2011

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 more than 900 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 .

Locking in the Future

A YEAR OF ACHIEVEMENT

- The Taiwan government has taken important steps in the past year, such as signing ECFA and reducing the corporate income tax rate.
- It is now seeking more aggressively to attract foreign direct investment.
- Taiwan's ranking has been rising in international competitiveness surveys.

LONGER-TERM CHALLENGES

- Despite these encouraging developments, the Taiwan economy faces enormous challenges in the decades ahead.
- International rivals are constantly enhancing their competitiveness. Korea, for example, has negotiated FTAs with the United States and the European Union.
- Looking forward, questions remain about how well Taiwan can assure sufficient supplies of human capital, raise government efficiency, plan and build world-class infrastructure, and balance the fast-growing trade and investment ties with China with vibrant economic relationships with other parts of the world.
- ECFA increases the opportunity for Taiwan to gain the attention of multinational companies, but whether Taiwan can capitalize on those opportunities depends on how well it meets the challenges mentioned above.

THE TALENT CONSTRAINT TO GROWTH

- The talent issue is partly one of quantity, but it is also a question of quality, since people with the right technical skills often lack the breadth needed to perform effectively. Taiwan employees rate very high in many respects, but are relatively wanting in creativity, initiative, and international mindedness.
- The biggest shortages are likely to be for technical and managerial talent in the crucial high-tech sector.
- Over the medium- to long-term, university programs will need to be adapted to meet the needs of a knowledge-based economy, and the educational system as a whole should find ways to foster creativity and initiative.
- In the short-term, Taiwan should try to attract the best and brightest from all over the world, easing restrictions on residence and work permits for international (including PRC) professionals and dropping the two-year work experience requirement.
- A national campaign should be launched to enhance productivity as a means of relieving the manpower problem.

REGULATORY EFFICIENCY AND POLICY CONSISTENCY

- Taiwan's weak point in international competitiveness surveys is government efficiency.
- There is a sharp disconnect between the efforts of senior officials to promote internationalization and the random and idiosyncratic erecting of barriers by parts of the bureaucracy.
- AmCham urges the government to abide by these principles: Follow international practice rather than formulating "Taiwan-unique solutions," consult with industry players before introducing major regulatory changes, adopt transparent regulatory procedures, insulate decision-making from "consumer populism" and media pressure, and maintain consistency across jurisdictions.

COMPREHENSIVE PLANNING

- Taiwan is not in a position to sacrifice either economic growth or environmental protection.
- It needs to engage in comprehensive and integrated national development planning to build the infrastructure for a world-class economy.
- Taiwan faces some hard choices regarding its energy mix, as none of the options – coal, gas, nuclear, and renewable – is without problems. A big part of the solution will need to be more effective conservation efforts.
- Both power and water prices are too low to encourage saving. Shortages in either would represent major barriers to growth and investment.
- The environmental impact assessment process, which has involved too many delays and too much uncertainty, needs revamping.
- In the wake of the recent Japanese disaster, emergency response plans and resources should be reexamined.

BALANCED RELATIONSHIPS

- China accounted for half of Taiwan's economic growth last year. Over-dependence on any one market is risky, even without the cross-Strait political complications. To balance the economic interaction with China, Taiwan should strengthen trade and investment connections with other parts of the world and particularly the U.S., the world's largest economy.
- Unfortunately the trade relationship with the U.S. has been soured by the dispute over imports of American beef. AmCham urges quick resolution of that issue so the two sides can move on to exploring new forms of economic cooperation.
- Taiwan should view bolstering the economic relationship with the U.S. as part of its national security agenda.

CONCLUSION

- With the approach of Taiwan's 2012 presidential election, both major parties should enunciate clear and thoughtful policies for Taiwan's future economic development. As reference, we offer the recommendations given in the 2011 *Taiwan White Paper*.

摘要

把握當下，成就未來

成就非凡的一年

- 過去一年來，台灣政府採行多項重要措施，例如簽署ECFA、調降營利事業所得稅稅率等。
- 政府也更積極吸引外國直接投資。
- 台灣在國際競爭力調查的排名上升。

長期挑戰

- 雖然許多進展激勵人心，未來數十年台灣經濟仍面臨嚴峻考驗。
- 國際競爭對手持續提昇競爭優勢。例如，南韓已與美國、歐盟談判簽署自由貿易協定。
- 展望將來，台灣仍有許多努力空間，例如：台灣應努力培育優質專業人才滿足產業需要；政府效能必須提昇；積極擘畫、打造世界級基礎建設；政府須審慎因應兩岸之間日趨緊密的經貿投資關係，同時不忘加強與其他國家的經貿往來。
- 簽署ECFA，使台灣受到許多跨國企業的關注，但台灣能否藉此良機受惠，端看政府如何因應上述挑戰。

人才不足，阻礙發展

- 發展專業人力資源必須質、量兼顧。擁有符合業界所需的某項專業技能，卻缺乏跨領域的全面視野，工作表現難以提昇。台灣人才在許多指標上成績優異，但與其他國家相較，在創新、積極主動與國際觀上仍顯不足。
- 高科技產業的技術專家、管理人才短缺情形最為嚴重，影響甚鉅。
- 中、長期而言，各大學系所必須求新求變，以面對知識經濟時代的人才需求。整個教育體系中各級學校都應積極培養學生的創造力與主動態度。
- 短期而言，台灣應該向全球頂尖人才招手，一定程度放寬對於外籍專業人才（包括中國大陸）來台灣居留、工作之限制，並取消外籍專業人士來台工作的兩年工作經驗限制。
- 政府應採取全面性的措施，加強在職者工作生產力，減輕人力資源不足的問題。

法令開明，政策一致

- 國際競爭力調查結果指出，台灣的弱點在於政府效能。
- 決策者與執行單位之間有明顯落差。儘管政府高層非常積極推動國際化，但是政府團隊當中仍有某些單位的決策過程未能觀照全局、公開透明，造成產業發展障礙。
- 美國商會建請政府依以下原則為施政參考：依循國際常例而非自創「台灣特有」作法；重大法規制定前，與業界充分溝通並採行公正透明的法規程序；極力避免「消費者民粹主義」與輿論壓力影響決策，確保各級、各地主管機關之政令協調一致。

周全規劃

- 台灣不宜「只要環保、不顧經濟」，也不能「只要經濟、不顧環保」。
- 政府必須在周詳規劃、整合各單位力量之後確立國家發展目標，推動公共建設，以臻至世界級經濟體應有的水準。
- 能源發展方面，台灣面臨困難抉擇，燃煤、燃氣、核能或再生能源等各種能源都有其侷限。政府應大幅加強節能措施，杜絕浪費。
- 台灣的電費、水費過低，導致民間節能省水的意願不足。電力、水資源的短缺都將對經濟成長、吸引投資造成嚴重障礙。
- 政府必須修正環境影響評估程序，全力避免進度落後、前景不明的狀況發生。
- 有鑑於日本地震與核災，台灣應認真檢視國內危機反應機制與防救災資源是否充足。

