力成長，八年來全台電力裝置容量增加了近三分之一。

從2008年至2015年，發電廠的開發進度一直都不是很順利。根據台電五年前的電源開發方案，龍門核四廠的兩部機組應分別在2009/2010年完工商轉，以應付2008年到2011年的電力成長需求。此外，台電原先規劃當核四廠完工後，於2012至2015的四年間，將由一系列高效率的超臨界燃煤機組來提供每年的電力成長。

但這五年來情勢已發生極大的變化。首先，龍門核四廠兩部機組進度再次延後於2011及2012年底才能完工商轉。所有原先計畫的超臨界燃煤機組也因為環評審查研宕或地方杯葛而面臨極大的變數。這使得完工時程均延遲四年左右，商轉時程幾乎都推遲到2016年以後。

為何這樣嚴重的延遲下，台灣未受到缺電的威脅？原因是2008年時，全球經濟衰退，造成對能源的需求大幅度削減。台灣於2008－2009連續兩年的電力需求竟出現負成長，這對台電而言是史無前例。所以即使2010－2011年電力需求恢復成長，2011年的電力需求可能也不過與2007年相當。

總而言之，於2008~2015八年間能完工商轉的電廠，除了一個小型的民營電廠之外，就只有核四電廠的兩部機組，但這些都是在2000年以前就已動工或啟動的計畫；其中兩座燃煤電廠（彰工和蘇澳）的前景陷入極不樂觀的情勢。若是燃煤電廠未能如期完工，而由昂貴的燃氣電廠取代（施工時期較短），所增加的發電成本，每年將高達新台幣五百億元（相當於美金十六億元）。這麼高的電力成本和財政負擔，無可避免地將影響台灣以出口為導向的競爭力，同時也將成為國外對台灣投資的巨大阻礙。本委員會提醒政府，盡快正視此問題，以避免傷害台灣的經濟發展。

議題三：降低阻礙，以促使國際廠商參與台灣政府採購市場

本委員會讚許台灣政府在過去一年內忠實地執行WTO之下的《政府採購協定》（GPA）。自去年七月加入GPA以來，已有極大數目之政府招標案，對GPA會員國之公司開放。依照公共工程委員會之統計，到今年二月廿八日止，共有一千三百五十二項、金額共達新台幣一千九百八十億元（美金六十三億）之政府招標案，對GPA會員國之廠商開放。

但是，在這些標案中，只有一百九十五項（佔總數14%）、合約總金額在新台幣一百卅億元（美金四十一億元）的標案，由國外廠商得標。再者，值得注意的是，這些標案均為貿易類項目，而不是與營建相關之項目。

一如過去本委員會經常指出，國際級之營建公司如有機會參與台灣之基礎建設，將會帶來新的建設技術、工法及管理方式，以提升台灣基建之整體品質。國際性公司之參與並不會搶走台灣從業人員之工作，因為建設工作仍須在台灣當地，使用本地之員工來執行，如此一來，反而會因為國際性公司之參與機會增加，提升台灣在全球市場上的能見度，進而能增強外國直接到台灣投資的吸引力。

本委員會因此建議台灣政府採取更有效之行動方案，來增加國際性公司參與合乎GPA開放之標案；其主要目標應在於如何改變當前國際級公司對台灣營建市場「很難做生意」的既有印象。我們在此提供下列建議：

1. **取消最低價標。**目前，絕大多數台灣政府之採購單位，仍偏好使用「最低價標」，而非「最有利標」或「最高價值標」，而後列之兩種決標方式，實際上皆符合台灣政府之採購法規。採用最低價標決標，常使得標廠商為了自身能獲利，而巧用各種方法來節省開銷、成本；而最有利標及最高價值標，將使得標廠商遵照事前的整體規範，使用最有利於雙贏的成本效益規劃，以及成本控制，確保公共工程建設之最佳品質。本委員會謹建議台灣政府能指定最有利標及最高價值標為政府採購標案決標之常規，並督促各相關採購單位選用其中一種為決標方式。
2. **接受合理之合約追加減變更。**在台灣，採購單位對承包商在得標後，執行合約過程中，公平且合理之合約追加減變更請求，似乎都存有經常性的抗拒心理。由於部分不可預期的風險極難在合約執行前發現，若無法在執行過程中取得公平合理的合約變更，將讓得標廠商在執行合約過程中蒙受到極大壓力。其中特別令人困擾的是：業主或業主代表在沒有正式合約變更請求下，要求承包商做出工作上的變更，而承包商在工期的壓力下，只好按業主非正式之指示做出了變更，但最終卻發現無法得到業主在合約上之價格調整。此現象普遍存在，更讓台灣在國際市場上聲譽受損。
3. **將主要之工程顧問公司徹底民營化。**一些過去由政府經營之台灣主要工程顧問公司，經過改組後，大部分改由非營利基金會控管，但實際上仍受政府強而有利的庇護。這些公司也因其規模及過去多年來之經驗，佔有市場優勢。本委員會建議台灣政府採用更積極之作法，實際將此類公司民營化，以改善營建市場的開放程度，及競爭的公平性。
4. **基於效率及成本效益，更加重視設計及營建整體化之「統包」工程。**許多GPA會員國早已採用「統包」觀念，但在台灣仍未普遍使用。本委員會建議台灣政府多採用「設計帶施工」及「工程設計、採購及施工」的統包方式。在極具效率的市場上，採用以上的制度比較能夠容易吸引最佳團隊來參與投標。專案廠商透過參與、了解初期的設計概念，才能有助於團隊完成最有效率、最佳品質的最終成品。假使招標案件都已由當地工程顧問公司設計完成，則國際性之公司極少願意只參與營建工程施工之標案。
5. **移除最近加諸於營建公司之限制。**本委員會認為最近《營造業法》之修法，有保護主義的色彩，並認為此舉對欲參加非GPA開放標案之國際公司，已造成不具正當理由之阻礙。我們了解依GPA開放之標案並不受其影響，但對新台幣十億以下之標案，必須透過與國內之公司合作，方可參與投標，必有其影響及顧慮。再者，此法之修訂，讓國外公司由乙級升甲級之難度增加。這些改變對馬政府所標示之國際化及開放化，似乎是個退步。

議題四：依循國際慣例改進政府契約範本中之合約條款。

雖然台灣已於2009年簽署《政府採購協定》，但由於某些政府合約條款的不公平，國際廠商在進入台灣市場仍有實質的障礙，也進一步地阻止了國際投標者在本地市場的活動力。以下為國際投標者所面對的主要困難：

1. **缺少責任上限及排除衍生性損害之條款。**一個有經驗的國際投標商在管理風險時，公平的合約條款是一個決定性的因素；而責任上限條款以及排除衍生性損害的條款，是對國際廠商最重要的風險因素之一。近幾年來，一些政府合約的條款已做了相當改進，但在台灣政府將責任上限及排除衍生性損害此二項條款作為所有契約之標準條款之前，這個問題尚無法解決。我們很感謝公共工程委員會同意研究此種修改之可行性，這將可以使台灣的合約與國際的慣例一致。我們建議公共工程委員會可以諮詢一些經常向國際廠商採購設備及服務之國營、國有企業、或政府持股之公司，如台電、中油、中鋼等；藉由檢視他們採購合約中的合約條款，或可得知責任上限條款及排除衍生性責任條款對國外廠商 — 特別是美國與歐洲的廠商而言，是否是為絕對必要的。
   此外，政府契約範本中多要求所有資料均需保密，惟保密期限卻未加明訂，使得廠商必須將文件永久保密，因此我們建議修改為有合理之期限。我們也建議，在證明有購買保險時，得以保險證明替代真正之保單。
2. **契約範本間之不一致。**公共工程委員會目前就不同型態之採購專案，提供不同之契約範本，但其中之條款卻未一致。在過去數年間，有些契約範本已修改而採用廣為國際所接受的條款，但有些契約範本還是持續其過時的方向。因此我們請求公共工程委員會全面審閱各個契約範本，以使其有一致性。
   在這些契約範本中，去年修正之工程採購契約範本，訂有責任上限條款，排除「所失利益」的責任，並刪除責任上限例外規定中「侵害智慧財產權」之項目，我們認為這是正面的措施，也期盼鼓勵公共工程委員會能夠依此修正其他契約範本之相關條款。
   在所有的契約範本中，投標者有權選擇，而非被要求將智慧財產權給予採購機關。然而，某些採購機關仍堅持智慧財產權應無償轉移給採購機關。我們認為採購機關應更多尊重智慧財產權，並執行公平合理的條款。
3. **缺少雙語的招標文件及契約範本。**即使是預計向國際廠商邀標或是開國際標的情形下，目前大部分的政府採購機關仍僅提供中文的招標文件。由於英文是國際商務中最普遍使用的語文，如果能夠提供數雙語文版本的邀標文件，台灣對國際廠商應可成為更具吸引力的地方。我們也建議政府能夠提供英文版的各種契約範本，同時並注意中英文版本的內容需有一致性。
4. **核子損害保險不足。**台灣目前之核子損害保險的範圍遠低於國際標準，因此許多核能領域一流的廠商對進入台灣市場有遲疑。據我們所知，原子能委員會正在研究這個議題，我們期待能儘早看到相關結論。

議題五：改善政府效率，簡化行政程序

台灣政府提出之政府組織改造計劃，將於2012年一月實施，包括合併數個部會，減少層級，以期改善政府施政效率。我們十分支持台灣政府欲改善政府效率的決心，但我們認為，全盤檢視行政程序，並確認每一流程都是必要的，遠比組織改造更能增加政府效率。

舉例來說，環保署在環境影響評估審核程序之效率低落。誠如歷年來本委員會於《白皮書》中所指出的，很多重大專案均因環境影響評估的審核流程冗長，而影響了其開發進度。

一般環評審查程序是組成審查小組先行審核環評報告，小組委員由廿一位環評委員單中選出，小組審查結論，再交由環保署每月的環評大會中做最後裁決。此作法已實施將近廿年。去年，在小組審查程序中，增加了「專家審查」步驟，「專家審查」成員包括地方政府代表、環保團體、及國營或民營之開發單位。然而，原有的小組審查已涵蓋此一功能，並無必要成立「專家審查」；此一額外審查步驟，使得審核流程變得更長、更複雜，並無實質幫助。

另一個例子是可行性研究報告的審查過程。依一般程序，國營企業將可行性研究報告提送經濟部國營事業管理委員會（國營會）；國營會邀請專家組成審查委員會，並整合審查委員會建議，再呈送經濟部後，最後呈報行政院核准；行政院並另交經濟建設委員會（經建會）提供意見。

最近我們發現，經建會要求國營會另聘外部單位，對可行性研究報告作第二次審查，此一程序實為多餘，如果專家的意見十分重要，則可在國營會審查委員會階段，邀請他們參與研究報告之討論。

由以上兩項例子可見，若政府層級能落實其部門權責，則除了組織改造計畫外，其他方法也能有改善行政效率。

保險委員會

在過去十二個月以來，台灣保險業除了揮之不去的利差損以及資本適足性問題以外，持續經歷來自低利率環境、投資型保單課稅，以及愈來愈受重視的消費者保護議題所帶來的重大變化，並使得保險業在承保新業務時，在如何兼顧消費者需求以及保險公司的永續經營上面臨越來愈嚴重的考驗。台灣整體的法規環境以及經濟環境，加深了市場上現存國內外保險業者的困境，並且已經危及台灣想要成為區域金融中心的所做的努力。由於這類問題很多在某些程度上具有技術性，因此，我們在今年的《白皮書中》，將盡可能就所提出的議題同時提出配套的法令修正草案，以落實本委員會的主張。

藉此機會，我們要特別就保險局近期對於幾家未能達到最低資本適足率（RBC）200% 要求的保險業者陸續採取積極處理措施，表示肯定，我們了解主管機關在採取善後措施時必須同時兼顧保戶權益以及投入政府資源所增加社會成本時所面臨的衝突與挑戰，但我們都知道，如同許多國家的經驗一樣，我們應該要盡可能採取折衷之道，但無論如何，在這個過程中，各方都要付出一些代價。

議題一：為利差損以及資本適足性問題尋求解套

延續去年《白皮書》的議題，我們仍然認為利差損以及資本適足性是台灣保險業所面臨最嚴重的問題。雖然近期保險公司因為短期的獲利表現、亮麗的銷售業績以及高股利等題材，而受到媒體的關注與報導，造成一般人對於保險業有體質健全的印象，但事實上，持續的低利率環境加上幾乎沒有利潤的新契約保單，正在進一步惡化台灣壽險業長期的利差損問題，並加重保險業者為孱弱的資本部位增資的壓力。儘管一般大眾似乎還沒有意識到，但顯然立法院已經察覺問題的嚴重性，立法院財政委員會九十九年三月二十二日全體委員會議決議，就保險業因為利差損問題可能必須增提責任準備金達上兆元的疑慮，要求行政院金融監督管理委員會應監督壽險公司，除由董事會定期檢視以外，並應向主管機關保險局揭露自我評估的清償能力，使台灣的保險監理與IFRS4國際標準接軌。因此，我們支持政府儘快導入並實施國際會計準則(IFRS)以及Solvency II會計準則。我們期待2011年實施國際會計準則(IFRS)第一階段應該包括：

- 在標準市場的基礎上，對公司之資產及負債作明確的評價，以滿足會計上及清償能力之要求；
- 區分保險契約與投資契約，投資型商品應適用金融商品之會計準則，而不是保險合約的會計準則；
- 公司財務報表附註必須有更完整的揭露；
- 只有在能通過最佳假設適足性測試(Best-estimate adequacy test)的條件下才能接受現有的負債評估基礎。

儘管我們瞭解許多保險公司將會努力達到新會計準則的要求，但我們相信，此時此刻最重要的是要提供給消費者更透明的資訊，讓消費者可以合理評估其在選擇保險公司時所必須承擔的風險。因此，我們建議，所有保險公司至少現在應該按照其所依據財務報告及清償能力計算標準(無論是IFRS或者是台灣自己的標準)，揭露其為支持新契約保證給付所需之資本。

議題二：允許保險公司外幣投資得例外不適用國外投資限額規定

外幣計價保單在近幾年持續受到市場歡迎而成長，與台灣民眾愈來愈國際化的趨勢一致。然而，現行國外投資限額的規定，因為未能區分保險公司用以支持其傳統新台幣保單責任之國外投資，與保險公司為平衡其外幣計價傳統保單之責任所買入相同幣別之國外資產，已經造成新公司進入這個市場的障礙。因此，本委員會建議修正《保險法》第一百四十六條之四，授權保險主管機關，於保險公司為平衡其所簽發外幣計價傳統保單之資產與責任及確保保單經營效率而從事必要且適當之相同幣別國外投資之情形，得予以同意例外不適用國外投資限額規定。

議題三：開放要保人以新台幣支付外幣計價壽險保單及領取保險金額

壽險保單的要保人應該被允許以新台幣支付外幣壽險保單及領取保險金額，這項措施只是單純的免除一般消費者維持外幣帳戶的負擔，並簡化外幣匯兌及申報流程，對於中央銀行的外匯政策沒有任何影響，也不會改變商品的訂價、設計、核保、投資策略或任何商品內容。我們必須理解，消費者選擇購買外幣計價保單，可能是預期在未來某個時間有外幣的需求，但不代表他在購買保單時就必須有外幣帳戶，到了保單滿期領取保險金時，保戶也有可能因當時的實際需求，而希望將領取的外幣保險金兌換為新台幣，況且，在大多數情況下，維持一個外幣帳戶通常要付出很高的成本。

遺憾的是，現行《保險業辦理外匯業務管理辦法》以及相關的保險法規，包括《投資型保險投資管理辦法》以及《人身保險業辦理以外幣收付之非投資型人身保險業務應具備資格條件及注意事項》等均規定，外幣計價壽險保單的要保人只能以外幣支付保費及領取保險金額，形成消費者要購買外幣計價壽險保單一定要先在銀行有外幣帳戶的不合理現象。

本委員會建議中央銀行及金管會開放保險公司可以為保戶辦理外幣匯兌及申報，讓保戶可以支付新台幣購買外幣壽險保單及以新台幣領取保險金額，這項措施可以有效簡化作業流程，在遵循中央銀行申報規定之原則下，保戶可以因為適用機構大額匯率而得以降低購買成本，當然，個人保戶仍然必須遵守現行每年五百萬美元外匯交易額度之限制(即結購及結售外匯各五百萬美元)。

上述建議措施與中央銀行外匯局於2009年五月二十五日台央外伍字第0980028398號函允許私立就業服務機構得代外籍勞工辦理薪資結匯申報事宜之情形相似。

本委員會將另行提供相關法令的建議修正內容予中央銀行及金管會。

議題四：給予投資型保險商品免徵所得稅及遺產稅之稅賦優惠

本委員會再次重申並促請財政部取銷有關投資型保單課稅之規定，財政部未經立法程序變更現行法律對投資型保單課稅，將引發違憲爭議，而受到司法的審查，並已引發國內外的關切。因此，我們在此誠摯呼籲財政部慎重考慮金管會及保險局的建議，將符合保險定性的適格保單排除在課稅的範圍。

《所得稅法》第四條第一項第七款明文規定，人身保險之保險給付免徵所得稅，另外，《所得稅基本稅額條例》第十二條第一項第二款規定，只有受益人與要保人非屬同一人之人壽保險及年金保險其受益人領取之保險給付才須課徵基本稅額，且死亡給付每一申報戶得享有新台幣三千萬元的免稅額度。

這些法律並沒有區分人壽保險是傳統型保險或投資型保險而有差別待遇，令人遺憾的是，財政部在2009年十一月六日發布命令對投資型保險商品課稅，並自今年一月一日起生效，財政部沒有經過立法程序修改相關法律，而擅自發布命令對投資型保單課稅，顯然已經違反現行法律規定，勢將引發嚴重的違憲爭議。

數十年以來，人身保險給付在稅法上的優惠已經成功的鼓勵民眾購買保險作為長期儲蓄並獲得財務保障，由此強化社會安全系統，投資型保險商品具有傳統壽險相同的保障及儲蓄功能，因此，投資型保險商品現在已經廣為台灣消費者所接受，而成為台灣消費者滿足其退休規劃需求的重要選擇。財政部的課稅命令嚴重限制了台灣人民為滿足其保險需求選擇保險商品的權利。

關於未經立法程序而變更現行法的合憲性問題，財政部引用大法官會議解釋釋字第四二０號以及《稅捐稽徵法》第十二條之一所揭櫫的「實質課稅原則」，但本委員會認為，財政部違反「租稅法律主義」的憲法基本原則，而該原則正是大法官會議解釋釋字第四二０號以及所有稅法的基礎。在過去數十年以來，許多大法官會議解釋反覆闡明《憲法》第十九條所謂人民有依法律納稅的義務，係指課稅必須以法律明文規定辦理。

財政部無視投資型保險乃保險法所認可的保險商品，竟以投資型保險與所選定投資工具間之連結而將投資型保險視為投資商品，並依一般金融投資商品課稅，財政部此舉與金管會立場對立，並悖於十多年來將投資型保險視同保險的保險法規定。