平衡發展經貿關係

- 過去一年，台灣經濟成長約有一半來自中國的帶動。過度依賴單一市場有風險，尤其兩岸政治氣氛變化難料。為避免經貿發展過度依賴兩岸互動，台灣必須持續與其他地區加強經貿投資關係，尤其是全球最大經濟體美國。
- 遺憾的是，台美貿易受到美國牛肉進口問題的衝擊。美國商會敦促雙方儘速化解爭議，以利進一步擴展經貿合作關係。
- 台灣應把加強台美經貿關係視為維繫國家安全的關鍵議題。

結論

- 2012年總統大選越來越近，兩大主要政黨都需要為台灣未來經濟發展研擬明確、周延的政策。美國商會願以《2011年台灣白皮書》表達建言，供兩黨決策者參考。

Locking in the Future

A YEAR OF ACHIEVEMENT

Over the past year, the Taiwan government has taken several extremely important steps to help improve the business climate and spur economic growth. Most notably, the Economic Cooperation Framework Agreement (ECFA) entered into with China has eased access to the booming mainland market for many Taiwanese goods and services, while also contributing to the reduction of cross-Strait tensions and lessening the danger of Taiwan's being marginalized within the regional economy. Also highly significant was the decrease in the corporate income tax rate from 25% to 17%, bringing Taiwan closely in line with Hong Kong and Singapore, the two most competitive economies in the region according to nearly all international surveys.

Citing opportunities created by ECFA, the lower corporate tax rate, and Taiwan's plans to foster the development of various emerging industries such as biotech and green energy, the government has been aggressively wooing foreign direct investment with an intensity not seen in many years, dispatching teams of officials and corporate leaders on roadshows to major markets. Those delegations have also been able to point to Taiwan's impressive GDP growth last year of 10.8%, rebounding sharply from the 2009 worldwide recession to record (albeit from a low base) its first double-digit growth in decades. The brisk recovery in imports and exports enabled Taiwan to move up one notch to become the United States' ninth biggest trading partner.

Taiwan has also improved its performance in recent surveys of global competitiveness, such as its ranking in sixth place in the 2011 IMD *World Competitiveness Yearbook*. AmCham Taipei's own 2011 Business Climate Survey found that the majority of our members are pleased with their current profitability and bullish about business prospects for the next several years.

LONGER-TERM CHALLENGES

AmCham finds all of these developments to be highly encouraging, and we commend the government for laying the groundwork for potential future progress. At the same time, we are keenly aware of the enormity of the challenges facing the Taiwan economy in the years and decades ahead. Guarding against complacency prompted by the achievements of the past year, Taiwan at this stage needs to redouble its efforts to ensure continued progress.

In fact, maintaining Taiwan's existing comparative advantages while counterparts in the international arena constantly enhance their competitiveness will be no easy task. Korea is a solid example. Taiwan's number-one rival in many export categories, Korea will soon gain a competitive edge from the free trade agreements it has negotiated with both the United States and the European Union. When investors looking at Asia are focused mainly on the giants of China and India, will Taiwan, as a mid-sized market with only 23 million people, be able to carve out a compelling niche that plays to its particular strengths?

A string of other questions about Taiwan's economic future are equally relevant:

- Can Taiwan succeed in providing the quantity and quality of human capital needed to build a knowledge-based economy?
- Can it remedy the widely recognized weakness posed by government inefficiency and regulatory inconsistency?
- Can it plan and build a sound, world-class infrastructure, assuring adequate supplies of energy and water while also protecting the environment?
- And will Taiwan be able to balance its fast-growing trade and investment ties with China with equally vibrant economic relationships with other parts of the world?

ECFA and last year's vigorous growth have prompted many multinational corporations and trade specialists to pay renewed attention to Taiwan after years in which the island barely registered on their radar screens. But there is no certainty that such increased attention can be converted into expanded volumes of actual trade and investment. Whether Taiwan will be able to capitalize effectively on its new opportunities will depend largely on its determination and ability to tackle the numerous challenges mentioned above.

THE TALENT CONSTRAINT TO GROWTH

The leading concern on business leaders' minds is whether they will have sufficient access to talent to maintain their

growth trajectory. This is in part a quantity issue – there are not enough people with the right skills. It is also a quality issue – people with the right technical skills often lack the breadth they need to perform their roles effectively. Respondents to the AmCham Business Climate Survey generally gave high marks to Taiwanese employees, describing them as hardworking, trustworthy, loyal, highly productive, and easy to train. But there was far less satisfaction with the degree of creativity and willingness to take initiative shown by the workforce. And it appeared that many companies are already facing difficulties with recruitment and retention.

Although the Chamber's survey did not break down the responses by industry, information from the government's Council for Economic Planning and Development (CEPD) confirms the expectation that the greatest demand is coming for jobs in the high-tech sector, including managerial positions. Given that Taiwan's technology industries have been the main driver of economic growth for some time, and that those industries are continuing to expand rapidly, it will be crucial to ensure that there is a sufficient pool of talent to meet their needs. Adding to the pressure regarding Taiwan's human resources is the increased recruitment of Taiwanese managerial and other talent – often for considerably more money than they would earn domestically – by companies in China and elsewhere in the Asian region.

Several of the committee reports included in this *White Paper* refer directly to personnel concerns. The Travel and Tourism Committee raises the issue of the inadequate quantity and quality of prospective employees in the tourism sector, which has been designated as one of the Six Emerging Industries set for priority development. The Asset Management Committee notes that the overly restrictive regulation of the fund business in Taiwan limits opportunities for professional development, with the result that world-class talent is often unwilling to work here. The Human Resources Committee, for its part, urges care in implementing recently enacted legislation to promote unionization so that the rights of management and non-union employees are also well protected. It also recommends that the upcoming amendment of the Labor Standards Law include an exemption from overtime provisions for well-paid, senior professional employees.

Overcoming the quality challenges requires a medium to long-term effort. The government must do more to make sure that university programs and curricula match the current and future requirements of a knowledge-based economy, including the training of personnel for such new fields as cloud computing. For students from the kindergarten through university levels, the Ministry of Education should also devise programs and adopt techniques – as Singapore has succeeded in accomplishing over the past decade – to foster creativity, initiative, and international mindedness.

In the short-term, the government should pull all levers available to solve the quantity problem. Restrictions should be eased on the ability of professional talent from outside Taiwan, including PRC-passport holders, to live and work on the island. Further, the unnecessary requirement that foreign white-collar workers have at least two years of work experience should be dropped. Such foreign professionals are not competing directly with domestic job-seekers, and by internationalizing the workplace, their presence will enable their co-workers to upgrade their skills. In this era of global competition, Taiwan should be looking for ways to attract the best and brightest from around the world, not placing restrictions on their access to this job market. In that context, it should also be noted that while the corporate income tax rate has been lowered, Taiwan's personal income tax rates continue to be among the highest in the region, discouraging many talented professionals from accepting job offers here.

Finally, enhancing productivity should become a major thrust in Taiwan, with the goal of reducing the talent gap by using existing resources more effectively. While Taiwan's high-tech industries have extremely productive workforces, its service and public sectors, which together account for about 30% of Taiwan's employment and 67.1% of GDP, need substantial improvement. The productivity imperative is already well understood by economies facing demographic challenges similar to Taiwan's, including France, Singapore, and Italy. The Singapore program, for example, focused on management systems and instilling continuous improvement as a key value, is an ambitious program with very aggressive targets. Investing in a similar program in Taiwan could substantially ease the talent quantity problem raised by the business community.

REGULATORY EFFICIENCY, POLICY CONSISTENCY

Another set of concerns pertains to the efficiency and predictability of the regulatory and policymaking process. Pharmaceutical and medical-device companies, for example, find that it takes far longer for a new product to be approved in Taiwan than in almost any other market. In the international competitiveness surveys in which Taiwan recently has been doing so well, its lowest scores invariably come in the category of "government efficiency."

AmCham members are constantly struck by the sharp disconnect between the vigorous efforts of senior officials seeking to promote Taiwan's further economic internationalization and the seemingly random and idiosyncratic efforts by parts of the bureaucracy to erect barriers that make it more difficult to do business in Taiwan. Apparently a concerted top-down campaign by the President and Premier would be required a concerted top-down campaign by the President and Premier to drive policy consistency and predictability. As government leaders seek remedies, AmCham recommends that they keep the following basic principles in mind:

- ***Follow international practice rather than formulating "Taiwan-unique" solutions.*** In one committee position paper after another, cases are mentioned of Taiwan having re-invented the wheel instead of adhering to global standards or at least referencing the practices of major markets such as the United States and the European Union. Prime examples are the regulations on labeling, cosmetic, and dietary supplements cited by the Retail Committee. Pressure on foreign banks to perform their data-processing functions in Taiwan is another. When Taiwan imposes its own special requirements, the cost of compliance for multinational companies – in time as well as money – is an enormous burden for what the authorities need to recognize is a relatively small market.
- ***Consult with industry players before introducing major regulatory changes.*** Although some regulatory bodies have maintained good lines of communication with the industries they are responsible for, others have been remiss in this regard. The Bureau of Standards, Metrology and Inspection, for example, is seeking to make numerous changes in the regulations of toothpaste products, with little prior discussion with industry and no grace period for manufacturers and distributors to prepare for compliance. In the telecom sector, since the National Communications Commission has chosen to distance itself from industry to preserve its "independence," the Telecommunications and Media Committee this year is addressing its position paper to the higher-level Executive Yuan.
- ***Adopt transparent regulatory procedures.*** Examples of lack of proper transparency can be found in the medical devices sector, where company representatives have been excluded from the meetings in which experts advise on the approval or disapproval of their products, and in the reluctance by Customs to share information on seizures of counterfeit goods with other agencies and with rights-holders. In addition, the Bureau of Foreign Trade has failed to provide clear and accurate data to justify retaining certain categories on its list of made-in-China products banned from being imported, and has in effect empowered local industry associations to pass judgment on any proposed changes in the list.
- ***Insulate decision-making from "consumer populism" and media pressure.*** Responsible companies fully support reasonable consumer protection, but in Taiwan they often feel uneasy that government policy will be swayed by the latest charges from a legislator, foundation, or the media, regardless of the weight of the actual evidence. The business sector was therefore gratified that when a recent such case arose – the assertion that chemicals released from plastic lids on hot beverages pose a health hazard – the Taiwan Food and Drug Administration quickly stepped in to refute the allegation and put the issue to rest.
- ***Maintain consistency across jurisdictions.*** In several cases in recent years, including the melamine scare of 2008, agencies in different cities and counties adopted standards that not only varied from one another but that also diverged from the stance of the central government. Such discrepancies create confusion and great inconvenience for companies doing business throughout the comparatively small territory of Taiwan. In future, it is hoped, the central government agency in charge will take the initiative to impose a uniform nation-wide approach.

The reorganization of the executive branch of government due to take place next January may help to instill greater efficiency into the system by reducing duplication of authority among ministries and agencies. But given the deeply rooted nature of the problem, we believe that nothing short of direct involvement from the very highest levels of government is likely to bring a solution.

COMPREHENSIVE PLANNING

Poor in natural resources, highly densely populated, and with limited available land, Taiwan faces unusually difficult challenges as it seeks to balance its economic growth with protection of the environment. It cannot afford to sacrifice either one of those goals for the sake of the other.

As the Infrastructure Committee emphasizes in the introduction to its position paper, Taiwan is now at a crucial stage in its development when it needs to build the infrastructure – including the assurance of reliable supplies of power and water for both industry and the public at large – that will carry it to the level of being an advanced world-class economy. To accomplish that goal, what is needed is a comprehensive and integrated national development plan that encompasses land-use planning and development, as well as environmental concerns.

On the energy front, the Sustainable Development Committee underscores the hard choices confronting Taiwan as it considers its energy mix. After the recent disaster in Japan, public support is bound to erode for any additional reliance on nuclear power. At the same time, the operation of more coal-fired plants would increase Taiwan's carbon footprint, while the use of LNG (liquefied natural gas) would be extremely expensive, raising Taiwan-based companies' production costs. Renewable energy, such as wind and solar, is unlikely to amount to more than a partial solution. Whatever compromises determine the final mix, it seems certain that Taiwan will have to make a much greater effort at energy conservation than it has done to date, including broad public education and no doubt a significant rise in electricity rates. Those prices have been kept artificially low even as the Taiwan Power Co. runs heavily in the red. Whereas the average price for power in Taiwan last year was 8.15 U.S. cents per kwh, it is nearly double that level in Singapore and even higher in Japan.

Recent water shortages due to drought conditions have

also come as a sharp reminder of the "feast or famine" nature of Taiwan's water supply. Again, one of the main culprits is pricing – Taiwan has one of the lowest rates in the world for water usage, which encourages waste and deprives the government of funds for maintenance and development. According to Global Water Intelligence, the water tariff in Taiwan is equivalent to U.S. 22 cents per cubic meter, compared with 59 cents in China, US$1.35 in Singapore, and US$2.60 in Japan.