我們對於財政部致力於租稅公平的努力表示敬意，但堅決反對財政部不經立法程序而以行政命令實質改變法律，且直接牴觸現行保險法令。

財政部主張這項課稅措施影響有限，因為：(1)依照現行稅法，只有股息、銀行存款利息(每一申報戶新台幣二十七萬元以上)及海外所得(必須每一申報戶海外所得逾新台幣一百萬元，以及全部海外所得扣除新台幣六百萬元免稅額後)必須計入要保人的所得總額申報所得稅；(2)若以每年投資報酬率約5%至6%來計算，現有的投資型保險契約中高達94.6%的保單每年所產生的投資收益約僅有新台幣五萬至六萬元，因此，財政部估計大約只有5%的投資型保險契約必須繳稅，但財政部卻為此要求所有保險公司必須投入龐大的資源進行電腦設備及系統修改、重新設計行政作業流程，以確保每一位投資型保險要保人可以正確收到每一張扣繳憑單以辦理所得稅申報，讓稅捐單位可以評定這些微不足道的稅額。對於財政部為了非常有限的額外稅收而課以壽險業者極度困難且複雜的義務，我們感到相當憂心。

在尊重憲政體制、保障社會安全並確保經濟利益的基礎上，我們誠摯的呼籲財政部，重新檢討投資型保險的課稅規定，倘若財政部堅信其對投資型保險課稅的目標正確，亦須遵循法律修訂應有的程序，如僅以行政命令為辦理依據，勢將引起違憲爭議，將受司法審查。如果法律可以不經正當程序而輕易改變，勢將影響我們對於台灣法制的信心。

議題五：重新研議修正《勞工退休金條例》

本委員會感謝勞工委員會(勞委會)的耐心與努力，持續檢視並討論我們所關注有關《勞工退休金條例》中對於壽險業提供台灣勞工適合的年金商品的過度限制，遺憾的是，到目前為止，法規仍存在有相當大的障礙，而使得壽險業者無法進入勞工退休金市場，這些障礙包括：(1) 投保公司必須符合僱用二百名以上勞工的門檻；(2)必須至少經過50%勞工的同意並參加年金保險計畫；以及(3)兩年定存利率的最低保證收益。

投保公司必須符合僱用二百名以上勞工的門檻以及必須至少經過50%勞工的同意並參加年金保險計畫的限制，實際上已經剝奪了台灣大多數中小企業勞工選擇其所需要的退休金計畫的權利，而兩年定存利率的最低保證收益的規定則忽視了「確定提撥制」的精神，並且與壽險業的精算原則不符。

我們建議勞委會重新檢討其勞工退休金政策，使得勞工得以選擇將其退休金(包括自願及強制提繳部份)投資於能經由長時間的累積而獲取較高收益之投資標的。或者，至少在第一階段先開放就勞工自願提繳的部分得免受上述法令的限制。

對於距離退休至少還有十年以上的人，合理的退休規劃應該要投資於包括股票、固定收益商品，以及其他風險較高的資產，以獲取遠高於傳統銀行存款利息的報酬，這是一個在市場上被廣為接受且適當的建議，很多亞洲國家在很早以前就已經採納這項建議，儘管現在經濟情勢低迷，一旦全球市場開始復甦，這將再次提供獲得優越報酬的機會。

因此，本委員會促請勞委會去除前述障礙，使得台灣勞工可以享受年金保險商品所提供的利益。

議題六：訂定長期再保險責任準備金釋出規範

再保險可以有效降低保險業者之經營風險並增加其財務穩定性，在保險市場上具有重要地位。保險公司的「承保能量」係保險人依照其盈餘所能承擔的最大風險，經由再保險的安排，保險公司可以藉由一部分風險的分出而增加其風險的承受能力，並因此可以接受更多的保費。然而，台灣現行法令並未允許壽險業者得將已由再保險分出之長期壽險保單之責任準備金釋出，因此，儘管分出之壽險公司已將風險移轉予再保的保險人，但仍然無法就所分出再保的金額減少其損失責任準備金，壽險公司被迫只得選擇降低承擔風險能量而減少承保，或者避免從事不同態樣的風險業務，而使得保險市場的發展受到不利的影響。

基於上述，我們建議保險局訂定長期壽險保單再保險之責任準備金釋出規範，允許分出之壽險公司可以在財務報表上將已經分出給再保險人之風險相對應之責任準備金予以釋出。我們建議再保險責任準備金釋出必須符合下列各項條件：

1. 再保險人必須依《保險業辦理再保險分出分入及其他危險分散機制管理辦法》第七條規定符合適格再保險人之資格條件；
2. 再保險合約必須符合《保險業辦理再保險分出分入及其他危險分散機制管理辦法》第五條所訂標準之一；
3. 適格之再保險人必須提供履約保證以擔保其履行再保險合約之義務，再保險人提供擔保之金額必須等同於釋出之責任準備金，擔保的形式必須是信用狀、信託財產或其他金管會同意之擔保品。信用狀及信託財產必須是由與再保險人為非關係人之合格金融機構為分出保險公司之利益而開立或管理，如再保險人違約時，信用狀及信託財產不受任何影響，分出之保險公司可以取得這些資金以支應未來的理賠需求；
4. 開立信用狀或受託管理信託財產之合格金融機構必須符合下列條件：a) 依《保險業辦理再保險分出分入及其他危險分散機制管理辦法》第8條規定達到一定的信用評等；b) 過去三年財務業務表現健全；c) 過去三年沒有因為違反法令情節重大而有懲處紀錄；
5. 分出之保險公司必須維持最低的法定RBC標準。
6. 依照一般公認會計準則(GAAP)規定，再保險釋出之責任準備金得作為保險人負債的減少或被承認為再保險資產。（目前台灣的會計實務作業對於一年期保險的責任準備金釋出係以再保險契約認定為再保險資產，未來只要長期壽險保單再保險分出安排符合上述規定，其責任準備金釋出應同樣可以被認定為再保險資產，而無須更動會計準則。）

智慧財產權與授權委員會

本委員會很高興看到台灣政府持續高度重視智慧財產權的保護。去年相關單位已針對《商標法》、《專利法》、《著作權法》，和《著作權集體管理團體條例》進行修法檢討。2008年七月創立的智慧財產法院，專業度極高，已成為保護智財權的單位。保護智慧財產權警察大隊（保智大隊）及內政部警政署持續對仿冒品及違禁品進行獨立的調查並起訴侵權者；經濟部智慧財產局（TIPO）對加強台灣整體智財權保護的努力，亦可圈可點。

儘管有上述進展，下列議題仍需台灣政府多加關注，以持續提升台灣的智慧財產權保護。另外，本委員會在此也呼應製藥委員會的訴求，呼籲台灣建立藥品之專利連結與資料專屬權制度，來強化台灣對於藥品智財權的保護，以鼓勵藥廠繼續投資與研發。

議題一：更有效的監控走私及仿冒品之進口

本委員會希望台灣政府在未來一年能將智財權保護的執法列入優先施政目標，加強落實監測和執法行動，以監控仿冒品及違禁品的進口。中國仍然是仿冒品及違禁品的主要來源地。隨著兩岸在旅遊、運輸及貿易往來的增加，政府必須更積極地查緝從中國進口的仿冒品及違禁品，並對仿冒犯罪及走私者處以刑責。

已有許多證據顯示，違禁品及仿冒品會造成健康、安全和環境方面的風險；此外，這些非法商業交易已構成犯罪行為，嚴重影響到台灣社會的安定。這些行為更導致政府短少數十億稅收，國內企業也因不公平的貿易競爭而遭受損害，進而對台灣的就業市場產生負面影響。

本委員會建議政府採取下列措施，以有效打擊仿冒品及違禁品之進口：

- 建立更有組織、快速和透明的海關作業流程，以加強打擊仿冒或走私。海關申請查扣的作業程序，需從目前的數月縮短為數週。海關與台灣其他執法單位也必須建立更完善的溝通合作管道，並多與其他單位如智財局、司法院、法務部、內政部和財政部（負責菸酒管理）協調，分享查扣資料。可行方案包括建立一個被查扣者資料庫，將仿冒及走私侵權者的資料輸入並定期更新，由海關和其他相關主管機關共同積極監測。
- 針對大量走私及仿冒品，特別是透過國際快捷郵件（EMS）等郵政系統運送的走私/仿冒奢侈品，採取查緝行動。台灣經銷商和消費者經常在網路上訂購仿冒品，並透過國際快捷收取商品，因此，海關需要增加對一般進口郵件及國際快捷包裹的檢驗。此外，海關應更頻繁檢查仿冒品及違禁品網站最常使用的快遞公司，如有必要，海關得予以警告、甚至列入黑名單。
- 海關應與權利人建立更好的合作關係，例如當查獲仿冒品並涉及刑事訴訟時，海關應提供權利人有關侵權進口商和出口商的資料。我們鼓勵海關和權利人及其他執法單位密切合作，針對查緝特定仿冒商品類別推動宣導活動。此外，針對某些可疑國際快遞包裹或貨櫃，應允許海關增加查驗。
- 查緝大量從中國走私進口的偽劣農藥。如同農化委員會建議書中所呼籲，欲解決此問題，需要農委會更有效監測偽劣農藥的銷售者，海關和執法單位也必須強化進口貨櫃的查驗。偽劣農藥的猖獗不但危害農民健康，也會對台灣食品安全產生嚴重風險。

議題二：重新檢視《商標法》、《專利法》、《著作權法》，和《著作權集體管理團體條例》修正草案

- **保留《專利法》和《商標法》的刑責機制。**智財局目前正在推動台灣《專利法》和《商標法》的修法。此兩法案與《著作權法》是台灣智慧財產權方面的主要法規。《專利法》修正草案已於2009 年十二月三日提交給立法院審議，而《商標法》修正草案於2010 年三月四日送請行政院審查。

  台灣《民法》規定，損害賠償之普遍原則為以填補債權人所受損害及所失利益為限，而債權人應就其損害或所失利益負舉證之責任。但智慧財產如著作權、商標權和專利權，是無形的資產，其價值不易被量化或計算，因此，債權人很難就其智慧財產權所生之損害而舉證請求賠償，或獲得適當的賠償，尤其當台灣缺乏如美國所實施的充分證據開示制度。

  目前，《專利法》（第八十五條）、《商標法》（第六十三條）和《著作權法》（第八十八條）所列之損害賠償概念，分別於不同時間點納入立法實施，使得法院得爰引《商標法》和《專利法》就嚴重侵權的定義，或當債權人無法實際舉證其損失時，依《著作權法》作出懲罰性損害賠償判決。此外，2001年《專利法》通過修正，專利侵權全面除罪化，並將懲罰性損害賠償金額由原本實際損害額的兩倍，提高到三倍。

  然而，若《專利法》修正草案第九十九條及《商標法》修正草案第七十一條即將通過，則原先相關的懲罰性損害賠償條款將被刪除。本委員會高度關切此修法將對專利及商標案件造成負面影響。而且，若此次修法代表智財局未來有全面修改智財相關法律、刪除懲罰性損害賠償條款的打算，本委員會擔憂《著作權法》第八十八條將是下一個修法目標。我們強烈反對此兩項修正草案，這將造成台灣智財保護發展的嚴重退步。
- **避免不公平對待無法加入任何著作權集管團體之著作權人。**《著作權法》修正草案第三十七條，對著作權人的權利有非常不公平的限制 — 若著作權人不是任一著作權集管團體的會員，則該著作權人無法對於侵害其權利者，請求損害賠償責任。該修正草案並未考量台灣是否有合適的著作權集管團體，可讓著作權人加入。

  台灣目前只有七個著作權集管團體：其中兩個為錄音製作業，三個為音樂唱片業，一個為音樂錄影帶業，另一個為作家及出版業。對許多著作權人來說，例如電視節目製作者，他們找不到合適的著作權集管團體加入。電視節目常在公共場所如飯店、醫院、餐廳、咖啡店、百貨公司、大賣場和大眾運輸系統公開播放，卻沒有支付權利金。《著作權法》第三十七條修正草案將限制著作權人（包括台灣及世界各地的著作權人），無法向侵權者採取法律行為以請求損害賠償。缺乏適當的著作權集管團體可供著作權人加入時，政府不應該不公平且不合理地限制著作權人追究法律責任之權利。

  在台灣，民事訴訟通常對權利人來說是費時又徒勞無功，只有刑事訴訟才可達阻嚇的效果，因此若剝奪著作權人對於侵權者追究法律責任之權利，將造成嚴重問題。
- **重新考量近期通過之《著作權集體管理團體條例》修正案。**今年一月由立法院通過之該修正案，已讓著作權利人在法律上處於劣勢，且將嚴重損害未來著作權集管團體的發展。業界主要關切重點如下：
  1. **單一窗口與共同使用報酬率之規定。**該修正案授權智財局得就相同型態的著作權人，訂定共同使用報酬率，並指定單一窗口收取其使用報酬。此修正案賦予智財局過多的權力，干涉著作權人之共同使用報酬率的訂定以及集管團體之商業活動。

     國際經驗顯示，自由市場機制運作最有效率，著作權人得以用最有效的方法，確保其權利，進而使著作權人和使用者雙方最後都受惠。為確保台灣市場自由運作，應允許著作權人可自己決定要加入哪一個著作權集管團體，並與其他著作權人自行協商共同決定使用報酬率；限制著作權人的權利將威脅到市場的發展。其中，要求所有著作權人都必須透過集體的方式、收受使用報酬，易導致在收受及分配時造成衝突，進而阻礙市場的正常運作，並影響利用人的使用權。

     在大多數國家，著作權人可以自己決定本身要如何授權。在某些國家，同一類型的著作權人偏好於授權一個集管團體來管理自己的著作權，但應該由他們自行決定是否加入某團體或否成立新的集管團體。為確保目前著作權市場的發展，該法案應再進一步修訂，刪除「單一窗口」與「共同使用報酬率」之規定。
  2. **智慧財產局應允許委託代理收取使用報酬。**由於合法的音樂唱片市場銷售量減少，透過集管團體代收之著作使用報酬，已成為唱片公司主要的收入來源，但是，著作權人仍希望集管團體減少經常費用和其他行政費用的開支，並確保適當的商業用途。在公開演出時，透過委託代理人收取使用報酬可節省部分成本，世界各地的唱片協會也都是倚靠委託代理人，與公開表演及錄製音樂的商業表演者接洽，並教育他們要取得著作使用的授權，並發出相關授權。

     在台灣，集管團體過去也曾委託代理人推廣著作授權，有效處理世界各地的授權問題。不過，智財局於2008年九月的裁定，禁止繼續這種委託代理的做法。

     不能使用委託代理人達到授權的目的，將對權利人的授權活動造成直接的負面影響，並減少其權利金收入。此舉也造成市場上出現大量未經授權的商業活動，剝奪權利人應當獲取的報酬，而損害法律效力。

     智財局並未提出正當理由說明為何禁止使用委託代理人來授權和使用報酬收取，且相關政策目標亦不明。如有對於授權模式有疑慮，可建立公開演出授權模式之行為準則，以確保該模式不被濫用，並維護使用者的權益。
  3. **缺乏配套措施以落實「三振條款」條文。**新通過之網路服務提供者民事免責法案（ISP法案），包括施行細則，只說明網路侵權案件的通知與回復通知規定，但不包含實施「三振條款」的詳細執行機制，以處理大量的P2P侵權行為。智財局鼓勵ISP業者和權利人之間達成協議，建立三振條款的施行機制。儘管ISP業者依法必須盡快落實三振條款、否則可能失去由該法主張之免責保護，但ISP業者遲遲不願意與權利人團體協商一個有效率、價格低廉且適合權利人、ISP業者和用戶的機制。

     該法通過已快一年，但尚未達成任何協議，關於政府對於三振條款的實施機制也沒有明確的行政指導準則。本委員會建議智財局:
     - 清楚重申未落實義務的ISP業者，依法將喪失免責權；
     - 智財局應採取行動，訂定行政指導準則，以促使ISP業者充分與權利人充分討論協商機制的建立，以落實三振條款。

議題三：加強智慧財產權案件的司法處理

本委員會過去十年不斷在《白皮書》中呼籲，法院判決大部分智財案件，皆施以以輕罪、緩刑及低罰鍰之刑責，阻礙智財法律的落實。不幸地，這樣的狀況依舊存在，使得仿冒者普遍認為買賣仿冒品之利潤遠比被判處嚴厲刑責的風險來的高，而被移送法辦只是做

生意要承擔的成本支出。只有對仿冒者懲以嚴厲刑責，才能嚇阻仿冒者再繼續仿冒。因此，本委員會持續訴求，政府應落實修正後《商標法》、《著作權法》和《公平交易法》的法律條文，對侵權者判以更嚴厲的侵權刑罰。

本委員會也持續呼籲政府修改《民法》以及《民事訴訟法》，以建立有效率的機制、依法懲處民事案件之損害賠償，也讓智財權利人有權回收其支付地法律訴訟費用。

另一項新的議題是，著作權人將民事訴訟案件提交智慧財產法庭審理時面臨的困難。由於針對侵權證據只存在於被告的辦公室或工廠之案件，原告蒐集證據困難，僅能透過法院保全證據，但因去年智財法院經常駁回原告關於這類案件證據保全之申請，以致原告就類似案件提起民事訴訟會發生困難。

議題四：將網路盜版行為列為公訴罪

由於網路上盜版猖獗，已嚴重破壞台灣合法市場進行，更增加了查緝這些侵權者的困難度，台灣當局應考慮修訂《著作權法》，包括把網路盜版行為列為公訴罪。當有侵權行為發生時，不需經過權利人提起告訴即可認定為公共犯罪，而警方在臨檢時若可合理懷疑有盜版行為時，可即時採取行動。2003年，台灣將光碟盜版侵權行為列為公訴後，已直接有效地減低台灣的光碟盜版情形。

將網路盜版列為公訴罪，可讓執法單位對網路侵權行為採取立即的行動，應可有效遏阻日益增加的網路侵權活動。當務之急要先查緝那些已利用網路侵權行為獲取暴利的侵權者。

議題五：繼續打擊軟體盜版行為

軟體產業在台灣遭遇的最大損害，一直是「終端用戶盜版」問題 — 即未經授權的軟體重製、散佈及授權不足的問題。的確，雖然過去兩年軟體盜版率已下降，但實際虧損卻是增加的，這證明盜版問題正在擴大，因為包括盜版及正版軟體在內的市場也擴大。台灣需要採取下列行動，以減少終端用戶盜版：

1. 持續提升公眾意識。減少軟體盜版需要公眾態度的轉變，公眾教育是成功的關鍵。台灣政府應持續提升公眾意識，向公眾宣傳有關尊重智慧財產權的重要性及使用盜版軟體的相關風險，並鼓勵使用合法軟體。台灣許多成功降低軟體盜版的活動，都是由業界和政府共同舉辦的大規模公眾教育宣導活動。我們讚揚政府的努力，並鼓勵其繼續維持。
2. 繼續落實重點執法行為，並在必要時提出告訴，以對侵權者發出嚇阻的訊息，同時鼓勵民間企業使用正版軟體。

議題六：持續落實政府公部門採購正版商業軟體之政策。

雖然政府對硬體設備有相關法令規範，但部份政府機關、政府合約以及公務人員卻忽略軟體設備之採購相關規範。其結果是，公部門使用未經授權的商業軟體已在成為台灣的普遍問題。我們建議台灣政府採取以下行動：

1. 檢視現況並確保合適的立法、政策和配套措施能完全落實，包括將適當的軟體資產管理（SAM）納入公部門審計之必要程序。
2. 增加購買正版軟體的預算，以便政府單位能夠以身作則，為民營企業建立保護智慧財產權的良好模範並活絡正當的商業行為。
3. 持續提供智慧財產權的教育培訓。2009年智財局為五百名公務人員進行三次智慧財產權的教育培訓，教育他們如何在政府採購及招標過程中，正確判斷合法及盜版軟體產品，以避免被不誠實的經銷商欺騙。2010年，智財局會將進行另外六次智慧財產權培訓，對象為主要負責採購及使用軟體的政府單位，並針對中小型企業，進行三次智慧財產權訓練講座。