Serious shortages of power and water, if allowed to develop, would represent major barriers to growth and investment. We recommend that the government conduct a thorough study of the prospective supply and demand for power and water over the coming decade and how improvements in productivity and efficiency can help assure that needs are met.

Another issue is the urgent need for a more rational and efficient environmental impact assessment process. In recent years, many important projects – including a major petrochemical complex, a series of power plants, and expansion of the Central Taiwan Science Park – have undergone prolonged delays and numerous changes due to what the Chemical Manufacturers Committee refers to as the "uncertain standards and lines of authority" in the EIA process. Many of these projects have appeared to be stuck in limbo, and eventually some of them have been cancelled. The Infrastructure Committee suggests that instead of granting veto power to the Environmental Protection Administration, Taiwan follow the system adopted in most countries: the EPA may make recommendations, but the ultimate decision lies with the ministry responsible for a given project.

In addition, in the wake of the earthquake, tsunami, and radiation-leak catastrophe in Japan – and considering Taiwan's susceptibility to both earthquakes and typhoons – it is imperative for Taiwan to undertake a complete and intensive review of its emergency-response plans and resources, strengthening its capabilities where necessary.

BALANCED RELATIONSHIPS

According to analyses by domestic economists, the single market of the PRC accounted for fully half of the economic growth that Taiwan enjoyed last year, while China (including Hong Kong, which acts as a transshipment center for the mainland) took 41.7% of Taiwan's exports. In contrast, most other economies in Asia seeing resurgent growth coming off the bottom of the global financial crisis were far more balanced. Korea's top three markets in 2010, for example, together accounted for 47% of exports, and for Singapore the figure was only 32.8%.

The boost provided to the Taiwan economy by cross-Strait economic activity has of course been welcome. We applaud the government's efforts to achieve such progress. But longer range, over-reliance on any one market is always risky, even without the political complications present in the cross-Strait relationship. Although AmCham has consistently encouraged Taiwan to lower barriers to economic interaction with China, it would be prudent to combine those efforts with moves to strengthen trade and investment connections with Europe, Japan, ASEAN, and particularly with the United States, the world's largest economy. That notion takes on even greater urgency considering that Korea is moving closer to implementing FTAs with the United States and the European Union, and the United States is working with a number of other countries to expand the nascent Trans Pacific Partnership (TPP) grouping into a more robust organization.

Unfortunately, Taiwan's formal trade contacts with the U.S. government have deteriorated recently over restrictions on the import of American beef into the Taiwan market. Considering the importance to both Taipei and Washington of ensuring that Taiwan does not become excessively dependent on the Chinese market, AmCham urges both sides to actively look for ways to resolve the beef issue so that they can move on to explore possibilities for broadening U.S.-Taiwan economic cooperation. In such areas as green energy, cloud computing, and biotech, among others, there should be a great deal of opportunity for shared research, information, and investment.

Besides the purely business aspect, the bilateral economic relationship with the United States should also be viewed by Taiwan as part of its national security agenda. While seeking improved cross-Strait relations, Taiwan is conscious of the need to maintain its defense posture – in fact, feeling secure in its ability to defend itself gives Taiwan more confidence in negotiating with China. The United States, practically speaking, is Taiwan's sole source for the supply of weaponry, and the arms sales require approval by Congress. Being able to remind Senators and Congressmen of the amount of business being conducted between their districts and Taiwan is one of the most effective ways to get their attention.

CONCLUSION

As AmCham has stated in the past, the members of the Chamber are dedicated to the Taiwan market and firmly believe in its potential, especially if Taiwan can continue to build on its strengths and remedy its current areas of weakness.

With the approach of Taiwan's 2012 presidential election, it is now vital for both major parties to enunciate clear and well-thought-out policies for how to steer the Taiwan economy safely to the next level of development. As reference in that exercise, we urge the two candidates and their teams to give serious consideration to the recommendations offered throughout the 2011 *White Paper*.

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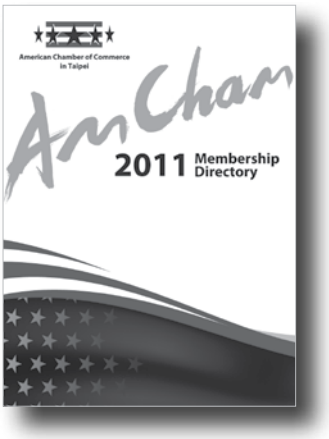

2011 TAIWAN WHITE PAPER

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 May 2011 issue of TOPICS.

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把握當下，成就未來

成就非凡的一年

回顧過去一年，台灣政府落實多項關鍵政策，顯著改善經營環境，刺激經濟成長。最引人注目者莫過於《兩岸經濟合作架構協議》（ECFA），既有利台灣商品、服務進入發展快速的中國市場，也緩和兩岸緊張，且避免台灣自外於區域經濟整合。同樣重要的，還有營利事業所得稅稅率由25%降至17%，追上區域內稅率最為優惠的香港與新加坡（在國際相關調查中，此二經濟體的競爭力經常排在區域之首）。

憑藉ECFA帶動的商機、更具吸引力的營所稅，以及扶植生技、綠能等新興產業的政策目標，政府以近年罕見的積極行動爭取國外直接投資（FDI），前往主要市場的政府招商與民間合作訪團不絕於途。訪問的宣傳重點之一是，台灣2010年國內生產總值（GDP）成長，不但自2009年的全球衰退強勁復甦，同時雖然比較基期較低，但兩位數的經濟成長仍是幾十年所罕見。進出口的大幅回溫，也使台灣由美國第十大貿易伙伴成為第九大。

近期幾項全球競爭力調查中，台灣排名也獲得提升，包括瑞士洛桑國際管理學院（IMD）《2011年世界競爭力報告》（WCY）將台灣列為全球第六。台北市美國商會的《2011年商業景氣調查》（BCS）也發現，多數會員企業都很滿意目前獲利狀況，也看好未來幾年的發展前景。

長期挑戰

商會非常歡迎過去一年的所有進展，也很高興政府能為未來發展奠定基礎。不過，商會深刻瞭解，台灣中長期仍面臨嚴峻考驗。台灣不該自滿於過去一年的成果，因為現在的台灣仍須加倍努力，才能保持前進動能。

事實上，國際競爭對手並未放緩提升競爭力的腳步，台灣想維持現有優勢並不容易。南韓是極好的例子。許多出口品項是台灣頭號對手的南韓，已和美國、歐盟簽署自由貿易協議，很快會獲得此協議帶來的競爭優勢。投資者檢視亞洲時，主要焦點放在中國、印度。台灣這人口2300萬的中型市場，能否開創受人矚目的利基，發揮自身強項？