本委員會感謝智財局在智慧財產權教育培訓上的支持。

醫療器材委員會

針對醫療器材委員會於2009年《白皮書》所提之建議，相關政府部門，均有正面之回應與進展，本委員會對此表達感謝。隨著食品藥物管理局（TFDA）在2010年成立，業界期待台灣將有更完備之醫療器材審查及廣告管理機制。另一方面，健保局開始執行的全民健康保險住院診斷關聯群（TW-DRG）和研議中的二代健保修法，對於醫療器材業界將有重大的影響，業界高度關注。

以下是本委員會對醫療器材管理現階段重要議題的建言。

議題一：促進食品藥物管理局（TFDA）醫療器材查驗登記之審查機制與國際法規接軌

食品藥物管理局（TFDA）已於今年一月一日正式成立，並同時宣佈其十大施政目標。其中在「強化產品安全管理體制及法規環境、建立產品專業審查機制、促進國際合作與交流、鼓勵多元參與、加速生醫藥產業發展、建立人才培訓及專業訓練機制」等目標，均與醫療器材及相關生技產業的發展有極密切的關係，本委員會期待今年TFDA的成立，能將國內醫療器材管理及審查制度朝向與國際法規接軌，以協助醫療器材及相關生技產業之發展。

由於醫療器材及相關生技產業發展快速，現行審查與管理機制應根據國際法規而調整。針對短期方向，本委員會有以下之建議。

1. **放寬《藥事法》第十八條醫療器材製造廠的定義**
   《藥事法》第十八條製造廠的定義「所稱醫療器材製造業者，係指製造、裝配醫療器材，與其產品之批發、輸出及自用原料輸入之業者」，這與歐美法規認定由負有產品法律責任及產品上市後監控的製造廠的定義及概念相異，在日趨複雜的國際製造廠跨國分工製造情況下，衛生署在醫療器材的審查和製造廠QSD認定上仍以具實質生產的工廠為主，與歐美法規管理模式不符，往往因製造廠認定的不一致，造成業界的困擾，產品上市時間相較於其他亞洲國家如韓國、澳洲要延遲許多，或甚至無法於台灣登記上市。此種狀況使得台灣的民眾無法即刻選擇最新之醫療產品與技術，影響民眾就醫權益。
   建議衛生署放寬製造廠定義，接受負有法律責任及產品上市後監控責任的製造廠為產品的製造廠，以因應日趨盛行的跨國分工製造情況，順應國際法規調和趨勢；於產品製造廠QSD和許可證，以負有法律責任及產品上市後監控責任的製造廠為主，並簡化對受委託廠資料的文件要求；對於因跨國分工製造所產生製造廠所在國與標籤上所載之產地國COO（country of origin）不同的情況以及法規概念，應加強與海關相關人員的溝通，認定依據以產品製造廠所在國為主而非以標籤上所載之產地國COO（country of origin）為認定標準。
2. **加強食品藥物管理局及其委外審查單位與業界之溝通，而提升醫療器材審查與管理的效能。**
   在QSD審查方面，委外審查單位時常針對審查標準和食品藥物管理局間有不同的解釋使得QSD核准延遲，因而影響醫療器材登記上市的時間。建議食品藥物管理局與其委外審查單位和業界應定期的會議溝通，以促進醫療器材審查的共識及提升審查的效能。
3. **建立查驗登記變更事項的判定標準**
   產品上市後在判定變更事項方面，常因審查人員與業者之間有不同的解讀，造成登記案件延遲變更，甚至無法變更，因而無法及時反應國外原廠產品變更事項。為避免類似情形一再發生而浪費雙方之時間及行政成本，建議食品藥物管理局參考國際法規就變更事項的判定，建立一致的標準。另外，與業者就此判定依據，能有正式的說明與討論。
4. **更新新醫材及高風險醫材之定義**
   因新醫材及高風險醫材要求文件繁複，須花費專業審查人員更多時間與行政流程來完成其上市前審查工作。考量現實人力及時間資源有限，且醫療器材發展快速，為強化審查效率以縮短產品上市前審查時間，針對新醫療器材及高風險醫療器材的判定思維實在有必要重新檢視，讓專業審查人員的時間及行政資源能更有效率地用在真正新的、高風險的醫療器材上進而加速產品上市時間。

議題二：醫療器材之藥物廣告審查與管理應針對DTC產品

1. **界定DTC醫療器材（如隱形眼鏡、體溫計、血壓計及其他Class I產品）**
   此類醫療器材之使用者多數為不具有醫療專業知識之一般消費者。為了一般消費者的安全，並且讓消費者能正確使用該醫療器材，醫療器材商與衛生主管機關有必要一起對一般消費者提供適當的衛生教育。
   現行《藥事法》第二十四條對藥物廣告限制，讓廠商無法向消費者傳達重要的醫療效能訊息及正確安全的使用方法。因此，我們建議衛生署重界定「藥物廣告」定義，必須符合以下每一項要件，才能被視為為藥物廣告（亦即：只要不符合下列任一項要件，不應被視為藥物廣告）：
   - 具有引誘消費者（激發消費者購買意願）之意圖內容。
   - 清楚記載特定商品名稱。
   - 能使一般消費者認知為廣告的內容（特別為區隔廣告與衛教）。
2. **廣告事前核准（pre-approval）之審查原則**
   業界瞭解，屬衛生主管機關訂定項目之DTC醫療器材如：隱型眼鏡、血糖機計、血壓計、體溫計以及其他Class I產品等，仍然需於刊播前核准。為了使廣告審查管理更實際合理，我們建議下列修正方向：
   - 刊播於學術性醫療期刊之藥物廣告則無須經事前審查（

因使用者為醫療專業人士）
- 以負面表列之方式提出廣告禁用字句。
- 另設「包裝」核准廣告類別，以有效管理DTC等醫療器材

3. **建立廠商/協會與主管機關公平公開的雙向定期溝通平台**
   - 藥物廣告應以上市後之監督模式管理。藥商須定期追溯掌握市面上的藥物廣告內容，必要時需自行回收
   - 逐漸鬆綁規範機制，以藥商自主性管理為導向，落實公平公正之監督機構與罰則
   - 建立藥商自律及自主性管理機制，建議可透過產業協會，提出廣告自主管理準則提案，並先試行一段時間，若可行的話，建議五年內取消廣告事前審查制度。

議題三：修改健保給付制度，提升台灣醫療服務競爭力

台灣醫療技術水準向來備受讚譽，加上全民健保之施行，形成獨步全球之醫療保障。然而，健保財源短絀的問題日益嚴重，很明顯地已經無法繼續以低廉的成本負擔高水準的全民醫療服務；而新科技之引進恐將因此陷入瓶頸，影響整體的醫療水準及民眾就醫權利。因此，本委員會建議政府改革健保給付制度，推動差額給付制度立法，並修改2010年一月一日起分階段實施的全民健康保險住院診斷關聯群（Taiwan Diagnosis Related Groups, Tw-DRGs）部分內容，以及價量調查的方式，以合理給付促進新醫療技術之發展，持續提升台灣醫療服務的競爭力。以下是本委員會對健保局之建議。

1. **合法化差額負擔制度，保障病患就醫選擇權**
   由於全民健保財源有限，無法及時以合理的健保給付納入新醫療技術。差額負擔制度不但能讓更多病患可有選擇新醫療技術的選項，也可以有效地防杜對健保資源的不當浪費，免於使全民健保成為引入新式醫療技術的障礙。本委員會已多次在《白皮書》表達支持差額負擔制度。
   我們瞭解，健保局已於《全民健康保險法》第四十三條修正案增訂有關醫材差額負擔之條文，本委員會再次表達強烈支持醫材差額負擔給付方式的立法通過。
2. **在Tw-DRGs給付制度下，保障新醫療技術及新醫療器材的引進**
   由於Tw-DRGs屬於前瞻性給付制度，但新醫療技術或新醫材使用的學習曲線長，因此可能需要數年的時間才可反映出新醫療技術及器材的成本。為解決此疑慮，美國、德國、澳洲等國家皆建立額外的給付機制，因此，本委員會針對Tw-DRGs給付制度，提出以下建議：
   - 在Tw-DRGs給付制度下，尚未納入健保的新醫療技術，健保局可逐年評估臨床效用及資源耗用情形，待新醫療技術使用普遍後再納入Tw-DRGs的給付。
   - 凡向健保局申請獲得新增功能給付的新醫療器材，手術及醫療器材皆以論量計酬給付，或新增功能的醫療器材核實給付，並針對相關的申請程序，建議健保局應事先與業界溝通，建立新增功能的醫療器材在Tw-DRGs制度下之申請流程及作業辦法。
   - Tw-DRGs之資訊應公開、透明，以作為醫療服務費用之客觀依據。建議健保局每年定期事先公佈Tw-DRG各給付項目之費用佔率，包含醫療器材費用佔各Tw-DRGs給付的比例，並在最終定稿前提供徵詢各界意見的機會。
   - 在總額預算制度下執行Tw-DRGs給付，很可能因為成本考量，影響醫院的醫療品質。若醫院可保有明確之財務收入，將會激勵醫院在不影響醫療品質的狀況下，用最有效率的治療方式治療病患。因此，本委員會建議保障TW-DRGs給付點值一點一元。
3. **價量調查調價合理化及資訊透明化**
   在DRGs給付制度下，應取消醫療器材核價制度及價量調查。因Tw-DRGs給付制度分五年階段導入，在此期間，本委員會建議應修改目前價量調查之相關執行方式，將價量調查時程定義明確，每四年執行一次; 並以公文函覆廠商價量調查品項各核價類別之市場加權平均數、第5及第95百分位之價格及數量等計算結果，供業者參酌。

針對價量調查時間點回推五年之新增類別的醫療器材品項，應另訂核價公式：「依廠商銷售加權平均價加15%計算」，以鼓勵業者引進新醫療器材與技術。

議題四：開放跨國企業於大陸廠製造之醫療器材進口

越來越多的國際醫療器材公司將生產地設立在中國，以符合全球供應鍊需求和生產的趨勢。跨國公司在中國的品質控管，與母國同等級，且這些的產品已被認可在美國，歐盟和其他主要市場銷售。然而，台灣仍禁止大部分這類產品的其進口。本委員會希望，在兩岸簽署《經濟合作架構協議》（ECFA）後，這類禁令能被放寬，我們建議政府可先開放進口跨國公司在中國製造的醫療器材產品，特別是已經以高標準在美國和歐洲聯盟等國核准認可的產品。

製藥委員會

過去數年來，開發性製藥產業在台灣市場的經營環境極為艱鉅。由於政府頻頻實施藥價調查，並據以大幅調降藥價，以致台灣目前整體藥價水準居於世界主要市場之末，原廠藥在台灣的平均價格僅為美國的28%。從2000年起，連續六次藥價調查的調降幅度累積已達台幣五百億元（約十五億八千萬美元），且政府此刻正計畫執行第七次藥價調查。由於無利可圖，藥廠紛紛延後創新藥品在台上市的計畫，使得台灣病患無法受惠於最新的治療方法。

在此同時，衛生署和健保局釋放溝通善意，期望藉由與業界有意義的對話，找出藥品核價和給付政策的新替代方案。此一發展方向，讓製藥委員會對上述問題的解決之道感到振奮。根據去年一項大規模的經濟模型研究結果，業界發現在台灣確實能以不超出健保預算的條件，達到修正藥品核價制度以獎勵創新的目的。我們感謝衛生單位以合作開放的態度來審查委員會提出的各項建議方案。

今年初甫成立的衛生署食品藥物管理局（TFDA）則屬另一項深具正面意義的發展。我們樂見台灣食品藥物管理局的成立，並希望美國食品藥物管理局長期累積的相關經驗能提供作為台灣方面的參考。

如以下所述，考量藥價調查制度未能成功地控制藥價差問題，我們建議取消藥價調查制度，並由相關團體代表共同協商訂定的藥品費用支出目標(Drug Expenditure Target)替代藥價調查。

這些改變連同白皮書中其他建議，將能顯著改善製藥產業在台灣所處的企業環境，提供台灣民眾更優良的醫療服務，並增加健保營運效率和財政穩定性。

台灣擁有諸多發展生物製藥產業和進行臨床試驗的條件，在此優勢下，跨國藥廠企盼台灣能創造一個鼓勵國際業者參與和投資的市場環境。

議題一：改革藥品核價政策以獎勵創新，並以藥品費用支出目標制度取代藥價調查

新藥在台灣的給付價格，由原先的十大先進國中位價逐步調降，及至2007-2008年間，僅達十大先進國最低價的72%。目前的新藥核價制度並不能反映產品創新度，以致在新藥及創新產品上市方面，台灣市場逐漸失去對廠商的吸引力。

業界目前正與衛生署及健保局針對藥價給付和核價政策，進行建設性的對話，並已在2009年七月和十月舉行二場藥品創新和藥品政策研討會。未來類似的研討會將持續舉辦。雙方對談重點在於如何將創新性納入健保局藥品核價和給付的考量因素之一，以使病患能使用更新更好的治療。

為測試各種新方案的可行性，美國研發製藥商協會(PhRMA)與中華民國開發性製藥研究協會（IRPMA）共同贊助進行一項研究專案，利用經濟模型來探討各種假設情境條件對病患用藥、藥廠和健保預算的影響。資料分析結果顯示，在大多數的情境假設下，未來六年間健保局毋須進行大規模的藥價調降，其經費便足以支撐獎勵創新的支付價格，藉以鼓勵藥廠將研發中新藥儘速引進台灣。本研究的另一項發現是，過去健保局定期執行的藥價調降作業，對撙節藥品支出並無實際功效。

業界建議衛生單位採行下列指導性原則：
- 以財務實質獎勵新藥創新
- 比照十國中位價

政府一直以來依賴藥價調查機制作為消弭藥價差的工具（藥價差指：醫療院所取得折扣後之實際購入藥品價格與健保局給付的較高支付價格間的差額）。過去六次藥價調查和後續藥價調整作業，藥價調降幅度從2000年的台幣五億元（一千五百九十百萬美元）驟增至2009年的台幣兩百億元（六億三千五百萬美元），成長幅度高達四十倍。然而，同期間的藥品預算成長卻不到兩倍。藥價調查機制對藥商、醫療院所、病患用藥和用藥品質等都造成相當程度的負面影響。

再者，醫院往往在藥品給付價格調降之後，持續向藥品供應商提出折扣要求，幅度需至少維持其原有的利潤水準，因此而造成二次藥價差。是故，目前的藥價調查／藥價調降政策並未能減少或消弭藥價差問題。

業界建議採取替代措施，透過修訂《全民健康保險法》，明訂藥品費用支出目標和協議成長率，並以此作為藥價基準下各項藥價調整的依據。由前述之經濟模型研究結果顯示，藥價調查在許多假設情境下非屬必要。費用支出目標制度除了可解決藥價差問題之外，亦能使各有關團體節約花費於蒐集和分析調查資料而耗費的資源，並提供各單位較佳的預測性。

<u>建議事項：</u>

1. 根據業界提出的建議案，修訂藥價分類項目，達成以創新程度為基礎的市場區隔。
2. 新增給付品項，尤其是受專利保護的藥品，應免除藥價調整。

3. 取消價量協議（該協議規定藥商須將某些藥品銷售額超出預定銷售目標的部分，回繳健保局／衛生署。此一協議嚴重限制創新性藥品進入市場的機會；且對在市場上銷售成功的產品而言，實為一種懲罰）。
4. 修訂《全民健康保險法》，根據前一年實際藥費支出與協商成長率來設定藥費年度目標。相關法規應制定一回收機制；支出費用超出預算的部分應繳回健保局。
5. 生物製藥產業代表應與其他有關單位團體代表共同參與藥費年度目標的協商。
6. 在健保法未修訂之前，健保局／衛生署應採取行政措施，使藥價基準的價格調整能符合業界建議的原則。

議題二：放寬藥品採用證明（Certificate of a Pharmaceutical Product, CPP）的檢附要求並加速法規審查程序

考量台灣負責藥品登記審查機構已設立超過十年以上，衛生署同意放寬新藥查驗登記檢附CPP 的相關要求。

過去數年來，藥界不斷要求台灣法規單位採取與國際一致的標準，放寬CPP檢附規定並簡化行政流程，以使病患能盡快使用新藥。由於檢附之CPP須先經發證國之台灣駐外單位簽證，因而大幅增加完成作業程序所需時間。與十大先進國或亞洲鄰近國家相較，台灣新藥登記需要耗費較多時間，平均審查天數在台灣為六百六十八天，新加坡則需四百五十天，歐盟四百零五天天，南韓四百天，美國三百九十天，香港和澳洲各需三百六十天。若能縮短審查時程，不但可顯著提升台灣市場的吸引力，並能強化藥廠滿足醫療院所和病患需求的能力。

衛生署目前有條件的准許廠商在申請新成分新藥（New Chemical Entity）查驗登記時，毋須檢附 CPP，僅需在領證前備齊出產國CPP與二至三張參考國CPP；若符合《藥品查驗登記準則》第三十八之一條規定時，則僅需繳交出產國CPP。但這些規範相當嚴格，廠商若未能正確遵循規定，將會使企業面臨重大風險。

此外，衛生署亦已同意自首度核發許可證之日起，廠商每五年得展延藥品許可證。申請時，廠商需檢附出產國CPP，或檢附出產國製售證明與參考國CPP。然而，若該產品基於商業考量已停止生產且撤銷銷售許可，則會產生無法取得出產國製售證明或CPP的情形。這種狀況將導致該產品在台灣的許可證被撤銷。

建議事項：

1. 加速法規審核／登記流程。由TFDA與業界共同成立專案小組，負責研擬解決方案並建立審查流程進度（Roadmap）。
2. 放寬 CPP 要求。
   - 符合《藥品查驗登記準則》第三十八之一條規定時，新成分新藥得完全免除出產國或參考國CPP檢附要求。
   - 僅要求檢附一張CPP，或由任一十大先進國之法規單位出具核准文件，證明該藥品之品質、安全性、療效，以及在該參考國之使用情形。
3. 取消CPP必須經由發證國之台灣駐外單位簽證的要求。
4. 針對具重大醫療需求或治療罕見疾病的新藥審查，建立快速受理與審查機制。
5. 確保流程之透明性：
   - 建立與委員會直接面對面溝通的機制
   - 建立透明審查流程，包括銜接性試驗評估的審查。

議題三：強化上市後藥物品質規範以確保病患用藥品質的一致性

許多先進國家均制定完整的上市後管理制度，以確保病患用藥品質的一致性，包括實施先進的優良製造規範（GMP）、例行檢查、原料藥（API）管理系統、監控可能影響藥物品質的製程變更等。

GMP、cGMP 以及藥品核准前生物相等性（BE）規範的實施，已為台灣奠定良好的藥品製造標準。但目前台灣上市後的管理法規仍落後其他國家的標準，不足以確保台灣的藥物品質，例如：有關原料藥來源變更的管理。我們呼籲衛生署強化本地藥品上市後變更的法規制度，以確保病患用藥品質安全無虞。

建議事項：

1. 建立原料藥登記系統。
2. 採用與國際一致的規範以管理原料藥來源的變更。
3. 強化目前藥物品質管理系統。

議題四：實施專利連結和資料專屬權，加強智慧財產權保護

專利連結和資料專屬權是保護藥品智慧財產權措施的重點項目。明確訂定專利和資料專屬權的到期日，將有利於開發性製藥業者與學名藥業者制定投資研發和製造決策，避免將資源浪費在無謂的訴訟，進而可使病患順利使用創新藥品。