另外一些問題也攸關台灣經濟發展：

- 台灣的人力資源的質量是否足以支持知識經濟？
- 台灣是否能導正政府效能低落與法規相互扞格所造成的問題？
- 台灣是否能建構穩定、世界級的基礎建設，重視環保的同時還能穩定水電供應？
- 台灣積極發展兩岸貿易投資關係時，是否能平衡發展與其他國家的經貿關係？

跨國企業與投資專家多年來似乎遺忘了台灣市場，但ECFA與去年的強勁成長的確重燃台灣的吸引力。但吸引力有時並不等於實際貿易與投資。唯有下定決心、展現實力解決上述問題，才能有效化機會為現實。

人才不足，阻礙發展

商界領袖心中最關切的，是他們能否找到足夠的人才，維持成長力道。這在某種程度上是數量問題—擁有合適技能的人不足。然而這也是攸關品質的問題—具有合適技術專才的人，通常缺乏有效發揮角色所需的完整視野。美國商會《商業景氣調查》的受訪企業主管普遍肯定台灣勞工的素質，既勤奮、可靠、忠誠、產能高，又容易訓練。但不足之處是創意與開創性。而且許多企業現在已面臨招募、留用的難題。

雖然商會的調查未就個別產業進行分析，行政院經建會的統計證實商會的猜測，即最缺人的產業類別是高科技產業，其中包括管理職缺。鑑於科技產業已是台灣經濟成長主要動力，相關產業又在持續快速發展，確保人才充裕至為重要。人力資源更形惡化的另一個原因是，中國與亞洲其他國家，持續以更優沃的薪酬向台灣挖角，包括管理與其他人才。

今年《白皮書》中，某些委員會的建言也包括對於台灣人力資源問題的高度關切。旅遊與觀光委員會認為，觀光旅遊業（已被政府列為六大新興關鍵產業之一）的人才質量亟待提昇。資產管理委員會提到，政府對於基金業者過於嚴格的管制，已經限制了台灣相關專業人才的發展空間，世界頂尖人才往往不願來台工作。人力資源委員會建請政府對於近期所施行法規鼓勵勞工籌組工會一事持審慎態度，以確保雇主、非屬工會會員之員工的權益。人資委員會同時期盼，《勞動基準法》近期修法能使部份高階、高薪專業員工得豁免於現行《勞動基準法》對於延長工時之規定。

解決人才素質不足問題要有中、長期的眼光。政府必須更積極調整大專院校的課程設計、教育方針，以符合現今與未來知識經濟的需求，這包括訓練雲端運算等新領域的人才。對於自幼稚園至大學的課程安排，教育部也應學習新加坡過去十年的成功經驗，引進更多創新作法，提升學子的創造力、開創性與國際觀。

短期而言，政府宜盡全力解決人才數量不足的問題。政府可放寬引進中國與外籍專業人士的限制，使他們在台生活、工作更為便利。特別是，政府不應再要求白領外籍員工至少有兩年以上工作經驗。白領勞工不會直接壓縮台灣勞工的就業機會，還能使工作場合更為國際化，帶動本國員工的成長。在各國激烈競爭的此刻，台灣該做的是引進最優秀、能幹的全球人才，而非對他們處處設限。而且，台灣雖已調降營所稅率，個人綜合所得稅稅率仍高於亞太多數國家，降低專業人才來台意願。

最後，強化生產力應成為台灣發展主要推進力之一，目標是透過更有效利用現有資源，減少人才缺口。台灣高科技產 業擁有極具生產力的勞動人口，而其服務業和公部門（共占台灣就業人口的30%，產能為國內生產毛額的67.1%）還須大幅改進。法國、新加坡和義大利等與台灣同樣面臨人口變遷挑戰的幾個經濟體，對於急迫的生產力危機均有深刻體認。例如，新加坡的生產力提昇計畫以管理體系為焦點，並以持續改善為主要價值觀，充滿雄心壯志。台灣若投資類似的計畫，可大大緩解產業界遭遇的人才數量不足問題。

法令開明，政策一致

產業界另一個疑慮來自法規與決策過程的效率與可預測性不足。舉例來說，製藥與醫療器材廠商發現，台灣核准新產品上市的時間遠比絕大多數國家要久。近期一些國際競爭力調查雖肯定台灣，但政府效能都是台灣得分最低的項目。

美國商會會員發現，政府首長為台灣經濟國際化投注可觀心力，但施政團隊中部份執行單位的決策卻似乎無法觀照全局，時

有各自為政、前後矛盾的情形，導致企業在台灣經商的難度增加。顯然，這需要由總統與行政院長帶頭推動政府各部門的革新，使政策具有連貫性與可預測性。在政府領導人尋求改進措施之際，美國商會建請政府於施政時參考以下基本原則：

- 援引國際慣例，而非堅持「台灣特有」的規範：許多委員會都指出，台灣寧可自創一套作法，也不願採納國際慣例，或是參考美國、歐盟等主要市場的先例。其一如零售委員會所指出，產品標示、化妝品、膳食補充劑之法規都有類似問題。其二是強迫外商銀行在台進行資料處理。台灣市場規模相對較小，政府若堅持獨創的辦法，只是徒增跨國企業營運成本，虛耗時間、金錢。
- 法規有重大更動之前，應徵詢業者意見：有些部會習慣與相關業者維持良好聯繫，但也有部會並不重視。例如經濟部標準檢驗局預備大幅修改牙膏之管理規範，卻不太跟業者討論，也未預留足夠的緩衝期給製造商、經銷商。電信產業方面，因為國家通訊傳播委員會（NCC）堅持與業者保持距離以維持獨立性，電信及媒體委員會今年只好訴求提高溝通層級，向行政院提出產業優先議題建議書。
- 增加規範管理的透明度：醫療器材業的問題正是透明度不足，包括審核產品的專家會議排除業者代表參與、海關不願意與其他部會或權益受害者分享偽劣產品的查緝資料等。此外，經濟部國際貿易局仍提不出充分證據，證明特定中國製產品禁止進口的合理性，且實際上形同授權國內產業公會主導審查過程。
- 決策過程不應受制於「消費者民粹主義」或媒體壓力：負責任的企業絕對支持合理的消費者保障，但在台廠商難免擔心民意代表、基金會或媒體評論，會使政策方向在無明確佐證支持下驟然轉彎。因此，在不久前熱飲塑膠蓋疑似釋出有害人體化合物的風波中，業者格外慶幸衛生署食品藥物管理局於第一時間出面澄清，平息爭議。
- 各級政府應有一致規範：近年幾起案例，例如2008年的三聚氰胺事件，地方縣市政府不僅彼此標準不一，某些還與中央政府不同調。這類各行其事的現象，讓在台企業常感困擾。業界希望中央主管機關能負起責任，統籌出全國一致的標準。

政府預定明年一月正式施行之行政部門組織重整，可望減少各部會之間職權重複、責任不明的情況，應有助於提昇行政體系的效率。不過鑒於相關問題根深柢固，我們認為，唯有政府最高層直接密切地參與推動變革，才能真正解決此一問題。

周全規劃

欠缺天然資源、人口高度密集、可用土地有限，台灣想要兼顧經濟發展與環境保護確實困難。但台灣既不能為了經濟犧牲環保，也不該為了環保葬送經濟。

基礎建設委員會的產業優先議題建議書指出，台灣已進入發展的關鍵階段，必須強化基礎建設，特別是穩定供應民生與工業用水與電力，才能躋身先進經濟體之列。為此，政府必須擬定周全的國家發展計畫，盡力兼顧土地規劃開發與環保考量。

就能源供應而言，永續發展委員會瞭解台灣在選擇發電方式上面臨兩難困境。日本發生核電廠事故後，反對增加核能發電占總體發電量比例者勢必增加。擴大燃煤發電會增加台灣的碳足跡，液化天然氣（LNG）則成本驚人，將增加企業生產費用。風力、太陽能等再生能源只可少部分取代傳統發電方式。不管最後決定為何，台灣必須大幅提升能源節約措施，包括廣泛宣導與教育，以及顯著調漲電價。政府刻意壓低電價，就算台灣電力公司因此虧損嚴重也在所不惜。以去年來說，台灣平均電價大約是每1度電要8.15美分，新加坡電費接近台灣的兩倍，日本電費還要更高。

近來的缺水旱象再度提醒我們台灣往往處於「非旱即澇」的水資源困境。同樣的，主因之一還是價格。台灣是全球水價最低的國家之一，變相鼓勵浪費，排擠了維護與開發水資源的必要資金。根據「全球水資源情報」（Global Water Intelligence）的分析，同樣是一度水，台灣水費約22美分，中國要價59美分，新加坡1.35美元，日本則是2.6美元。

若容許電力和水的短缺情形持續惡化，將構成經濟成長和投資的主要障礙。我們建議台灣政府針對未來十年電力和水資源的供需問題，以及如何透過提高生產力、效率來滿足水、電需求，進行徹底研究。

台灣非常欠缺合理有效的環境影響評估程序，則是另一議題。化學製造商委員會指出，近年多項重大投資開發案，包括國光石化新廠、多座電廠，及中部科學園區擴大案，都因環評過程規範標準不明、權責劃分不清而再三拖延，計畫內容反覆更改。許多計畫進退不得，部分甚至胎死腹中。基礎建設委員會建議，與其交由環保署全權決斷，不如學習多數國家的作法：環保署負責提供建議，但專案之主管機關才有最終裁量權。

此外，鑑於日本接連發生的地震、海嘯、核災，同樣身處地震與颱風帶的台灣，必須全面密集檢討防災計畫與資源，強化災害應變能力。

平衡發展經貿關係

台灣多項經濟分析指出，2010年經濟成長有一半來自中國市場的帶動，而中國（包括為大陸發揮轉運中心功能的香港）吸納了台灣41.7%的出口總額。相反地，亞洲其他經濟體熬過全球金融危機後，經濟復甦的動力來源都比台灣平衡多元。舉例來說，2010年，南韓對前三大出口市場的出口量占其出口總額的47%，而新加坡前三大出口市場占出口總額之比例僅32.8%。

我們樂見兩岸經貿往來密切刺激台灣經濟發展，也對政府努力成果表示肯定。但長遠來說，過度依賴單一市場總有風險，特別是兩岸政治氣氛充滿變數。雖然商會一直鼓勵台灣開放兩岸經貿往來，但兩岸關係持續升溫最好是與其他經貿關係同步發展，包括歐洲、日本、東協，以及全球最大經濟體美國。韓美、韓歐自由貿易協定即將生效，美國也與多國合作以擴大、鞏固「泛太平洋戰略經濟夥伴關係協定」（TPP），如此一來台美貿易關係的持續加強，更顯急切。

遺憾的是，台美正式貿易談判已因美國牛肉進口問題幾近停擺。而避免台灣過度依賴中國市場，對台灣或美國都很重要，商會因此敦促雙方積極化解牛肉爭議，以便進一步擴大經貿合作。在綠能、雲端運算、生技，以及其他領域，雙方應該都能就研發、資訊及投資進行廣泛合作。

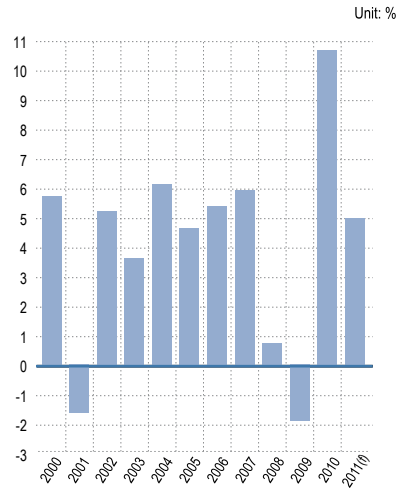
除了經濟面向，台灣宜將台美經貿關係視為維繫國家安全的關鍵議題。兩岸關係雖有改善，台灣仍需維持自我防衛能力；事實上，只有確保安全無虞，台灣才能有自信進行兩岸談判。美國可以說是唯一願意出售武器給台灣的國家，且軍售須經國會同意。向美國參、眾議員證明其選區與台灣經貿往來密切，應是最能促使對方關注台灣需求的辦法。

結論

商會一直認為，會員企業無不用心經營台灣市場，對台灣發展潛力深具信心，只要台灣持續強化優勢、修正缺點，潛力必能發揮。

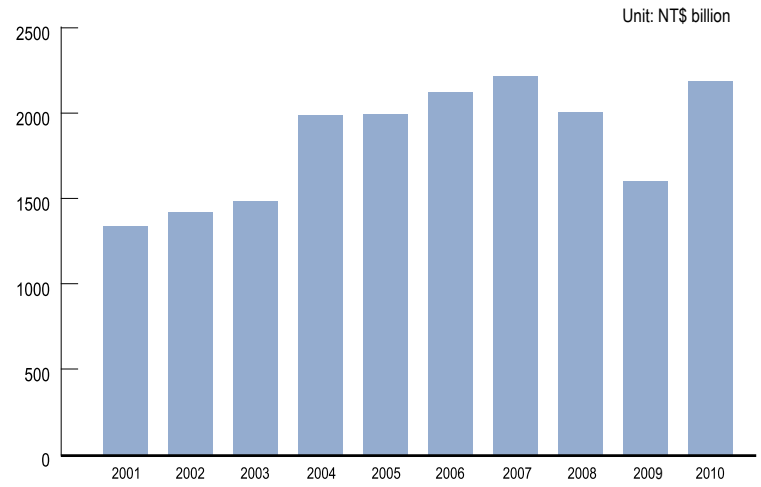
隨著2012年總統大選逐漸接近，國民黨與民進黨的當務之急正是制定明確、妥善的政策，協助台灣經濟穩健邁向下一個發展階段。商會相信，馬英九與蔡英文兩位總統參選人及幕僚若能認真看待《白皮書》所有建議，當可擬定契合台灣發展需求之務實政綱。