專利連結制度

台灣目前仍未實施有效的專利連結制度。在專利連結制度下，學名藥許可證的核發需將原廠藥的專利狀態納入考量。台灣在2009年核發的藥證中，有三十五件侵害專利權，其中多件甚至列入健保給付。截至目前，有關專利連結的實施項目中，台灣僅實施其中一項：即要求原廠在領取藥品許可證時，需登記專利資料。其他重要項目，如查證程序、通知原廠專利權人相關學名藥的申請案、暫停藥品審查程序等，皆尚未實施。這些缺失不但使台灣在保護智慧財產權方面的國際聲譽受損，同時也使相關業者遭受不必要的損失。

過去數年來，生物製藥業者不斷呼籲政府透過立法程序建立有效的專利連結制度，而政府卻無意採取此項措施，因此未能遵循世界貿易組織（WTO）制定的《與貿易有關之智慧財產權協定》（TRIPS）第二十八條和第四十一條規範。

此外，智慧財產法修正建議案中提議給予學名藥廠試驗免責權。此一建議若經實施，只會使情況惡化。惡質的智慧財產權環境不但讓訴訟案件增加，降低開發藥廠介紹新藥進入台灣市場的意願，同時影響病患使用創新藥品的權利。

資料專屬權

在資料專屬權保護之下，法規單位得據以限制在一定期限內不得核發學名藥許可證。台灣的資料專屬權相關規定有若干缺失。目前資料專屬權僅適用於新成分新藥或小分子產品，但不適用於新適應症、生物製藥或大分子藥物。同時資料專屬權的效期係根據該產品在台灣以外首次取得許可證的日期而訂，而非在台灣本地取得許可證日期。若台灣希望鼓勵研發新適應症（增加藥品的適應症項目）和新使用方法（例如：新劑型），則應先解決這些有關資料專屬權的問題。

與十大先進國相較，台灣在資料專屬權方面敬陪末座。例如，歐盟對新成分新藥、生物製藥和專利過期藥品的兒科適應症提供十年的資料專屬權保障，新適應症並可再延展一年，孤兒藥得延展兩年，新藥的兒科適應症得延展六個月。加拿大則分別提供化學藥品和生物製藥八年與六年的保障，兒科適應症並可再延展一年。日本透過再評估期，給予八年資料專屬保障。美國提供化學藥品五年保障，生物製藥十二年半的保障，新適應症和兒科適應症則可分別延展三年和一年。

研擬修訂資料專屬權相關法律時，台灣政府可參考以下二項國際經驗：第一，加拿大為了保持在全球研發投資市場的競爭優勢，在2007年修法將資料專屬權由五年延長至八年；第二，生物製藥是未來拯救生命和改善生命品質的下一代藥物，但由於生物製藥的研發需要比小分子藥物投入更多的時間和資金，因此應給予較長的資料專屬權保護期。基於以上原因，美國給予生物製藥十二年半的資料專屬權保護期。

建議事項：

1. 制定法律並建立相關程序以落實專利連結制度，並透過新藥查驗登記準則有效地保障研發者的智慧財產權。
2. 將下列項目納入專利連結制度：
   a. 查證程序：學名藥申請者須負責專利失效之舉證。
   b. 通知原廠專利權相有關學名藥登記申請案：登記案送件後，學名藥廠和衛生署應通知原廠專利權人。
   c. 暫停藥品申請審查程序：若發生侵權爭議，應有暫停藥品申請審查程序一段時間的機制（在美國暫停審查期間為三十個月），直到雙方達成協議，或學名藥廠證明未有侵害專利權的情事。
3. 台灣應提供新藥下列資料專屬權保護：
   a. 小分子藥物（新化學成分NCE）
      - 新適應症／新用法：三年
   b. 大分子藥物（新生物製藥）
      - 最少八年
      - 新適應症／新用法：三年

議題五：落實醫藥分業制度（SDP）

台灣現行的醫院制度，限制雇用醫師僅能依醫院處方集所列藥品開立處方，而處方集中品項的選擇往往出於利潤考量。政府應該建立一個醫療環境，使受雇醫師和藥師能依病患利益為考量，以專業判斷開立處方，而毋需侷限於因財務利益而採購的選項。為達成此一目標，衛生署和健保局應思考如何改善對醫院和診所的補助，使其不必依賴調劑賺取利潤。調劑工作應主要由社區藥局負責執行，並由其提供病患用藥及保健諮詢服務。

實施醫藥分業有助於提升病患的藥事服務品質。醫藥分業不僅能促使醫師依專業經驗開立最合適的藥品，同時亦能落實由藥師執行的處方確認機制，確保病患所持由不同醫師或醫院開立的處方，無重複用藥或用藥禁忌的情形。然而考量驟然改變現行體制的困難與影響，藥業支持分段實施醫藥分業，並願配合建立必要的藥物配銷體系，加強對社區藥局的服務。

衛生署署立醫院和台北市立醫院在持續釋出處方箋至社區藥局方面已有相當的進展。此一計畫可作為醫界、藥界、藥局建立合作機制的範例，應予以推廣。

建議事項：

1. 一直以來，美國商會要求制定醫藥分業實施計畫（roadmap），以便即使在必須分段實施的情況下，亦可有明確的實施方向。完善的實施計畫應包括將醫藥分業實施成果指標納入醫院評鑑制度。此外，應調整給予醫院的給付，使其不必依賴調劑獲取利潤；同時，應強制醫院門診部門釋出處方箋至社區藥局。
2. 加強對大眾的教育，宣導實施醫藥分業的優點，協助病患了解醫藥分業在改善醫療品質和減少不必要的用藥以節約醫療資源方面的重要性。長期下來，醫藥分業必能達到撙節健保支出的目標。
3. 政府應提供足夠經費，改善各地社區藥局的基礎設備，以滿足實施醫藥分業所需。
4. 應建立明確規範以確保藥局正確調劑，若無醫師同意，應禁止更換處方藥品。
5. 政府應定期公布各醫院釋出處方箋統計數量。

其他

脊骨神經醫學

議題一：提供脊骨神經醫師在台灣的合理、合法位階

過去的一年裡，在台灣的脊骨神經科醫師所遭受的騷擾及檢舉似已減少許多，令人遺憾的是，台灣的衛生主管單位及醫師公會等對於脊骨神經醫學的歧見還是一成不變。在台灣的脊骨神經醫師人數雖然不多，但幾乎全是受訓及畢業於美國的相關學校，惟至今仍無法得到政府部門的正式認可，而且還被禁止宣導及推廣脊骨神經醫學的療效與服務內容。

台灣的全民健康保險計劃一直受到相當大的財政赤字壓力 — 從今年調高健保費到目前仍在研議中的二代健保 — 處處可見政府欲求改善健保赤字的決心。此時正是將脊骨神經醫學納為另一項治療選項的最佳時機。尤其是針對患者的物理結構上的問題，脊骨神經醫學可在不使用藥物或手術的情況下，以自然保守的治療方法解決病痛。脊骨神經醫學早已在許多國家受到歡迎，除了可以有效解決病痛之外，同時更有助於降低大眾的醫療費用，舒解政府在醫療財政上的壓力。

台灣衛生主管機關對脊骨神經醫學的排擠現象，與一百多年前脊骨神經醫學在美國和其他西方國家初期發展的過程相似。但隨著科學研究證實脊骨神經醫學對健康確有實質助益、具經濟效益及病患滿意度高，歐美各國的排擠現象早已被扭轉。以美國為例，每年就有超過三千萬人次造訪脊醫師診所。

世界衛生組織(WHO)長久以來認可脊骨神經的專業，並與其附屬之「世界脊骨神經聯盟」，在世界各地推展多項的合作計畫。(另須提到的是，「世界脊骨神經聯盟」曾經多次替台灣參與世界衛生大會(WHA)一案發聲，卻從未得到台灣官方或台灣醫界任何的致謝或回應。)

在2005年頒布的「脊骨神經醫學基礎培訓和安全性指南」中，WHO對脊骨神經醫學的定義為「一種的醫療專業，專擅於診斷、治療及預防神經肌肉骨骼系統的失調，及此類失調對整體健康的影響」。2008年十一月在北京召開的世界衛生組織傳統醫學大會，公布了該指南的中文官方版本。不過在台灣，脊骨神經醫師被降格為「脊背調理人員」，然而世界衛生組織的指南中，不論中英文均清楚地界定脊醫專業的職稱、類別與位階均為「醫師」。

台灣長久以來都極積努力希望成為世界衛生組織的成員或觀察員，因此台灣應進一步尊重並接受世界衛生組織的立場，認可脊醫專業，讓台灣人民能享有更多自由選擇合宜的醫療照護。諷刺的是，領有美國脊骨神經醫師執照的脊醫師不僅能合法的以脊醫師身份在歐、美、加、澳行醫，也能合法的在香港和新加坡以及中國大陸行醫，唯獨在民主的台灣卻不被允許。

在2006年有多位台灣立法委員依照WHO所制定的規範，連署提案制定《脊醫師法》。該草案中訴求允許已在先進國家完成訓練並取得證照的脊醫師(在美國是學士後五年的研究所課程)能在台灣合法執業。這是因為台灣無類似的教育課程，亦無國內培育的合格脊醫師。之前，香港亦曾面臨相似的情況，香港政府因而建立一套制度，允許在國外取得證照的合格脊醫師，在香港以登記註冊的方式合法執業。

基於利益保護主義，台灣醫師公會將脊骨神經醫師視為潛在的利益競爭對手，對於脊骨神經醫學提出了諸多不實及毀謗性的指控，在醫師公會的強勢反對操控下，《脊醫師法》草案最後無疾而終。然而，儘管醫師公會對脊骨神經醫學有明顯的歧見，卻能操控影響政府官方醫療政策。台灣政府過去對《白皮書》的部分回應即指出，台灣醫師公會的反對是脊骨神經醫師無法獲得正式合法承認的主要原因。

衛生署過去一再強調，脊骨神經醫學欲獲得認可，必須遵照「教、考、用」政策建立制度；若依此邏輯，必須等到台灣建立一套完整的脊骨神經醫學教育及證照考試體系後，現行的脊醫師們才能獲得合法承認。但衛生署的理由並無任何法律根據，即便政府真要建立一套完整的體系，亦可能要數十年時間才能完成；在過渡期間，這些對台灣醫療體系可提供寶貴貢獻的脊醫師們，可能前途未卜。上述的香港經驗 — 即允許在國外取得證照的合格脊醫師，在香港以登記註冊的方式合法執業，應是一套可行的過渡時期辦法。

美國受訓、學成之合格專業脊醫師於在台灣受阻礙無法合法執業的現象，已經成為台美《貿易暨投資架構協定》(TIFA)雙邊談判議題之一。美國貿易代表署在2009及2010年《國家貿易評估報告》之醫療章節中，連續兩年提列這項議題

值得注意的是，早在適當的規範制度建立之前，基於「祖父條款」（即不溯既往的原則），傳統的中醫治療在美國已被認可亦受允許執業。基於台美雙邊互惠及互相尊重的原則，台灣政府應該比照此一原則，讓持有美國脊醫師證照者能在台灣合法而有尊嚴地執業。

我們呼籲衛生署應拒絕利益保護主義團體的壓力，立即停止對脊骨神經醫師的突擊搜查、罰款、監禁威脅與騷擾，並積極支持《脊醫師法》之立法，讓脊骨神經醫師能在台灣擁有合法執業的專業尊嚴。當台灣獲已獲得世界衛生組織授權參加2005國際衛生條例大會(International Health Regulation 2005)且兩岸關係的解凍使台灣在過去的兩年參與世界衛生大會(WHA)，台灣政府正式承認脊骨神經醫師的合法專業地位，將可使台灣與世界其他國家及世界衛生組織（WHO）的政策接軌。

菸品

議題一：重新考量統一安全防偽機制

立法院社會福利及衛生環境委員會曾於九十七年十二月廿二日做成附帶決議，要求財政部及衛生署就菸品「安全防偽憑證與辨識機制」試辦一年；九十八年一月十一日，立法院亦針對附帶決議之執行提出相關主決議，現在甚至有立委提案修改《菸酒管理法》，要求增列「菸品應標示安全防偽完稅憑證與辨識系統」。此系統要求業者於每一菸包、甚或菸條、菸箱上印製完稅憑證，以減少仿冒菸品，並強化下游供應鏈的安全辨識功能。

然而，台灣近年的走私態樣已逐漸改變，大宗散裝運輸的仿冒商品已不存在，非法菸品市場已形成「少量進口，大量走私」的新型態，也就是俗稱的「非法白牌菸」，而此類非法的白牌菸品均未繳稅。

統一的安全防偽憑證並無助於解決該新式的走私型態，同時從其他國家執行經驗來看，安全防偽憑證本身就有極高的偽造風險，要求統一執行安全防偽憑證將可能引發更多令人擔憂之問題。

我們誠懇呼籲政府主管機關在制定相關政策前，宜先審慎思考其可行性與合理性，邀請產業共同加入政策制定與討論過程，並籲請政府考量下列幾點建議：

(一) **合法菸品進口、製造業者均已建立各自的防偽辨識系統**

走私菸品影響所及，不僅造成國家政府稅收減少（每包非法低價白牌菸估計讓政府遭致新台幣三十五元的稅收損失），更嚴重侵害合法菸品業者的權益，危及其生存。本商會之菸品進口及製造業者對於其生產或進口之菸品皆已各自擁有專屬的防偽辨識技術，並於每年與查緝單位共同舉辦三至四場的訓練會議及年度研討會，成效卓著。

(二) **台灣非法菸品走私型態之改變**

承上所述，近年來台灣的走私菸品，多以不肖業者先行透過合法報關手續，申請進口小部分國外自創品牌菸品，再透過不斷翻新之走私手法大量進口，在夜市、雜貨店直接販售；與傳統直接仿冒、偽造知名品牌香菸的私劣/非法菸品態樣完全不同。加上九十八年六月年菸品健康福利捐的調漲，帶動菸品價格上漲，以及經濟不景氣等大量誘因，造成非法白牌菸以每包三十五元以下的低價充斥市場。

根據主管機關及查緝機關的業務報告，目前私劣菸品約占市場8％至10％，其中沒有完稅的非法白牌菸高達70％至80％。由於不肖業者不會依循正常管道通關，因此實施統一的防偽憑證完全無法根本地解決此一問題。

(三) **若針對菸品實施統一防偽辨識機制，缺乏立論基礎**

台灣各項產品之走私、仿冒問題不僅發生於菸品，其他如農產品等其他許多產品，均有走私或仿冒的情形存在，其對消費者健康與安全之危害更甚，但政府機關並未針對農產品等其他商品之走私或仿冒實施「統一」之防偽辨識機制，若針對菸品要求實施統一防偽辨識機制，恐缺乏公平性與合理性，也連帶增

加合法進口業者之額外且不必要之物流支出與營運成本，有違台灣自由開放市場之本質。

（四）籲請主管機關，廣納產業意見於管理規範中，維護合法市場之運作與權益

台灣走私低價白牌菸情形嚴重，而走私仿冒問題絕非單一機制能完全解決。建請主管機關針對漁船與貨櫃走私加強查緝與大眾宣導，修法提高販賣、走私非法菸品刑責，強化源頭管制，並提高獎勵查緝誘因；唯有多管齊下、對症下藥，才能真正解決私劣菸品泛濫的問題。

同時，若政府機關堅持建立一套「統一」之安全防偽機制，我們懇請主管機關：1）進行通盤性的研究，參考國外相關經驗；2）決策前請思考一種以上的系統機制。如此方能實際了解其實效與成本，避免限縮合法業者權益。

議題二：因應菸品健康福利捐之調整，建立「補徵」之法源依據

九十八年一月廿三日總統府公告，正式調整菸品健康福利捐為每包二十元，並於同年六月一日正式施行。產業界一直以來不斷強調，「補徵」實為最有效率、行政成本最低、對市場影響最小之配套措施。

所謂「補徵」，即是由所有菸品製造、進口業者及零售通路、販賣業者清點前一日之實際庫存數量，再計算新舊健康捐之差額，「補徵」給政府。由於所申報之數量，無論製造、進口業者甚或佔通路大宗的連鎖便利超商，均有相關電腦貨品進出資料可供勾稽比對，斷無造假之虞。

我們於去年之《白皮書》提出相關建言，希望政府能儘速透過修法，解決補徵機制的法源問題，並委派第三公正單位如會計師公會、消基會等民間團體進行稽核，如此才能建立因應未來菸品福利捐循序調漲、一勞永逸之配套機制，並真正維護市場秩序、有效杜絕非法交易。

雖然主管機關（衛生署國民健康局）過去曾多次表達補徵之可行性，但最終仍因「缺乏法源依據」，而採行黏貼價格辨識標籤的方式。此一繁複費力的過程，不但延宕菸品健康福利捐開徵日期，使國庫損失慘重，亦使得合法進口業者在運送、配銷、以及與下游廠商溝通上產生諸多不便，更增加人力、物力等各方面難以估算之成本。尤有甚者，由於市場上出現新、舊菸品的多種價格，更造成消費者與通路商間的諸多消費糾紛。

綜上所述，有鑑於《菸害防制法》已明定菸品健康福利捐將於每兩年調整金額，現在若再不採取行動，屆時必然有類似問題重演。我們籲請政府，宜儘速增訂補徵法源基礎並推動立院修法完成，訂定「補徵」法源基礎。

議題三：政府不宜限制菸包上之敘述性文字

衛生署於九十八年十一月五日預告訂定「禁止促銷菸品或為菸品廣告之方式」中，有關「促銷菸品或為菸品廣告，禁止以下列方式為之：於菸品容器或其外包裝上，加註嚴選、優質、聞名、精緻、限量、珍藏或特別等任何描述性文字」。

針對上述內容限制，我們有以下看法：

（一）法律所未限制，且屬商業言論自由的憲法保障層面

有關菸品容器之標示規定，依據現行之《商品標示法》、《菸酒管理法》及《菸害防制法》等相關法令規定，並未限制菸品容器之包裝設計。而合法進口業者之所有市售產品非單獨針對台灣市場行銷設計；若限制菸品容器上標示文字，將有違國際對於菸品之管制措施。更重要的是，菸品容器上所為之文字標示，實屬菸品業者之合法權利，並受憲法言論自由及財產權之保障。

（二）業者於菸包上事實性描述文字未有誤導消費者之意圖，符合規範限制

台灣之《菸害防制法》，與世界各國規範相類似，對促銷或廣告之文字行為有嚴密禁止規定，但除限制菸包上不得使用「淡菸」、「低焦油」或可能誤導消費者認為較不危害健康的文字外，均未規範禁止標示菸品容器上之描述性文字，因此菸品業者於菸品包裝上標示非屬誤導性文字，在我國或其他世界各國均不受任何其他法令之限制或禁止，應屬合法行為。

議題四：菸品健康福利捐不宜納入營業稅稅基

自九十八年一月十二日起，菸品健康福利捐之法源已由財政部主管的《菸酒稅法》移列至衛生署主管的《菸害防制法》之下。另外，近來修正通過之《菸酒稅法》修正案，確定將菸品健康捐的相關規定予以刪除，僅留下「代徵」的規定，顯已進行法源移列的配套修正工作。

財政部亦於九十八年十一月四日發布新聞稿指出：「菸品健康福利捐係專款專用之捐費，性質上不屬賦稅範疇。」儘管如此，菸品健康福利捐卻仍被列為加值型及非加值型營業稅法之稅基之一，明顯與財政部的說法矛盾。我們要求政府應發佈明確的徵收指引，規定菸品健康福利捐不應被列為加值型及非加值型營業稅稅基。

九十八年七月行政院提案修正《加值型及非加值型營業稅法》，目前立法院正審議中，若該法修正通過，消費者繳交菸品健康福利捐之餘，還必須承受更高額的加值型及非加值型營業稅，形成「捐上加稅」的雙重負擔，更造成「稅」、「捐」法律定義上的混淆不清，我們敦促立法院切勿通過此一修正案。

不動產委員會

不動產委員會謹代表本委員會所有成員提出建言。這些建言攸關如何吸引更多資金流入不動產市場並加速都市更新事業。我們期望政府能更積極傾聽業界的建議，採取行動活絡不動產市場，以提供大眾更多元的服務，並使投資人— 包括外國投資人 — 獲得合理的報酬。

本委員會期許，透過與相關政府部會實質的交流，進一步促進市場的健全發展。

議題一：放寬港澳僑胞購買台灣不動產的相關法規

根據金管會的規定，目前銀行在受理港澳僑胞房貸申請時，仍須依照「銀行辦理港澳僑胞購屋貸款要點」（台財融字第770259495號令訂定）辦理。這項要點主要規範港澳僑胞的借貸人資格、申請程序、申貸金額、貸款成數、貸款期限、及擔保額度，然而就一般房貸而言，這些貸款條件則由各家商業銀行根據其本身放貸政策及放貸能力自行作決定。

在2009年《白皮書》中，我們曾呼籲相關主管機關，廢除貸款成數80%上限和最高新台幣五百萬貸款金額上限之規定，因為該規定將減低港澳僑胞投資台灣房地產的意願。金管會於去年回應指出，會在諮詢各家商業銀行後，研議取消此規定，然而，目前貸款成數80%上限和最高新台幣五百萬貸款金額上限之規定依然存在，因此我們再次呼籲金管會盡快廢止「銀行辦理港澳僑胞購屋貸款要點」，使港澳僑胞得被視為一般外國人，以鼓勵港澳僑胞投資台灣不動產市場。

議題二：開放陸資投資商用不動產

過去幾年，兩岸關係已明顯改善。台灣與中國於2009年簽署了多項協議，《兩岸經濟合作架構協議》(ECFA)也在協商之中。本委員會十分樂見這樣的改變，並相信未來兩岸間更緊密的聯繫，將為台灣整體經濟帶來新的成長動能。

2009年六月底，經濟部公布《大陸地區人民來臺投資許可辦法》及《大陸地區之營利事業在臺設立分公司或辦事處許可辦法》，正式開放大陸人民及法人來台從事事業投資。本委員會樂見多項在2009年《白皮書》中提出的建議事項，例如允許陸資在台設立據點、延長大陸人民在台置產後之停留時間等，已獲得政府正面回應並修改相關規定，本委員會對此表示感謝。

然而，依《大陸地區人民在臺灣地區取得設定或移轉不動產物權許可辦法》第七條規定，目前陸資企業獲准來台設立公司後，僅能因業務需要申請取得不動產。反觀《土地法》第十九條對外國人購買台灣不動產所作之規定，外國人為供自用、投資或公益之目的使用，可取得該條款所列各項用途之土地。考量商用不動產市場交易熱絡與否，並不會對社會大眾產生直接的影響，本委員會建議，政府應進一步開放陸資可因投資需求購買商用不動產（不含住宅），以促進台灣商用不動產市場蓬勃發展。

議題三：檢視建物使用的相關法律規範，並設置單一商業登記窗口

在政府尚未廢止營利事業統一發證制度之前，企業申請公司行號設立登記時，縣市政府相關單位設有聯合作業審查機制，提供申請及預查服務，並可讓企業於選址或搬遷進駐前，事先審查該公司營業項目及營業地址是否符合相關土地使用分區及建管法規。

由於營利事業統一發證制度繁複且費時，為回應業界建議，政府於去年簡化相關法規作業程序，改為事後審核機制，大大提升台灣在世界銀行年度《經商環境報告》中「開辦企業」指標的排名。實施此新制度後，經濟部商業司負責新公司或商業登記之辦理，效率十分快速，並在核准登記後，副知所屬縣（市）政府之都市計畫、建築管理、消防、衛生單位及相關稅捐稽徵機關。值得注意的是，在現行新制度下，政府已不再審查公司營業項目及營業地址是否符合相關土地使用分區及建管法規，使得企業在選址及不動產使用上，面臨潛在的風險。

因此，本委員會建議政府設立單一窗口，提供諮詢服務和預審機制，讓企業於公司選址及不動產進駐使用前，得以確認符合現行土地使用分區及建物使用類組相關規定。

同時，延續2009年《白皮書》的議題，我們建議政府檢視現行土地使用分區及建物使用類組相關法規，並簡化變更建物使用執照的申請流程。

議題四：成立推動都市更新之非營利機構

根據內政部營建署之都市更新資訊網以及「都市更新專業整合機構」案承辦單位網站，目前全台共有六百六十一件推動中的都市更新整合案件，但大多數仍處於初期階段，尚未有已整合成功、可供投資人評估之案件。此外，由政府主導之都市更新案件中，亦無後續招商推動時程等相關清楚資訊可查詢。

本委員會建議政府加速推動現行都市更新計畫，並提供明確的計畫時程與招商訊息，以利有興趣的民間投資人提早進行評估。

根據《都市更新條例》第三十六條，「權利變換範圍內應拆除遷移之土地改良物……逾期不拆除或遷移者，實施者得代為或請求當地直轄市、縣(市)主管機關代為之，直轄市、縣(市)主管機關有代為拆除或遷移之義務。」然而，《都市更新條例》自1998年實施至今，該條文並未落實執行，使都市更新進度經常因為少數地主或個人而阻礙。即使該條例之相關施行細則已訂有協商時程之相關規定，目前仍未看到政府積極執行公權力，進行拆除或遷移。

本委員會強烈建議政府嚴格落實執行《都市更新條例》第三十六條，以利都市更新之推展，進而促進經濟、改善環境，並提升台灣民眾的生活品質

議題五：放寬外國廠商參與低於《政府採購協定》門檻金額之採購案

台灣雖已於去年七月十五日正式加入《政府採購協定》（GPA）並開放外國廠商參與政府部門標案，然僅一定金額以上之採購案，必須遵照GPA之約定。許多顧問研究性質之限制性招標案，由於金額通常較小，不受GPA之保障，因此導致外國廠商無法參與類似招標案的投標。這不僅使外國廠商失去許多為政府部門提供服務的機會，政府單位也因此失去一些潛在優秀廠商的選擇。

本委員會建議中央政府行文各級機關，鼓勵各機關在設定廠商資格時，除非特殊案件，儘可能不要限制外國廠商參與投標。

零售委員會

衛生署食品藥物管理局（TFDA）於今年一月正式上路，是一項重要的里程碑。對本委員會的食品及化妝品相關業者而言，TFDA這個專業主管機關的成立，代表未來與業界及消費者權益相關的議題，都將獲得高度專業的處理。本委員會樂見許多會員公司與TFDA的初步接觸皆十分正面。

才剛成立不久的TFDA已開始與美國FDA聯繫交流，學習並瞭解美國FDA的相關經驗，我們樂見這樣的發展，也希望這兩個單位持續對話，建立緊密的合作關係，以嘉惠產業界。本委員會希望TFDA能透過此類的溝通交流，促使台灣的法規與國際接軌。

誠如我們過去多次指出，許多「台灣獨有」的法令規章，對在台跨國公司的經營環境造成嚴重的阻礙。我們相信，TFDA對於促進食品與化妝品安全法規與國際接軌，將可發揮相當大的影響力。至於其他零售產業，我們也呼籲其主管機關能在促進法令規章與世界各主要國家接軌上更加努力。如同我們在去年的《白皮書》中所言，「台灣製造」應該是值得驕傲的標籤，因為它代表了高品質，但「台灣獨有」則表示政府法規與世界潮流脫節。這不僅徒增進口商、製造商、零售商及消費者的成本，而且對任何人都沒有好處。

議題一：制定與國際接軌的法規

在產品管理上，台灣常常採取獨有的法規，而不遵循國際慣例或參考國際主要國家的先例制訂法規，這對製造商及零售商而言無非是徒增負擔，因為廠商必須為了這個非主要市場的法規遵循，另外付出管理及行政成本，然此結果將抑制貿易的流通，消費者的選擇性被限縮，而成為最大的受害者。

我們希望主管機關特別注意以下事項：

1. 三聚氰胺含量　有鑑於2008年的三聚氰胺事件，國際食品法典委員會（該委員會是由聯合國糧農組織和世界衛生組織共同建立，專門負責協調政府間的食品標準，建立食品國際標準體系，簡稱Codex）指派一個工作小組來制定三聚氰胺於食品中之限量，該小組最近提出容許值建議如下：
   - 嬰兒奶粉　1毫克/公斤
   - 其他食品　2.5毫克/公斤

   目前台灣衛生署對於三聚氰胺的檢測限值為：
   - 嬰兒奶粉、奶粉及奶精粉等產品為0.05毫克/公斤
   - 部分類別品目（不論是否含乳製品）亦為0.05毫克/公斤
   - 其他複合食品為2.5毫克/公斤

   台灣對於部分產品類別採用0.05毫克/公斤的限量，不僅造成進口程序繁雜，而且延宕通關時間。若Codex如預期地採用上述建議值，我們呼籲台灣政府採用與Codex同樣標準，以符合國際規範。
2. 衛生標準　台灣食品的衛生標準往往與其他國不同，例如「水產動物類衛生標準」，台灣的重金屬容許量遠比大多數國家嚴格。然而，由於野生漁貨補撈之海域不同，其重金屬含量無法控制，因此美國對於部分水產品並未規範其重金屬限量；又例如「食品中真菌毒素限量標準」，美國所容許的真菌毒素比台灣寬鬆許多。我們並不瞭解兩國在食品衛生標準上的差異原因，我們建請新成立的TFDA重新審視並考慮修訂台灣的標準。
3. 營養宣稱　《食品衛生管理法》規定食品不得有不實、誇張、易生誤解或醫療效能之宣稱，然該法規的執行非常嚴格，因此即使產品確實對人體有益，亦不得有相關宣稱，最常見的情況莫過於產品中天然存在的營養素，例如美國允許黑巧克力產品宣稱富含抗氧化劑，但即使已經科學證實，台灣卻仍禁止如此宣稱，其結果將導致消費者無法清楚了解產品特性，而且因為進口商必需重新標示，負擔額外成本，造成貿易障礙。
4. 進口有機食品　自2009年開始，依《進口有機農產品及有機農產加工品管理辦法》，食品進口商於產品銷售前需向農委會申請，申請書中應包含產品數量及批號等相關資料，而且每一批產品到港後均需經審核通過後始得上架販售。如此的程序不僅繁複，而且造成進口貿易障礙，因為進口商於每次申請時尚需支付至少新台幣五佰元的審查費用，整個準備及審理時間需一至兩週才能完成，不僅相當耗時也影響業者商機。我們建議台灣仿照歐美做法，認可其他國家驗證機構之認證，凡經過這些機構認證之有機產品可以直接上架販售。另一個可行的作法是，仿照商品通關檢驗制度，建置類似的驗證登入機制並搭配事後抽查，除可確保品質外，同時並能避免繁瑣的申請程序。
5. 商品標示規定

1）襪類產品　根據台灣的法規，每一雙襪子上必需有中文標示，換言之，即使廠商已於半打裝或十二入裝的襪類產品之外包裝貼上一張中文標示外，仍需在每一雙本體上附上中文標示，造成廠商的額外成本。但這種規定對消費者而言並沒有附加價值、更迫使業者把增加的貼標成本轉嫁予消費者，對消費者造成額外負擔，同時阻礙了貿易流通。

2）多包裝商品　依據《食品衛生管理法施行細則》第十三條規定，對於有容器或包裝之食品，流通於市面上個別小包裝商品之標示，必須由進口商在銷售前負責完成；換言之，若是部分商家自進口商購入多包裝商品，再分開銷售裡頭的各別小包裝產品，進口商仍應負此小包裝商品之標示責任。此種規範對進口商而言不甚公平，原因是進口商對其他下游廠商或消費者購得多包裝商品後，拆封轉售情形，根本無從得知，而且依法也無從管理或限制。而進口商為遵守該條文規範，必須負擔額外的作業成本，最後可能導致他們放棄輸入商品至台灣。

6. 進口標準

1）太陽眼鏡／玩具／照明產品　雖然台灣的CNS國家標準係參考歐盟的標準而訂定，但台灣卻不接受外國主要實驗室的檢驗報告，因此衍生的額外檢驗手續增加了進口業者的成本。雖然經濟部標準檢驗局的理由是，由於台灣與其他國家缺乏相互承認，無法直接認可他國的檢驗結果，但我們強烈認為，政治問題不應造成貿易障礙。

2）營養食品　在美國普遍被認為營養補充品的產品，在台灣卻以藥物管理，例如退黑激素、銀杏葉、牛奶薊、鋸棕欄、柴松果菊等。此外，美國規定輔酶（抗氧化劑的一種）每日最高攝取量為兩百毫克，在台灣卻限定最高為三十毫克。由於台灣的健康意識日益高漲，但因台灣與其他國家的法規不同，不僅造成進口障礙，進口商也無法引進符合台灣民眾需求的產品。我們認為，除非產品被證實有害，否則應放寬規定，讓民眾有更多的選擇。這類的法規不但讓消費者必須以付出更高的價格，也造成市場上選擇的減少。

議題二：加速審查並解除中國進口產品禁令

自2007年本委員會第一次在《白皮書》提出建議書以來，最主要的訴求之一是要求政府縮短中國進口商品禁令的清單。本委員會已多次與各政府機關研商此議題，特別是定期就此議題舉行審查會的國際貿易局。很遺憾的，此議題的進展速度之緩慢令人訝異。例如，在去年的《白皮書》中列出三十二項優先注意的品項，只有四項被開放。

台灣和中國都是世界貿易組織的成員。台灣禁止自進口中國的貨物只有兩個原因：首先是危害國家安全，但這實在很難跟一般普通商品有所關聯；第二是嚴重損害台灣的經濟，但若無具體的經濟影響評估數據，這實在是保護主義的方便藉口。

在我們的經驗中，做為政策主管機關的國貿局，已偏廢自身的責任；國貿局在此議題上，通常不做決定性的裁決，而將決定權推諉給其他政府機關甚至是國內的產業公會。事實上，國貿局也經常建議本委員會的代表，應先與這些公會私下磋商，獲取他們的認同以解決問題。我們認為，政府機關放棄如此重要的決策職責而向小部

份的利益團體妥協，極為不適當，而且會阻礙創新和競爭力。

針對單一市場施加進口禁令並非明智之舉，原因如下：

1. 背離了WTO原則，不利於台灣作為一個自由經濟體系所應有的聲譽和信譽。
2. 消費者取得多元化產品的管道被減少，卻必須支付更高的價格。
3. 減少跨國公司在台投資的意願。
4. 在保護主義的傘下，一些國內產業將缺乏全球競爭力。
5. 挑戰競爭是來自於全球，而不只是來自中國。

正當政府與中國談判《經濟合作架構協議》（ECFA）之際，似乎也是徹底重新思考進口禁令的好時機。我們建議政府：

1. 採取透明的審查程序，而國貿局必須是全權負責的單位
2. 逐項或逐類、加速審查下列項目：

	未開放號列	
1	1806.20.00.00-0	其他調製品成塊狀、板狀或棒狀重量超過２公斤者或液狀、膏狀、粉狀、粒狀或其他散裝在其容器內或內包裝內之容量超過２公斤者
2	1806.31.00.00-7	其他巧克力調製品，呈塊、條狀或棒狀，重量不超過２公斤，有填塞物
3	1901.20.00.00-4	供製作第１９０５節烘製食品用之混合料及麵糰
4	1902.30.10.20-5	速食麵，不含肉者
5	1905.31.00.00-7	甜餅乾
6	1905.32.00.00-6	鬆餅及薄餅
7	1905.90.90.00-6	其他第１９０５節所屬之貨品
8	2005.20.20.00-3	酸漬除外之調製或保藏馬鈴薯片及其他馬鈴薯條，未冷凍
9	2103.20.00.00-8	番茄醬及其他番茄調味醬
10	2208.90.60.00-4	穀類蒸餾酒（Ｋｏｒｎ）
11	3005.10.10.00-5	外科用膠帶
12	7009.91.90.00-8	其他玻璃鏡子，未鑲框
13	7009.92.00.00-6	其他玻璃鏡，已鑲框
14	7013.37.00.00-8	陶瓷玻璃器除外之其他玻璃杯
15	7013.99.40.00-5	其他玻璃花瓶
16	6302.21.00.00.8	棉製其他印花床上用織物製品
17	6302.22.00.00.7	人造纖維製其他印花床上用織物製品
	有條件開放號列	
1	1704.90.00.90-9	其他糖食（包括白色巧克力），不含可可者
2	2309.10.00.00-2	供零售用之貓狗食品
3	3005.10.90.90-9	其他粘敷料和其他具有粘層之物品
4	6101.20.00.00-2	棉製男用或男童用大衣、駕車外套、披肩、斗蓬、附有頭巾之禦寒外套（包括滑雪夾克）、風衣、擋風夾克及類似品，針織或鉤針織者
5	6105.20.00.00-8	人造纖維製男用或男童用襯衫，針織或鉤針織者
6	6106.20.00.00-7	人造纖維製女用或女童用上衣、襯衫及短衫，針織或 鉤針織者
7	6107.11.00.00-7	棉製男用或男童用內褲及三角褲，針織或鉤針織者
8	6108.21.00.00-4	棉製女用或女童用三角褲及短內褲，針織或鉤針織者
9	6115.95.00.00.6	棉製長襪、短襪及其他襪，針織或鉤針織者
10	6201.13.00.00-0	人造纖維製男用或男童用大衣、雨衣、駕車外套、披肩、斗蓬及類似品
11	6202.92.00.00-3	棉製女用或女童用附有頭巾之禦寒外套（包括滑雪夾克）、風衣、擋風夾克及類似品，第６２０４節所列者除外
12	6205.20.00.00-7	棉製男用或男童用襯衫
13	6205.30.00.00-5	人造纖維製男用或男童用襯衫
14	6206.40.00.00-2	人造纖維製女用或女童用上衣、襯衫及短衫
15	6212.10.90.00-1	其他紡織材料製胸罩，不論是否針織或鉤針織者
16	7007.19.00.00-8	其他強化安全玻璃
17	7013.99.90.00-4	其他玻璃器
18	6914.90.90.90.6	其他陶製品（瓷製者列入６９１４１０・９０）
19	6914.10.90.00.2	其他瓷製品

我們的評估是，從中國進口這些品項將不會對台灣的國家安全構成任何威脅，或對國內經濟造成任何可能的損害。相反的，解禁這些品項將重建台灣加入WTO的承諾，並增加台灣的聲譽，讓台灣成一個有吸引力的投資地點，增加長期的就業和業務發展機會。如果政府決定不開放這些品項，我們亦希望政府能提供具體的經濟影響評估數據做為決策理由。

議題三：改革化妝品法規管理架構

目前衛生署的化粧品法規規定，含面皰預防、防曬及染燙髮等的含藥化妝品需經上市前查驗登記、所有化粧品的廣告需事前審查、及進口含藥化粧品產品必須提供製售證明。但這些規定都和確保產品安全無關。