GRAPH 1: ECONOMIC GROWTH RATE



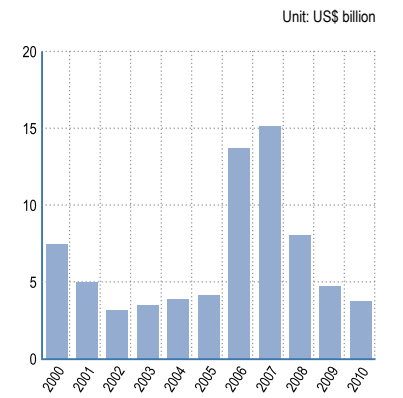
Source: Directorate General of Budget, Accounting & Statistics (DGBAS)
Note: f=forecast

GRAPH 2: GROSS PRIVATE DOMESTIC INVESTMENT



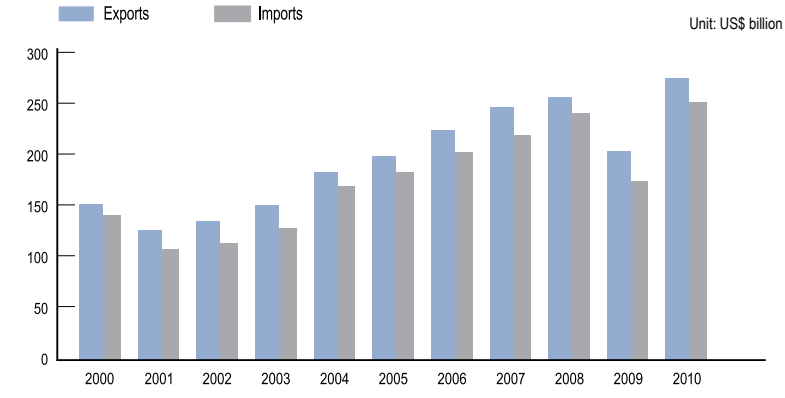
Source: National Statistics, R.O.C.

GRAPH 3: FOREIGN DIRECT INVESTMENT



Source: Ministry of Economic Affairs (MOEA)

GRAPH 4: TOTAL FOREIGN TRADE



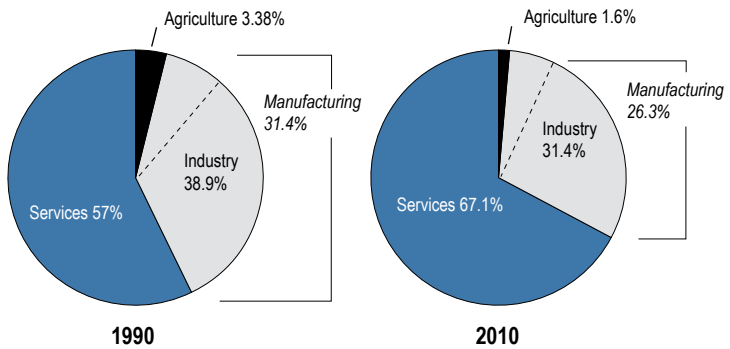
Source: Ministry of Economic Affairs (MOEA)

GRAPH 5: KEY ECONOMIC INDICATORS

	2009	2010	2011
Gross Domestic Product	US$377.4 bn	US$430.5 bn	US$483.9 bn f
Per Capita GDP	US$16,353	US$18,603	US$20,848 f
Gross National Savings	28.12%	32.30%	
Unemployment	5.85%	5.20%	
Inflation (CPI)	-0.87%	0.96%	
Foreign Exchange Reserves	US$348 bn	US$382 bn	

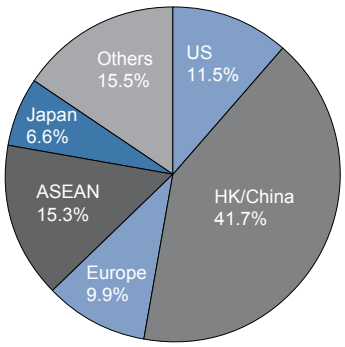
Sources: DGBAS, Central Bank

GRAPH 6: COMPONENTS OF GDP



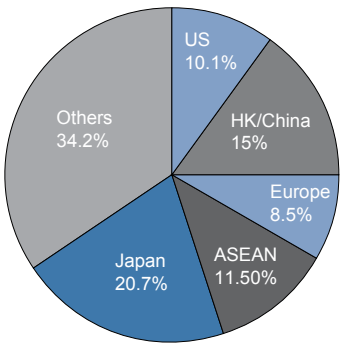
Source: Directorate General of Budget, Accounting & Statistics (DGBAS)

GRAPH 7: 2010 EXPORTS BY REGION



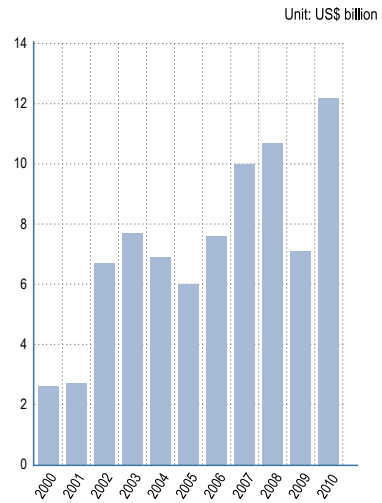
Source: Ministry of Economic Affairs (MOEA)

GRAPH 8: 2010 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 2011 *TAIWAN WHITE PAPER*

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Issue 1. Move forward on other trade matters while pushing for resolution of the beef issue.

Although the member companies of AmCham Taipei have been disappointed that U.S.-Taiwan bilateral trade talks under the Trade and Investment Framework Agreement (TIFA), which are normally conducted annually, have not been held now for nearly four years, we recognize that the ongoing dispute over restrictions on the import into Taiwan of U.S. beef have created an atmosphere in which the U.S. government finds it inappropriate to proceed with TIFA talks at this time. Nevertheless, U.S. companies have investments in Taiwan totaling about US$20 billion and sell Taiwan over US$25 billion per year in goods and services across many sectors of the U.S. economy. If TIFA cannot be held, the U.S. should find other ways to support American business in this large and growing market.