在美國、歐盟及東協等主要先進國家都不需要化粧品上市前查驗登記，這些區域的法規設立嚴格的安全與品質的規範，且採行上市後的稽查，以確保產品符合法規規範。

先進國家對於化粧品廣告也採取同樣的規範原則：不採事前審查機制以避免影響公司與消費者溝通時的相關與必要資訊完整性。雖然衛生署已經公告「化粧品得宣稱詞句及不適當宣稱詞句」，卻反而導致官方審查人員過度審查詞句，而忽略審閱產品宣稱的可信度。我們建議衛生署應定期與產業界、皮膚科醫師及媒體學界開會，訂定清楚一致的原則，以避免誇大或不實的廣告，才能更有效達成保護消費者的目的。

另一個產業界面臨的問題是台灣的法規對於禁止直接使用的禁用成分之殘留量。受限於技術原因，完成品中還是有可能會殘留某些無法避免的化學成分，其殘留量非常低、也都在安全範圍內；這樣的情況普遍獲得美國、日本及歐盟的認可，同時也清楚明列於歐盟的規範中。但台灣的化粧品管理法規並未比照他國作法，因此，每當有關殘留量的報導出現時，都會引起消費者的疑慮與恐慌。

本委員會也建議參照歐盟及東協的法規來重新修訂現行的化粧品管理法規，我們建議的修正方向包括：廢除含藥化妝品的上市前查驗登記、取消所有化粧品的廣告事前審查及製售證明的要求、明確允許無法避免的禁用成分之殘留量。

稅務委員會

合理且具競爭力的稅賦制度雖非改善一個國家投資環境之唯一要素，卻是政府穩定經濟復甦重要的一環。稅務委員會感謝歷年來台灣政府傾聽外商團體之訴求及戮力於各項稅務議題上追求公平合理之政策。舉例而言，為解決長期以來的稅務爭議，財政部於去年公佈《中華民國來源所得認定原則》以及《適用所得稅協定查核準則》，即為解決長期困擾國內外企業稅務議題所達成之里程碑。

惟，目前仍有下列關係吸引外國投資之議題亟須台灣政府重視，本委員會感謝財政部針對該等議題持續性之努力，並期望能與財政部進一步的合作，以創造與國際租稅實務接軌的投資環境。倘若這些議題能於不久的將來獲得解決，將對增進台灣國際競爭力實有高度助益。

議題一：修正失衡的所得稅制結構

日前台灣通過調降營利事業所得稅率之政策，已使台灣的營所稅率與亞太地區國家得以相提並論，如新加坡的17%及香港的16.5%，此舉有助於促進台灣的競爭力，並降低企業在台營運成本。但是調降營所稅的同時，整體所得稅制結構若無配套修正，將造成稅制失衡，對台灣競爭力產生重大衝擊，因此，本委員會呼籲主管機關審慎思考下列問題：

1. 營所稅率已降低至17%，但是外國企業多數中華民國來源所得適用之扣繳稅率仍為20%，並非合理稅制結構。我們呼籲外國營利事業之中華民國來源所得適用扣繳稅率降為17%或更低。
2. 台灣個人綜合所得稅率最高為40%，比亞太地區其他國家高出許多。如此偏高的個人所得稅率自無法吸引或是留任外國人才，以促進台灣經濟成長。此外，個人綜所稅率與新版營所稅率之差距，意味著個人之稅務負擔比例遠高於營利事業之稅務負擔比例，相較於其他國家之稅制結構，台灣所得稅制結構不僅不尋常，亦非一個國家健全稅制結構應有的現象。

議題二：針對移轉訂價金額之調增與調減給予一致性的稅務處理

依《營利事業所得稅不合常規移轉訂價查核準則》，納稅義務人需提供移轉訂價報告等相關文件，以證明其交易符合常規，若其評估結果不符常規，則需對其課稅所得進行必要且適當之調整。實務上，一個國際跨國集團所需考量之移轉訂價因素極為複雜，進行受控交易之各公司，雖力求符合常規交易原則，但決定實際營運結果之相關市場變數無法於事前精確估算，期末為使各地營運結果能符合常規交易，則有依移轉訂價方法研究結果主動進行一次性調整之必要。

依目前規定，按常規交易方法調增課稅所得時，可被國稅局接受，惟調減課稅所得時則不被允許，上述調整模式有違課稅之一致性及公平性，亦不符合OECD國家通用之規範。雖財政部已有事先申請核准則可向下調整所得之前例，但是事先核准不見得符合國際集團經營追求之時效性。本委員會建請財政部重新評估是否可採事後審查之方式，並給予明確規範。另外，若徵納雙方事後認定不同時，財政部不應予以處罰，以降低稅上之不確定性，並創造有利跨國企業之投資環境。

議題三：減輕施行最低稅負制對於在台工作的外籍人士之負面衝擊

依現行規定，凡符合《所得稅法》第七條中華民國境內居住者定義者，應申報個人最低稅負，並自2010年起將海外所得納入計算個人最低稅負。若依上述規定，外籍人士在中華民國境內停留超過一百八十二天者，即符合居住者定義，雖然上述海外所得與外籍人士在台灣工作內容無關，卻必需將其海外各項所得，包括利息收入、股利，以及買賣海外投資（股票、房地產等）所得，納入最低稅負申報。

此作法與最低稅負之原立法意旨不符，將導致外國公司降低派遣高階主管或外籍專業人士長駐台灣之意願，進而有損台灣政府吸引國際優秀專業人才，以及建立台灣為區域營運中心之政策和目標。

本委員會建請財政部重新評估最低稅負適用範圍，考量將「居住者」之定義予以適當限縮，排除不具雙重國籍、於一課稅年度內在中華民國境內居留合計超過一百八十二天之外籍人士，以避免在台外商主管或外籍專業人士，因最低稅負規定而需就其非中華民國來源所得繳納中華民國綜合所得稅之不合理現象。

議題四：重新思考現行稽徵機關對於外商委託國內營利事業加工後再將貨物送至境外客戶之貿易活動所產生利潤視作我國來源所得加以課稅之妥適性

台灣致力發展高科技產業的成果，使外國企業選擇委託台灣廠商進行加工、測試、組裝或其他活動，並隨後將加工後之貨物運往境外買方。對外國企業而言，此等委託台灣製造商就半成品進行加工並運送至境外買方乃極為普遍的一種商業模式，稱之為「國外進口之貨物經在台加工後直接轉售國外客戶」（以下簡稱境內加工境外轉售模式），惟委託加工過程所產生之附加價值是否應於台灣課稅，財政部傾向於視其是否於台灣完成銷售行為而定。

台灣稅法中針對「完成銷售行為」一詞並無明確定義，財政部之見解為，若貨物離開我國境內時已有既成訂單，而買主及交易條件均已確定，則視為完成銷售行為，外國企業即應就境內執行之功能（如採購、測試、儲存等）所產生之附加價值，依境內加工之貢獻度計算所得課稅，納稅義務人則應提供該企業之全球移轉訂價文件或其他文據以計算歸屬於台灣之利潤。

因此，境內加工境外轉售模式之有效稅率為：境內加工境外轉售模式之貢獻度 x 實際利潤 x 17%營利事業所得稅。然而，該完成銷售行為定義於境內加工境外轉售模式中實有欠公允。實務上，外國企業鮮有於訂單及買方尚未確認前即下單給台灣加工廠商進行加工，如此一來，境內加工境外轉售交易勢必符合財政部所認定完成銷售行為之定義。

此外，該定義亦變相鼓勵外國企業於運送過程中安插其海外倉庫作為中繼點，即便交易開始時已確認買方。「完成銷售行為」於境內加工境外轉售模式中實則應指貨物移交予買方之時點，因此完成銷售行為應為境外發生，而非境內。既然銷售並非於境內完成，將台灣加工廠商創造之附加價值視為外商之台灣來源所得，實屬牽強。

另一方面，台灣委託加工廠商就創造之附加價值 － 亦即其自外國企業賺取之勞務報酬－已於或將於營利事業所得稅申報書申報納稅。若就相同之附加價值向外國企業課徵營利事業所得稅，將產生重複課稅之疑慮，並偏離國際租稅實務。試想若其他國家就境內加工境外轉售模式採取與台灣相同之課稅主張，台灣企業勢必對該等不甚公平之課稅原則頗有微詞。

基於平等互惠的原則、促進國際貿易的流暢性，以及避免外國企業視台灣為商業競爭力不足之惡名，本委員會懇請財政部修正對外國企業在境內加工境外轉售模式下之課稅原則以及對完成銷售定義之見解。

議題五：釐清非屬買賣之證券移轉行為是否應免證券交易稅

依《證券交易稅條例》第一條之規定，有價證券之買賣應課徵證券交易稅，故非以買賣之方式轉讓有價證券者，例如贈與、繼承、以股作價投資等，均非證券交易稅之課徵範圍。此外，《企業併購法》規定，依據《企業併購法》進行合併、分割或合乎特定條件之營業及資產讓與，免徵證券交易稅。

然而，由於《企業併購法》僅適用於進行併購交易其中至少一方為中華民國公司之交易，稅捐稽徵機關似乎依此而認為，凡不適用《企業併購法》之併購交易（例如二個外國公司之合併）所衍生轉讓有價證券之行為，以及非依據中華民國《公司法》所進行之以股作價投資或解散清算分配股票等，均應課徵證券交易稅。

有鑑於徵納雙方對於持有中華民國公司之有價證券於非因買賣原因而轉讓時，是否應課徵證券交易稅有不同見解，是以，本委員會建請財政部惠予明確核示非屬買賣轉讓有價證券之交易應非證券交易稅之課徵範圍。

議題六：釐清印花稅法有關承攬合約之定義

按《印花稅法》規定，於中華民國境內簽訂承攬契據者應課徵印花稅。另按《民法》規定，稱承攬者，謂當事人約定，一方為他方完成一定之工作，他方俟工作完成，給付報酬之契約。茲因《印花稅法》未針對承攬契據作明確定義，而多數契約均涉及契約一方須為他方完成一定之工作，故稅捐稽徵機關實務上傾向於將大部分契約納入承攬契據之範疇。茲舉財政部於1999年九月廿二日函令中「清潔維護契約」之案例作說明，於該函釋中，財政部認為由於契約已明訂涵蓋清潔及保養等業務範圍，並規定應完成一定工作，始給付約定報酬，兼具承攬契據性質（但警衛安全業務除外），故屬印花稅課徵範圍。

稅捐稽徵機關對於「完成一定工作」之廣泛解釋在實務上已造成「委任」契約及「承攬」契約區分之困難，由於此二種契約實質上皆涉及一方契約當事人為他方提供服務並以獲得一定給付為對價。倘若按稅捐稽徵機關此類廣泛解釋，則所有在中華民國境內簽訂之契約皆會落入「承攬」契約之範疇而應課徵印花稅。

有鑑於實務上對於契約徵免印花稅之適用疑義日益增加，本委員會建請財政部對於《印花稅法》中「承攬契據」惠予提供明確之定義，並就現行《印花稅法》第五條第四款承攬契據示例（承包各種工程契約、承印印刷品契約及代理加工契據）說明其構成「承攬契據」之要件。

議題七：解決因《中華民國來源所得認定原則》無法完全適用之問題

本委員會感謝財政部於2009年九月三日發布《中華民國來源所得認定原則》，釐清課稅範圍。然而，實務上，扣繳義務人於付款給外商時仍然採取保守態度，不敢完全以來源所得認定原則判斷外商是否有中華民國來源所得，而仍對外商扣繳20%的金額。這是因為稅法對於漏扣繳的罰則甚重，扣繳義務人為避免遭受處罰而不得不採取的作法。

若扣繳義務人依照該原則，認定外商無中華民國來源所得而不予扣繳，但稅務機關卻持不同見解時，則扣繳義務人將被視為漏扣繳而被處以高額罰金。因此，儘管財政部發佈了該認定原則，但大多數扣繳義務人仍持續扣繳20%。

在這個情況下，外商只好向財政部申請解釋令以免除該項扣繳，或是於所得被扣繳後再依據來源所得認定原則申請退稅，此舉徒增納稅義務人之行政負擔，也增加稽徵機關之工作。換言之，由於扣繳義務人為避免因漏扣繳而被處罰，讓財政部訂定該來源所得認定原則的原意完全喪失。為了解決這個問題，建議財政部考慮，如納稅義務人已盡善良注意之義務（例如：備妥相關證明或已尋求專家解釋等），得予免除扣繳義務人相關漏扣繳處罰。

議題八：將已登記之境外基金之資本利得納歸國內所得

在台灣由總代理人代理登記之境外基金與由證券投資信託事業（投信）所發行之海外基金，均屬台灣投資人參與全球經濟成長與分散投資組合之重要工具，有鑒於兩者之相同本質，稅務委員會與資產管理委員會採取相同立場，亦即兩者需獲得相同稅賦對待，以確保公平競爭環境。

然而，依據財政部於2009年九月三日所發布之命令，經登記之境外基金之資本利得－不包括投信海外基金－已被排除於「國內所得」之外，且自今年起將納入最低稅負制。如同資產管理委員會所指出，該一詮釋不僅傷害購買經登記境外基金之投資人之權益，且與金融監督管理委員會（金管會）之見解不一致。依金管會之見解，已登記之境外基金與投信海外基金均屬《證券交易法》第六條之「有價證券」。此外，財政部亦將於台灣證券交易所掛牌之指數型基金之資本利得，定義為國內所得 — 縱使指數型基金與境外基金一樣，均係於台灣境外發行。本委員會促請財政部修正上述命令

第八條，明定於台灣掛牌或發行或登記之有價證券之資本利得，均應被定性為國內所得。

科技委員會

科技委員會感謝主管機關努力發展台灣成為營運總部，並進一步鼓勵經濟轉型，從原先製造業轉型至研發服務產業。科技、服務和智慧資本的投資，攸關台灣是否能成功轉型為一個具吸引力和競爭力的地點，以吸引國內企業和跨國公司。

為實現此目標所需的政策之一是全面性的租稅優惠，鼓勵企業在台灣從事研發、設計和其他服務產業活動。雖然目前已有投資抵減措施，但相關執行細節需要進一步釐清。此外，當前政府對於軟體、服務以及培訓的投資金額，並不足以支援台灣所需的經濟轉型。

過去幾年，台灣的研發支出雖然呈穩定成長，佔GDP比率由2004年的2.4%增加到2008年的3%，本委員會仍建議政府仿效研發支出領先群國家，設定更高的目標值。舉例來說，以色列的研發支出佔GDP比率（4.8%）全球排名第一，其次是瑞典、日本和韓國。增加研發支出將會幫助政府提昇台灣經濟發展的目的，並強化臺灣的競爭力。

再者，本委員會鼓勵政府與業界分享如何吸引投資以推動綠能及節能科技的長遠計畫，這些資訊可協助企業與政府攜手合作，共同達成政府的政策目標。

為配合政府政策，促進台灣發展成為營運及研發中心，並進一步轉型為服務業經濟體，本委員會提出以下議題，並希望與政府相關單位探討，協助政府找出可行的解決方案。

議題一：增加對軟體、服務與知識產權之重視

資訊社會的發展，是達成聯合國「千禧年人類發展目標」最重要的工具，這不僅需要相關硬體設備的普及化，軟體與相關資訊服務的提供亦同等重要。

台灣資訊及通訊科技相關硬體產業值高達三兆六千億新台幣(相當於一百一十四億美金)，強力支撐我國外銷產值，而年產值約二到三千億的軟體與資訊服務業，卻也因此而長期的被誤認為是基礎厚實，績效卓著的產業。

根據 2009國際數據資訊(IDC) 報告，全球資訊市場軟體與服務約佔整體市場之61.3%，且每年成長率皆超過硬體，凸顯軟體與服務之地位；同一報告中，台灣資訊市場軟體與服務僅占37.7%。此外，根據台灣銀行政府統一採購中心資料顯示，過去兩年政府在資訊採購上，軟體與服務的金額不到總採購金額的20%；2009年擴大公共建設之軟體與服務支出比例低於10%。這些數據明顯揭露台灣在資訊建設上，尚未跟上世界潮流，仍停留在硬體為中心的思維。

軟體與資訊服務應是高毛利、高密度的知識經濟產業，是製造業服務化的核心，也是經濟、社會轉型的關鍵。雖然台灣資訊硬體製造業出口產值表現亮麗，但軟體與資訊服務之應用卻尚未達到其該有之產值。為縮短軟硬體投資之差距，本委員會提出相關建議。

一、 *強化政府之資訊組織與領導角色*

目前政府正在進行組織改造，我們對於政府將於2012年正式設立科技部表示歡迎。同時，政府將透過組織改造，精簡政府機關人員，五年內將從十七萬三千人降到十六萬人。當人力減少時，欲維持或甚至提升政府效能，資訊化將是唯一選項。然而，研考會之「資訊改造」報告中並沒有對增加政府資訊科技能力的計畫，政府甚至計畫「三級及四級機關原則不設資訊單位，資訊人力向上集中至中央二級機關」，此舉將導致政府資訊人力與資源之嚴重不足。因此，我們呼籲政府應配合組織改造，增加資訊員額，強化資訊組織與其職能，並遴選具專業與歷練之人才，賦予適當權責率領政府資訊團隊，並對台灣軟體與科技服務產業產生正面之影響。

二、 *改善政府採購法令環境*

目前政府採購法令需做適度的修法，才能符合當前市場機制，協助政府取得所需的軟體與服務。因此我們呼籲：一)主管機關應將資訊軟體與科技服務可使用之資訊服務分類、分級人月單價納入採購中心資料庫；二)專業、科技與軟體服務項目可適用不訂底價之最有利標；三）對於專業、科技與軟體服務之採購，應採用公共工程委員會所訂定之採購契約範本為原則。本委員會樂見並支持目前立法院因應上述呼籲，正針對《政府採購法》第十一條，第五十二條與第六十三條進行修法。

另外，本委員會長期提出的一項議題是，有些政府機關不管採購標案的內容，要求廠商讓渡採購契約中所有相關的智慧財產權及商業機密。這類的要求通常使跨國企業不願進入台灣的政府採購市場。我們再次敦促政府建立更明確的政策，讓廠商能在採購案中保有智慧財產權，並採取具體行動，確保該政策能落實到所有採購機關。除了涉及軍事武器發展之採購案外，政府應同意以免權利金授權方式或以永久無償使用智慧財產權方式，避免廠商被要求移轉所有智慧財產權。如果其他國家通用的準則，在台灣只有某些政府機關採用，將造成台灣失去使用跨國企業之先進智慧財產權的機會。

三、 *訂定清楚的政府資訊技術支出目標*

政府應根據聯合國贊助的資訊社會世界高峰會(World Summit on the Information Society, WSIS)中《原則宣言》以及《行動計畫》，訂定資訊技術支出之質量目標，並將業界專家及學者的建議納入考慮，以增加政府對於軟體服務和智慧資本的投資，進而提昇台灣整體競爭力，改善公共生活品質。

議題二：提供更多的補助及誘因，以鼓勵台灣再生能源產業的發展

本委員會強烈期許政府，透過跨部會（環保署、經濟部、交通部）的協調，來整合並制定更多再生能源的政策及誘因。政府更應該善用台灣在這方面的技術及市場優勢，來把握每一個機會。最近在歐盟、日本、美國、和中國制定的政策，以及2009年全國能源會議的會議記錄，均可作為我國制定再生能源長期策略目標的重要參考。舉例來說，中國在2009年二月公布的一項能源使用政策中，明訂中國政府在十三個主要城市，將提供非常優惠的補助，來鼓勵消費者購買油電混合、電動、及燃料電池的車輛，以因應中國在2010年要達成再生能源佔總能源比例10%，以及在2020年達成12-16%的目標。相對而言，台灣政府在再生能源比例的目標 — 在2025年達成8% — 顯得十分保守。

本委員會肯定台灣政府致力於提供更好的專案補貼，來鼓勵家用及工廠太陽能發電設備的裝設，以降低電力的使用。但本委員會建議政府應設定更積極的目標，來鼓勵家用太陽能發電設備的裝設。目前能源局的目標為十萬戶，但該目標僅為韓國目標值的十分之一。

我們也建議政府應該對社會大眾作更廣泛的溝通，以提升太陽能相關的應用。另外，從供應鏈的觀點來看，政府應該對太陽能設備的關鍵零組件提供更好的租稅優惠，以刺激相關產業的發展。這些措施，將可讓台灣在未來幾十年的全球市場太陽能相關產業，繼續保有一定的優勢。

議題三：改善投資稅負抵減辦法案件之審核程序及效率

為促進台灣持續投資研發支出，政府訂定《公司研究與發展及人才培訓支出適用投資抵減辦法》（簡稱《研發投抵辦法》）。現行研發投抵係由稅務單位負責審核認定。然而稅務人員往往沒有足夠專業知識或背景去審核公司所執行之投資計畫是否具確實符合《公司研究與發展及人才培訓支出適用投資抵減辦法》第二條所列之項目，常造成納稅人與稅務局爭議不斷。

為了改善《研發投抵辦法》審核之有效性，我們建議將研發投抵的審核權由現行之稅務機關改由其他專業之目的事業主管政府機關認定執行，例如科學園區管理局或工業局，如此可減少納稅人與稅務局之間的爭議，研發投抵辦法可以更有效地落實，以達到政府鼓勵研發投資的目的。

議題四：持續協助維護《資訊科技協定》(ITA)的關稅優惠待遇

《資訊科技協定》（Information Technology Agreement，ITA）是世界貿易組織 （WTO）的一項協定。加入ITA的簽署國承諾免除對此協定涵蓋產品所課徵的關稅（如個人電腦、電腦印表機、電腦螢幕、半導體、以及電信設備）。目前有超過七十個國家簽署ITA協定，在全球高科技產品的貿易中，其涵蓋比例估計達97%。這項指標性協定，促進簽署國的創新、生產力、貿易、以及投資；而ITA也造就台灣為全球製造業首屈一指的高科技中心。

此協定自1997年生效後，許多更精密或技術更先進的ITA產品陸續問市。近年來，歐盟執行委員會（EC）將技術先進或更精密的ITA產品版本排除在ITA產品之外，並課以高達14%的關稅。儘管經由雙方或多方與歐盟執行委員會協商，要求歐盟執行委員會切實遵行ITA協定，但歐盟執行委員會仍未改變其策略。

在2008年五月廿八日，美國和日本正式向歐盟執行委員會以及其會員國要求諮商，希望透過協調，解決歐盟對某些高科技產品課徵關稅的爭端。2008年六月十二日，台灣常駐世界貿易組織代表團正式加入美國和日本的行列，提出爭端解決諮商的要求，但2008年與歐盟執行委員會的諮商並未解決該爭端。因此，日本、台灣與美國聯合要求WTO成立爭端審議小組，並於2008年九月成立。審議小組的不對外公開初步報告已於2010年六月十一日出爐，公開報告可望於今年秋天發佈。

此議題持續受到全球高科技產業的關注。本委員會感謝台灣政府持續維護ITA協定，以敦促其他會員國尊重自身承諾。

電信及媒體委員會

電信與媒體是對於一個國家長期的經濟發展提供顯著貢獻之重要產業。例如，倫敦商業學院的一項研究即顯示，手機滲透率每增加10%，就會促使GDP成長增加 0.6%。雖然台灣曾經在資訊與通訊領域為亞洲之虎，且在發展、佈署及快速採用先進的通訊媒體服務各方面均實質上領先所有鄰近國家，但是這項殊榮地位已經喪失了。本委員會相信，一個過度限制的法規環境是造成此停滯的主要原因，此問題迫切地需要政府的關注。

在任何國家，電信與媒體產業對於一個活躍與成功的經濟是不可或缺的。因此，台灣必須摒棄目前限制性及過時的規範，以更開放及進步的政策，便帶領國家邁向一個有尖端服務的匯流通訊未來。否則，當針對基礎設施及產品發展的資金不斷湧進亞洲時，台灣將無法與亞洲鄰近市場競爭、吸引這些投資。相反地，若能成功振興電信及媒體產業，將可實質促進對於台灣的投資，為人民創造更好的工作機會以及生活品質。

本委員會提出六項需要改善的關鍵事項，供台灣政府參考。

議題一：擁抱開放市場模式，創造革新的法規環境

於此重要的產業，更亟需自由化「微控」的監理模式。本委員會提供以下建議供台灣的相關單位擬訂政策和程序的方向：

1. **以雙向並開放的模式與業界溝通。**產業監理機關 — 國家通訊傳播委員會(NCC) 與消費者和業者之間，應建立開放和實質的對話機制。唯有透過與產業界的積極對話，方能共同促進對經濟成長的良性刺激、技術升級、強化消費者選擇和長遠的客戶滿意度。然而，有些官員似乎認為，為了維護獨立性和客觀性，他們必須避免直接會見業者。若參考台灣和其他國家的政府單位之做法，其實另有其它正當手段能確保其獨立客觀的目標。

   監理孤立主義使政府機關難以跟上產業日新月異的發展，特別是對迅速改變的電信產業；而多數NCC委員缺乏實際的產業營運經驗，使得這個問題相形惡化。其結果是對真正能有效激勵產業成長的法令政策之形成，產生嚴重阻礙。因此，產業和政府間的會晤應予鼓勵而非避免，並透過公開會議紀錄，得以觀察掌控進度及成效。
2. **著眼產業發展和建立台灣競爭優勢。**監理機關應的政策重點應在於產業決策、自由化、執行和發展。然而，NCC創立以來卻只著重消費者保護，因此而偏重於執行過時的政策，並對新服務提供者加諸更多法規限制。很可惜的是，儘管台灣深具潛力成為世界級中英語文節目的製作和出口大國，但由於產業成長和發展的監理不善，已導致國內的內容產業發展低落。為幫助扭轉局勢，NCC應鼓勵實質討論，如產業和政府如何共同努力建立基準認知和台灣的發展可能等的議題。定期的將台灣電信和媒體產業的發展與其他國家比較，將有助於台灣尋找現在和未來的發展機會。
3. **加強發展公平公正的競合市場。**媒體和電信服務之整合匯流是現行趨勢，不管在台灣或世界各地皆同。這個趨勢帶給消費者的好處在於：眾多服務提供者的選擇性、新產品的種類和價格的競爭。但在匯流趨勢下，法令規定中對各類型的產業參與者所加諸的不公平限制，已越來越明顯。監理機關應對所有競爭者提供公平公正的競合市場 — 無論業者是來自電信或媒體業，亦無論其經營權屬性或組織大小。
4. **多鼓勵少懲罰。**台灣監理機關的政策和執行本質上傾向嚴厲，通常以行政罰作為政策執行依據。遺憾的是，此種方式，無疑讓業者及未來投資者與監理機關之間，形成不必要的對抗關係。更具建設性的作法應是，NCC尋求與業者之間的「合作夥伴關係」，提供正面誘因以達成共同的目標。為了促進技術發展、市場成長和用戶滿意的提升，監理機關應提供誘因和獎勵辦法，以促進台灣在電信和媒體業的所有投資發展。以獎勵政策取代處罰，對於全國期待的電信和媒體產業之成長發展，將更有助益。

議題二：重新定位NCC以促進產業及經濟發展

今年七月NCC將改組，因為一些現任的委員任期即將屆滿，並將由新的委員替代。此時，正是審視NCC所扮演的角色及促進產業成長的成果之最佳時機。有鑒於與台灣競爭之亞洲各經濟體正致力於促進他們在電信及媒體產業的成長與發展，此次檢視顯得格外重要。

依據《國家通訊傳播委員會組織法》，NCC成立宗旨是促進通訊傳播健全發展、有效辦理通訊傳播管理事項、確保通訊傳播市場的有效競爭以及保護消費者權益。然而，自從NCC成立以來，其施行的政策卻遠比成立宗旨狹獈；NCC主要自我定位為消費者保護委員會，而非促進產業成長的推手。NCC不重視產業自由化及長遠發展，反而經常以缺乏遠見的的決定，扼殺產業成長與創新。

NCC決議全面調降電信業者的費率，就是政府政策與產業發展需求完全脫節的最著名例子之一（詳情請見議題四）。NCC亟需重新關注其成立宗旨中最基本的項目之一 — 透過制定可強化台灣國際競爭力的合理規範來促進產業發展。

若要解決目前妨礙NCC運作效能的障礙，修訂《國家通訊傳播委員會組織法》是可行方案。例如，司法院大法官會議第六一三號解釋函指出，NCC應為獨立且無黨派的媒體監督機構，但是，此規範卻被NCC的委員刻意地曲解。大法官使用「獨立」這個名詞，不應被解釋為NCC完全與台灣其他行政機關分離或是NCC不必對政府或民間單位負責。大法官使用「獨立」這個名詞的目的，只是單純地確立NCC於處理特定案件時應客觀無黨派。但NCC自成立以來就謝絕與相關利益團體的聯繫溝通，是監理失敗的主因。所有NCC制定的政策、規範或決議必須經過透明化的公開討論過程，以確保NCC所做的決定對於消費者、產業及國家整體而言都是理想的結果。

另一個妨礙NCC運作效能的原因是委員中缺乏產業的專家。NCC最近兩次的委員遴選，大多數都向學界求才，僅少數委員有電信及媒體產業的實務經驗。不論是遴選NCC委員或工作人員，都應該力求其才能與背景的平衡性與多元性，並考慮向業界求才，以引進第一手產業經驗：美國聯邦通訊傳播委員會（FCC）也是如此做法。NCC的長遠目標應是建立一個足以充分反映跨產業經驗的監理機構。

我們建議《國家通訊傳播組織法》修正草案應清楚地規定來自產、官、學界的委員組成比例，如此方可確保NCC可與其他政府機關及業界充分合作。

第三個阻礙NCC效能的因素是缺乏領導者。NCC的主委及副主委並非被指派，而是由委員所推選，然而，NCC主委對於任何NCC討論事項皆無最後決定權：反之，所有決議都是採多數決。為了清楚確立NCC主委及副主委的責任及強化其領導力，組織法應修正並明確規定主委及副主委的任命應由行政院提名並經立法院通過，並給予主委最後決定權。此修正方向除了讓NCC可為自身決策負責外，也為NCC與其他政府單位建立了較為清楚的連結，確保NCC所做出的政策及規範，能與國家的長遠目標一致，例如經濟成長。目前立法院正在討論的《國家通訊傳播委員會組織法》修正案，即包括上述重點。我們力促立法委員儘速通過這項修正案。

議題三：鬆綁外資投資電信與媒體產業之限制

為促進電信與媒體產業邁向國際化發展，透過跨國合作之方式創造產業競爭優勢日益重要，因此，對國外業者對國內通訊傳播事業之投資(尤其針對中國對國內產業之資金投資）及國內業者對於國外通訊傳播事業投資之相關限制應加以解除，以有效促進台灣通訊傳播事業之國際化發展。現今兩岸間僅開放部分「屬第二類電信業之一般業務者」之投資，並且對於投資人之資格及持股比率均有設限，此作法將會限制兩岸間產業之發展與合作。

舉例而言，若開放台灣電信產業與中國間之相互投資，將可大幅促進台灣電信產業及其上下游產業之競爭力及發展空間，包括IC設計、手機製造商、軟體加值服務供應商及行動文創產業等。

我們瞭解，目前政府對於開放兩岸間電信事業相互投資之疑慮，主要在於國家安全及其他非經濟因素之考量上，但相關開放之規劃，實可參酌目前兩岸間其他已規劃開放投資及合作之特許產業（如金融業）作法，在不影響台灣主權下考量進行開放。配合「深耕台灣、連結全球」之基本政策，政府對於國際及兩岸間通訊媒體產業之投資，應以積極正面的角度看待，以創造台灣通訊傳播產業邁向數位化國際發展之新紀元。

議題四：儘量減少或解除價格管制。

在充滿競爭的市場中，主管機關的重要角色之一在於營造公平的環境，以確保市場的永續成長。其他國家已透過監理措施，順利讓市場進入自由整合的時代，並促成資訊與娛樂服務的進步；若檢視這些相關經驗，便可發現其共通之處在於「合理的」管制。這些較先進國家的主管機關明白，讓市場力量引導競價方案的發展，不但能吸引國內外的資金進駐，亦能帶來創新，進而創造就業機會與經濟成長，並提升相關服務用戶的生活品質。

近十年來，特別是最近一年，主管機關以「一體適用」的方式與「價格越低越好」的哲學，作為價格管制的決策主軸，卻未能從經濟成長與創造就業機會的角度，進行立論完善的經濟分析。

國家通訊傳播委員會（NCC）近來有關電信與有線電視價格管制的決策，便是一例。目前全國各地有線電視業者收取服務費的上限為每月六百元台幣，最近行動電信業者亦被迫降價，以配合NCC 利用「係數 X 值」公式計算並調整費率與價格的決策。歷史經驗顯示，設定價格上限的措施，最後總是扼殺業者增加投資與創新的意願，其結果反不利於經濟發展。有線電視服務的價格上限，以及NCC 要求電信業者逐年降價的政策，在現代經濟學中並無理論基礎。各項服務的價格應由市場力量決定，而非主管機關。

韓國與美國在這方面的經驗可資借鏡。有鑑於網路電視的興起，

美國國會在 2006 年通過一項修正案，解除政府對於有線電視業者的費率管制。韓國的主管機關亦自 2008 年起允許有線電視業者調升費率，使得安裝數位機上盒的家庭達到 一百萬戶。本委員會強烈呼籲NCC與美國聯邦通訊傳播委員會及其他國家的相關主管機關積極展開對話，並從其經驗中學習。唯有儘量減少或全面解除價格管制，才能鼓勵業者在台長期投資基礎架構。

議題五：積極扶持創新技術與服務的的發展

為了促進創新技術與產品的發展，台灣政府必須制訂一系列相關法規，協助加速新產品與服務的認證及測試，使新觀念與技術能盡快地在市場上商業化，不至於延遲產業發展 — 特別是已在其他先進國家廣泛使用的創新技術及服務。這些法規的重點應在於促使新服務能儘速推出，而非僅著眼於管制或驗證產品技術。

例如，近兩年來，電信業與網通設備產業積極推廣的新產品 — Femtocell，北美三大行動電信者Verizon、AT&T、Sprint Nextel都已先後推出，同時日本包括NTT Docomo、Softbank也已加入建置的行列，另外，法國、挪威、英國等歐洲電信業者也宣布推出同樣的服務。在台灣，雖然中華電信已於2008年專案引進Femtocell，然而礙於缺乏完備的法規，至今仍然無法提供商業服務。

Femtocell是改善3G、WiMAX以及未來4G室內信號不佳問題的解決方案之一，並可提供多元的多媒體創新應用，支援數位匯流服務。遺憾的是，NCC不但未能促進廣泛應用於先進市場的Femtocell技術，反而誤將本是消費者端載具的Femtocell，定義成基地台。

我們期望台灣政府能致力於扶持創新技術發展與服務開放，並即時設立相關電信法規；這將有助於提昇整體台灣網通、電信及應用服務等相關產業的商機與競爭力。

議題六：保護影視內容之智慧財產權

美國貿易代表署基於肯定台灣持續加強對於智慧財產權之保護，於去(2009)年一月將台灣由特別301觀察名單除名。不過，有關付費電視/影視產業中影視內容之智慧財產權保護，仍需台灣政府付出更多努力。

經由有線電視網路所傳輸之影視內容，目前在台灣並沒有一套有效法律規範可保護其智慧財產權。因此，部分不肖消費者可將電視偷接至有線電視網路，即可免費收視頻道節目而無需訂閱。由於這類盜用訊號之行為不被視為觸犯刑事犯罪，即使偷接行為被發現，有線電視業者亦無法對盜接者採取有效之法律訴追。依台灣現行法律，有線電視業者僅能對盜接訊號者尋求民事損害賠償，惟民事訴訟程序曠日費時，亦無法有效嚇阻偷接行為，因此面對盜接行為，有線電視業者並無法適當保護自己及頻道商夥伴。

盜接問題因欠缺法律遏止手段而持續擴大。雖然盜接問題並非僅發生在台灣，許多國家已意識到盜接問題之嚴重性，並以將盜接有線電視訊號行為刑罰化的強力手段，使有線電視業者及內容服務提供者獲得足夠之法律保護。

盜接問題已對台灣有線電視產業造成極大損失，並阻礙影視內容產業整體之健全發展。2007年九月，當時的新聞局廣電處長曾一泓曾估計，私接戶約占台灣總家戶數的百分之十五，亦即約有一百一十四萬家戶數正違法收視有線電視，然而，私接情況至今似乎無任何改善。

若以每一家戶(五百四十元/月)之平均年度收視費約六千四百八十元計算，台灣有線電視產業每年因盜接戶而營收損失逾二億三仟萬美金。如此嚴重之營收短缺，不僅影響有線電視業者進一步投資於網路及服務升級，更使內容提供者不願創新數位服務內容，並開始惡性循環，最終將侵蝕整體產業發展。台灣在引進新服務上，例如數位電視服務，已落後於其他亞洲主要國家，並不令人不意外。

雖然多年來台灣有線電視產業及內容產業已多次向政府喊話，盜接問題仍舊未獲解決。為遏止盜接行為並對影視內容所有權人提供正當的智慧財產權保護，我們強烈要求政府比照其他已開發國家的有效作法，包括澳洲、新加坡、英國，將盜接有線電視訊號行為予以刑罰化。值得一提的是，如印尼、菲律賓等開發中國家，在付費電視產業之智財權保護，亦較台灣為進步。

在這個數位匯流之年代，對影視內容提供強而有力之著作權保護不僅有益於有線電視產業，其他產業亦將受惠。一個健全的影視內容市場，將可確保相關高品質內容之供給，進而促進相關平台業者之接納度及成長，如網路、行動及無線。如台灣想在高品質內容及最先進網路之投資及創新等各方面，與亞洲同級國家相提並論，如香港、新加坡、南韓，政府必須正視盜接問題並找出解決之道。

交通運輸委員會

快遞貨物業

快遞貨運的貨量經常被用來衡量一個國家國際貿易活動的指標。不同於一般的空運貨物運輸，全球快遞貨運扮演四個不同角色 — 國際航空運輸、報關、地面運輸、以及倉儲與物流。自1980年代以來，台灣全球快遞貨運業的發展，已有顯著的成長，但若要更進一步發展，產業策略為何？當台灣政府投入大量心血打造桃園航空城計劃之餘，也應探討如何進一步改善台灣全球快遞貨運業的經商環境。

議題一：打造健全的法規環境，以促進快遞貨運業的發展

法規環境無法與全球快遞貨運業的趨勢接軌，不僅制約了產業的發展，而且也影響了台灣企業全球運籌與物流管理的能力。目前，專門針對快遞貨運業的法規只有《快遞貨物通關辦法》。台灣仍然將快遞業視為空運貨物運輸的一部份來規範，但這樣的管理方式反而妨礙快遞貨運業者健全及長遠的發展。我們提出以下建議，盼協助政府打造一套完整的法規架構：

1. 快遞報關
   - 修改目前進口低單價貨物要求客戶提供委託書的法規。
   - 建置「出口貨物事後報關」制度。
   - 放寬對快遞貨物重量之定義。
   - 全面開放跨關區連線報關。
   - 進口貨物於銷售時始課徵營業稅，而非現行一律於進口時由海關代徵營業稅。
   - 簡化高價格快遞貨物出口報關檢驗程序，例如，現行「貨物進倉」後才開始報關程序的作法，應改為「貨物已由快遞公司點收」之時點算起。
   - 採用進口貨物無紙化通關。
   - 取消快遞倉儲業者分擔海關加班工資成本，如同航空業者並未分擔機場海關加班工資成本。
2. 進出口快遞倉儲
   - 鬆綁管制貨運站許可證的規定，或建制一套專為快遞貨運倉儲而設的規範。
   - 減少對可疑貨物或抽查貨物X光機的抽驗頻率。
   - 針對快遞貨物，建制適當的貨運倉儲流程（而不是套用目前空運快遞業者的流程）。
3. 監督管理的定位
   - 設立明確單一的主管機關，管理快遞貨運業，使業者不需面對過多主管部會，以創造更有效率的監管環境，進而促進產業的發展。
4. 法令規章
   - 由於業務的性質不同，快遞公司需要緊鄰其客戶市場。在台灣，快遞公司的客戶通常位於市區和工業區，因此，快遞公司的業務要在完全符合倉儲和停車規則下，找到地方停車並取貨，是非常不容易的。我們促請政府檢討，並放寬現行法規，使快遞貨運業在台灣能建立一個健全的基礎。

議題二：將快遞貨運業的需求，納入桃園航空城建設之整體計畫。

桃園航空城計劃，是馬英九總統於2008年總統選舉時，承諾的愛台十二項建設之一。目前桃園航空城的計劃已進入規劃階段，但全部細節尚未揭露。我們促請政府在制訂桃園航空城計劃的同時，能考慮快遞貨運業基礎設施的需求。我們的具體建議如下：

1. 機場快遞園區
   - 提供一個專門的區域，足夠容納未來的增長，以確保快遞貨物周轉率
   - 提供包括海關、安全與航空服務之世界級的機場服務。
2. 地面運輸
   - 在總體規劃桃園航空城的交通網絡時，政府應慎重考慮地面交通運輸的需求。除了滿足商業需求的快遞業務外，精心設計的交通運輸動能將改善台灣企業全球運籌物流效率，並提高競爭力。雖然台灣許多城市和鄉鎮間的互通僅藉由地面的運輸，但目前高速公路系統仍不符合台灣企業對於貨物運送即時性的要求。

汽車業

汽車業者對於政府在去年初發布的三萬元貨物稅減免政策以刺激汽車銷售表示感謝。商會企盼政府能參照各國政府的作法，持續促進經濟後續穩定與成長。

除了目前《兩岸經濟合作架構協議》（ECFA）中可望將汽車列入早期收穫清單外，更希望盡速與東協簽訂自由貿易協定，以幫助車輛業者能開拓區域的競爭力、消除關稅貿易障礙，擴大整車及零組件出口。我們也希望避免國內單一法規要求形成技術壁壘障礙，同時阻礙國內車廠與國際母廠技術接軌，盡速調和車輛法規及簡化認證流程，以降低業者的成本和時間。

此外，政府已公告對油電混合車及使用液態石化燃料（LPG）車輛之補貼政策，並積極推動電動車輛政策計畫，提供為期三至五年

貨物稅減免、各項個人或企業購買電動車輛現金補貼，及所得稅抵減獎勵措施。我們欣見台灣的車輛產業政策以溫室氣體減量為目標，積極鼓勵各項節能減碳技術發展，同時亦期盼政府，獎勵政策能以降低排放之性能及效率為基礎，擴及所有技術，而非只針對特定技術。

議題一：擴大對潔淨車輛的獎勵措施

「氣候變遷」為當前全球面臨最嚴峻的考驗，更是人類文明史上從所未見的結合自然、生態、經濟、社會、健康的挑戰。因應馬政府推動節能減碳政策之溫室氣體減量法草案，我們再次呼籲政府能夠擴大現行對電動車、油電混合車及使用液態石化燃料（LPG）之補貼政策，並考量對其他替代能源，例如缸內直接噴射柴油車（Turbocharge direct injection diesel）、氫燃料電池車、生質燃料車輛等同樣具溫室氣體減量性能的車輛亦提供獎勵。以新的柴油技術、稀薄燃燒（Lean Burn）、汽柴油缸內燃油直接噴射引擎技術、車身輕量化技術佐以先進變速箱改善油耗為例，其溫室氣體減量效果遠比LPG車顯著，相對與目前油電混合車油耗比較，不相上下。若能擴大目前的獎勵措施，將能更快及更有效率地導入潔淨車輛。

議題二：汰換老舊高污染車輛

因應去年政府提供貨物稅三萬元定額減徵措施有效提振車市，我們建議政府能將此一獎勵措施擴大延續，建立汰換老舊高污染車輛機制。除了具有環保效益，這個政策亦有助於帶動國內汽車產業的發展，並對政府提供額外的稅收。我們的具體建議為：

1. 推廣具有低污染排放及高燃油效率的車輛（符合歐洲五期污染排放標準）。
2. 目前新車出口可以享受貨物稅減免優惠，但對於使用中新車或中古車於汰換時，政府退回部份（依使用年限比例）舊車的貨物稅，於一定期限內提供購買清潔車輛折抵所需繳交貨物稅，其目標在於淘汰一半以上超過十年車齡的車輛（該類車輛的污染排放，比現行新出廠車輛的排放高出五到十倍）。
3. 利用提高能源稅或彈性貨物稅（新車碳稅、合併於現有牌照稅、依CO2排放值g/km或引擎）機制，獎勵低污染及低CO2排放車輛使用，加速高污染車輛的淘汰，並將所收的稅收用於獎勵高燃油效率及二氧化碳排放的車輛。

議題三：幫助車輛業者開拓區域競爭力

為刺激台灣經濟成長及就業率，台灣政府應利用台灣車輛產業成熟的工業基礎、製造能力及過剩的產能，考慮透過簽訂自由貿易協定，消除關稅貿易壁壘，以拓展成車及零組件外銷中國、東南亞國協及新興市場的機會。

除了盡速與中國協商簽訂《兩岸經濟合作架構協議》（ECFA）並將汽車業列入早期收穫清單外，我們也企盼政府與中國商討汽車法規安全審驗與相互認證事宜，以利推動兩岸之間的進口車輛互補政策，擴大經濟規模。此一政策可包括相互配額制度，或逐年消除稅率差異。

議題四：促進車輛法規及認證制度與國際接軌

台灣車輛的法規及認證制度已導入一段時日，各車輛業者亦對政府的政策目標努力配合，感謝台灣政府努力與國際法規制度調和，如導入歐洲車輛技術法規；環保署亦將在下一階段，接受部分歐洲執行污染測試時之進化係數和聯合國歐盟合格證等。然因為目前的認證制度仍無法與國際制度完全一致，導致使業者引進車輛之困難度大增，尤甚者只好淡出台灣市場。

例如，台灣交通部門仍不接受歐盟合格證，致使業者須重新至認可實驗室，或送至台灣車輛研究測試中心重新執行測試，造成額外之成本與時間之增加。環保署對柴油的黑煙測試程序仍堅持獨特之測試程序及標準，而能源局則持續採取「油耗未達標準不得銷售」之管理手段。然而，在多數先進國家，車輛油耗標準通常僅作為參考，不像台灣的能源局，將油耗標準當作管控全國能源消耗量的手段之一。

此外，台灣對於美規車輛引進之限制，除造成業者必須付出比導入歐規車輛之更龐大額外成本及時間外，政府更將於2013年一月一日起，全面禁止美規車輛之進口。

本委員會呼籲政府盡快採取相關措施，讓台灣所有車輛法規認證制度完全與國際接軌，並對美規車輛之引進採取較為彈性的作法，以促進台灣整體車市的蓬勃發展。

航運業

2008年底爆發全球金融海嘯後，台灣政府在2009年祭出多項航運業的經濟刺激措施，例如，各港務局提供碼頭業者一項40%的港口/碼頭土地租約折扣。這項措施有利於海運及碼頭業者，我們也對政府這項行動報以掌聲。

展望未來，我們提出以下建議：

議題一：持續朝減輕航運業負擔的方向努力，並降低管理費。

雖然2010年初乍現經濟回溫的跡象，但距離全面復甦仍有一段路要走，而且航運業的景氣仍舊疲軟。因此，目前尚不宜將停止對航運業業者的抒困方案。本委員會強烈要求延續2009年的港口/碼頭土地租金折扣計劃 — 雖然折扣幅度也許可以縮小 — 讓業者得以走出困境。許多國家都持續提供獎勵，支援疲弱或復甦中的產業，台灣應該也要跟進。

此外，台灣最近公佈一項航運業公司稅結構的修正措施，對於航運公司在台灣註冊的船隻，允許選擇以船隊噸位來課稅。這項新措施與以往課稅方式的不同處在於它並非依據公司申報的營業利益來課稅，但對於外國航運業者而言，若以分公司形式在台灣營運，或母公司所在國家已與台灣就國際來源所得簽署互惠稅務協定，則該措施的幫助並不大。由於這項改變對台灣的航運業的整體發展並無明顯的助益，因此主管機關應提出其他方案，例如延續港口/碼頭土地租金折扣計劃，以舒緩產業壓力。

議題二：提供獎勵，以刺激航運業成長

全世界的海運景氣正在快速變化。閒置的航運業動能重新加入調度營運的速度比以往更慢，但必須服務更多的新增港口航線。此外，市場焦點已由傳統的歐美市場移往亞洲，未來幾年肯定能看到亞洲市場擁有更多的航線及更廣大的服務頻率。

台灣如果想要擴展在航運產業的角色，那麼政府就必須思考：1）台灣港口的吸引力為何，以及如何才能將競爭優勢最大化？2）台灣港口目前提供那些獎勵，以吸引航運商停靠、轉運，及裝載更多貨物進出台灣？

在檢視這些獎勵內容的同時，交通部應該要與航運業者進行廣泛的對話，才能了解航運業者的市場焦點、船隻調度，及新服務方向。政府唯有將這些要點納入考量，才能設定更實際、更有效的政策方向。

旅遊與觀光委員會

馬英九總統於2008年五月就職上任時宣布，台灣將全力推動包括觀光旅遊在內之六大新興產業的發展，作為他促進台灣今後數十年經濟成長政策之一。為了支持發展觀光旅遊產業的倡議，美國商會去年集結產業專業人士，成立了旅遊與觀光委員會，致力於提供專業見解和建議，以幫助刺激台灣觀光旅遊產業的發展。

本委員會的使命並不在於推動對美國商會特定會員有助益的政策，而是希望藉由增進國際旅客來台數量，提昇台灣在全球的整體聲譽與知名度，使其成為一個國際觀光旅遊目的地。我們的成員將以其國際實務經驗為基礎，提供有效的國際最佳慣例和成功的實例，供政府參考以協助提升觀光產業的發展。

我們提出下列建言，希冀藉此能建立與台灣政府有效溝通的平台。

議題一：加強政府行銷規劃，推動台灣成為國際觀光旅遊目的地

日前本委員會有幸與行政院政務委員曾志朗先生會晤並了解台灣政府對觀光業發展的總體規劃。我們很高興得知政府已經提出一項全面性計劃，並成立一個內閣級工作團隊監督計劃的執行。

為配合政府的總體規劃，本委員會就如何更完善地推動台灣成為國際觀光旅遊目的地，提供以下建議：

定位與品牌

A.制定一個新的觀光主題

為了標榜自身為一個觀光旅遊勝地，台灣必須先確定自我的主題定位，以吸引潛在的國際旅客。目前的主題大部分著重於台灣原住民文化。原住民文化固然是台灣的特點之一，但同時台灣還有更多特色是值得推廣的，包括自然美景、卓越與多元化美食、自行車運動和其他休閒活動、購物場所，以及友善、好客的台灣民眾。

日本、韓國、香港、新加坡、泰國和其他亞洲國家城市，都擁有使人容易聯想到的明確地方特色，幫助這些旅遊地點吸引來自世界各地的遊客。台灣需要找到一個明確符合其核心價值觀的新主題，並在所有關於台灣的宣傳活動中傳達此一鮮明的主題；同時充分利用現有資源，如在電影、出版品、建築、餐飲、人文藝術和音樂產業中，以此一主題展現台灣。

B.、採用「大爆炸」全面性策略宣傳

無論新制定的主題為何，都應採用「大爆炸」策略，即一次全面性重擊深入而非分段式、足以廣泛地影響全世界各個角落的一系列大舉宣傳活動。舉例來說，若政府計劃將台灣南部沿海

崎嶇多山的島嶼小琉球發展為一個生態觀光旅遊地，則可邀請國際知名的電視實境節目「我要活下去」至該島實地取景拍攝，將立即且顯著地為台灣帶來廣大觀眾群的矚目。

行銷方法

A. *制定新的觀光標語*

台灣應找出與新觀光主題密切相關的新觀光標語，替代目前所使用的「Naruwan, Welcome to Taiwan」和「Taiwan, Touch Your Heart」。其他亞洲國家的實例可作為參考，他們全方位的媒體行銷架構在活力十足的標語，例如：「Hong Kong - Live It! Love It!」、「Uniquely Singapore」、「Malaysia - Truly Asia」、「Amazing Thailand」、「Incredible India」、和「Korea - Sparkling」。此外，委任有能力且擁有良好風評的專業行銷公司，對於推廣工作的成效與能否持續其長期的影響力，絕對是重要的成功關鍵。

B. *加強政府的觀光市場行銷方法*

1、強化網路行銷

修改目前官方觀光網站的內容和呈現風格，以反映新實施的觀光主題和標語，吸引與增加瀏覽者的瀏覽意願並提高該網站的瀏覽人次。

2、對旅行社和活動主辦單位提供獎勵誘因

政府需透過獎勵誘因，促使旅行社開發更多新的產品並構思更好的旅遊促銷活動。同理，台灣政府與國際間專業會議活動籌辦單位應建立並保持穩定互動，並提供適當的獎勵措施，以協助引進會議展覽產業活動（MICE）、大型團體、以及高知名度的活動。

舉例說明，日本旅遊局在日本境內每年舉行一次B2B（企業對企業）旅遊交易展覽會，邀請來自世界各地的訪日旅遊業者參與。在香港，政府舉辦年度活動，作為旅遊業者和零售企業與海外同行業務交流之平台。香港政府更對會議展覽活動產業提供額外補助金，並指定一個專門單位，維繫與海外各會展團體的關係。

3、在台灣舉辦更多國際與大規模的活動

我們誠心讚賞政府的貢獻與努力，相繼舉辦國際盛事如 2009年高雄世界運動會、2009年台北聽障奧運、以及即將開幕的2010年台北國際花卉博覽會。我們深信，更多同等級、甚至更大規模的活動應能持續在台灣舉行。

舉例來說，台灣為世界知名的自行車生產地，而且已在觀光局官方網站大力推廣「Cycling in Taiwan」活動，台灣本身條件相當適合舉辦擁有最高專業標準的國際自行車比賽 - 類似於環法自行車賽。這樣的盛事肯定會吸引眾多的自行車好手、體育愛好者和國際媒體，大大提高台灣在國際間的形象與知名度，且使全世界透過自行車比賽路線認識這座美麗的寶島。此活動若能與明年中華民國一百歲生日共同舉辦，在市場上的宣傳成效將更佳彰顯。

4、整合各政府單位的行銷工作

負責推廣觀光業、貿易展或相關活動的政府單位，需要強化彼此間的協調。例如，民航局應更密切地與觀光局合作，在桃園國際機場兩座航廈以及台灣其他國際機場設置醒目且配備周全的旅遊服務中心和專職人員。新旅遊服務中心的重新啟用，則應大力推廣和宣傳。

此外，我們建議有關當局重新審視國際機場周邊所有觀光旅遊相關行業（包括飯店、航空公司、運輸公司等）的旅客流量和空間配置，以幫助訪台旅客建立一個更好的「第一印象」。目前桃園國際機場的多項運作方式仍有改善空間，第一步可以從機場工作人員迎接國際旅客的禮儀開始。

我們也建議觀光局更緊密地與位於台北世界貿易中心內的台北國際會議中心配合，以吸引區域性和全球性的會議到台灣舉辦。

本委員會更建議政府進行全面性的國內宣傳活動，以確保國內民眾了解政府推廣台灣觀光旅遊的目標。政府也應該將台灣特色，持續深化於人民的心中，喚醒人民的國家光榮意識和熱忱。全台灣民眾在國外旅遊時，也應將自己視為台灣「觀光大使」，能直接宣傳台灣之美。

議題二：加強旅遊產業人才的培訓和發展

長期以來，觀光旅遊業的管理階層一直高度關切台灣未來旅遊從業人員的質量和數量。為達成觀光業的蓬勃發展，台灣有必要培養能夠促進產業發展且訓練有素的高級專業人才。本委員會鼓勵政府對旅遊產業人才專業培訓和發展，提供更多的資源與協助。

國內培訓

政府亟需增加對台灣大專院校的投資，協助他們提升觀光旅遊產業的教育課程，使其更符合現代潮流。許多本地學校提供的課程相當過時，培訓內容並不完全與當前產業中的需求相關。同時，政府應鼓勵這些大專院校與海外學校建立建教合作關係，透過交流計劃，引進高素質師資，豐富課程內容，並應邀請海外知名學校在台灣設立分校校區，提供產業訓練。

海外培訓

全球許多國家皆已設立旅遊、飯店管理、烹飪藝術等優秀的學術課程，並頒授高等學位，其中有些並提供初級及社區大學證書或文憑。本委員會建議政府給予適當的獎勵，以鼓勵產業中人才多加利用相關學位或證書課程性質的海外培訓機會。

此外，教育部承認海外四年大學及研究所課程，但尚未提供類似機制，認可社區及初級大專院校之證書和文憑課程。由於許多旅遊觀光相關科系課程屬於社區及初級大專院校課程，本委員會與教育及訓練委員會聯合呼籲教育部，設立相關認證機制，以鼓勵國內學生就讀旅遊觀光領域的課程。

議題三：升等觀光局的位階，並重新界定其目標和使命

即將上路的政府組織改造計劃中，並未在內閣層級設置一個負責觀光旅遊業的機關，而仍將觀光局保留於交通部下，本委員會對此表示遺憾。唯有內閣層級的部會才有足夠的資源，支持完善的觀光行銷推廣計劃之必要預算、人力和職權，並與大眾及其他公民營單位進行更專業、切題，並有系統的溝通，以利產業的長程發展。

亞洲其他重視觀光產業的國家，往往設立內閣級部會統籌管理這個產業。舉例而言，在南韓，韓國文化體育觀光部負責觀光、文化、宗教、體育等領域之相關事宜，附屬單位包括國家博物館、國家戲劇院和國家圖書館。在泰國則有觀光體育部，負責觀光與體育領域的各項宣傳推廣事宜。

雖然台灣政府的組織改造計劃已獲立法院通過，並預計於2012年一月生效，但是，我們仍然積極促請政府在未來儘早考慮提升觀光局之位階－甚至可創立一個同時負責體育及文化事務的部會。此一作為不僅對行政院六大新興產業發展計劃之觀光旅遊產業是一項堅定的承諾，同時也將提供台灣觀光旅遊產業發展所需之必要資源，以實現台灣的觀光旅遊潛力。