The Taiwan section of USTR's own "2011 National Trade Estimate Report on Foreign Trade Barriers" lists many problem areas, including:

- Taiwan's high tariff rates on many products of interest to U.S. exporters
- Continuing IPR concerns regarding internet piracy, trade dress, the smuggling of counterfeit goods from China, and pharmaceutical-industry issues.
- Pricing policies for medical devices and pharmaceuticals that in effect discourage the entry of innovative products into the market.
- Lack of recognition for the chiropractic profession.
- Foreign-investment limits and an overly restrictive fee structure in the cable TV sector.
- Technical barriers to trade, such as various labeling regulations.

Additional issues have been raised in the committee reports in this 2011 edition of the *Taiwan White Paper.*

The Chamber therefore urges the Office of the U.S. Trade Representative (USTR), Commerce Department, and State Department – while pushing for progress on the beef issue so as to enable TIFA talks to resume – to utilize alternative available channels to deal actively with these many other areas of concern.

Issue 2. Shore up the U.S.-Taiwan economic relationship.

Over the past year while the beef issue has blocked significant progress in strengthening the U.S.-Taiwan bilateral economic relationship, Taiwan has been moving rapidly to bolster its economic ties with China. The two sides last June signed an Economic Cooperation Framework Agreement (ECFA) that contained substantial early-harvest provisions and will eventually lead to a comprehensive free trade agreement. In addition, an increasing number of Chinese tourists are visiting Taiwan, a series of MOUs has opened the way for increased cross-Strait activity in financial services, and Taiwan has eased restrictions on investment in both directions.

As much as AmCham supports steps to improve cross-Strait economic connections, we had always envisioned those advances as occurring within the context of an increasingly 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 2010, 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.

As soon as the beef impasse has been resolved, we hope that TIFA talks can be scheduled without further delay. In the meantime, as suggested in Issue 1 above, it is important to pursue the many items on the trade agenda through other, albeit lower-level channels.

Also during the interim, AmCham suggests that both sides consider entering into bilateral agreements as building blocks toward an eventual Free Trade Agreement. Five 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 believed that in Taiwan's case the agreements may 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 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 consider entering into 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.

AmCham also continues to advocate the sending of 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 visited 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 in building trust and mutual understanding.

More broadly, we urge the U.S. government to take steps to assure that the rise of China does not cause the U.S.-Taiwan relationship to be neglected. 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 3. Pursue trade policies that promote economic liberalization.

We have been pleased to see increased attention in Washington to trade issues in recent months, both by the executive branch and Congress, and hope that this will lead to restoration of the President's Trade Promotion ("fast-track") Authority so that Taiwan could be considered for negotiation of a free trade agreement at the proper time.

AmCham Taipei also welcomes the efforts to expand the Trans Pacific Partnership (TPP) and develop it into a vigorous and effective mechanism for liberalizing and stimulating trade connections within the Asia Pacific region. As the structure and mission of the TPP become better defined, we hope that Taiwan, as a member in good standing of APEC and one of the leading trading economies in the Asia Pacific, would receive due consideration for inclusion. Participation would help bolster Taiwan's integration with the regional economy and ensure that it has ample opportunity to contribute to the region's development.

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

More and more countries have been extending visa-free treatment to Taiwan travelers; Israel recently became the 113th country to do so. 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, chiefly 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. In recent months, Taiwan has been taking steps to rectify this problem by setting up a system for personal appearances by passport applicants.

The Taiwanese are avid and 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. For the United States, providing visa-waiver entry to Taiwanese citizens would benefit the U.S. travel industry and help stimulate the U.S. economy as it recovers from recession. The experience of other countries is that the number of Taiwan visitors typically increases by one-third in the year following introduction of the visa-waiver system.

Issue 5: 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 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.

REVIEW OF 2010 *WHITE PAPER* ISSUES

The chart below is a status review of all priority issues in the 2010 *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 114 issues raised in the 2010 White Paper, two are rated Solved, 12 In Progress, 37 Under Observation, 50 Stalled and 13 Dropped.

Committee	2010 White Paper Issues	Status	2011 WP	Notes
Agro-Chemical	1: Tighten law enforcement against illegal pesticides.	3	*	Changed to "Shut down unscrupulous retailers of illegal pesticides."
	2: Adopt effective new registration rules incorporating crop grouping.	2	*	Changed to "Adopt clear and effective rules governing new product registration."
Asset Management	1: Expedite the signing of an MOU with Luxembourg's CSSF.	2	*	Changed to "Accelerate the signing of a Stage II MOU with Luxembourg's CSSF."
	2: Ensure equal tax treatment by exempting capital income derived from registered offshore funds from the Alternative Minimum Tax regime.	4		
	3: Advance the regulation of onshore funds.	2	*	
	4: Further relax China-investment restrictions.	3	*	
Banking	1: Rationalize the "Regulations Governing Offshore Structured Products" and its operating rules.	3	*	Changed to "Review the "Regulations Governing Offshore Structured Products" and its operating rules, as well as the product approval process."
	2: Support the growth of the wealth management and trust businesses.	4		
	3: Exempt foreign banks from the "thin capitalization regulation."	1		
	4: Rationalize the regulatory and disclosure requirements for wholly-owned subsidiaries of foreign financial services companies.	5		
Capital Markets	1: Enhance the trading infrastructure to achieve best practices as a developed market.	3	*	Changed to "Enhance the Taiwan capital market's efficiency, depth, and breadth."
	2: Expand the scope of brokers' research and trading to increase industry competitiveness.	2	*	Changed to "Continue to enhance investor education to minimize misuse or misinterpretation of brokers' research."
	3: Relax futures trading and its related foreign-exchange rules.	3	*	
	4: Further liberalize the Securities Borrowing and Lending (SBL) market.	3	*	Changed to "Continue to enhance the Securities Borrowing and Lending (SBL) market."
Chemical Manufacturers	1: Ensure a sufficient supply of feedstock for the industry's continued development.	3	*	
	2: Streamline the regulatory control of chemical life-cycle management.	4		
	3: Establish a transparent communication mechanism for better interaction between chemical companies and neighboring communities.	4		
	4: Advance the use of Remote Operation Centers for on-site air separation units.	3	*	Changed to "Approve the use of Remote Operation Centers for on-site air separation units."
	5: Suspend collection of the SPRGA fund and integrate all environmental fees into green taxes.	4		
	6: Follow international standards in the inspection of high-pressure containers.	1		
Education & Training	1: Continue liberalizing regulations governing foreign universities and degrees.	4	*	
	2: Facilitate greater student mobility and internationalization by removing systemic barriers.	5		
	3: Recognize overseas diploma and certificate programs.	5		
Environmental Protection (now Sustainable Development)	1: Expedite the construction of public sewerage projects.	2	*	Changed to "Continue to expedite the construction of public sewerage projects."
	2: Reevaluate greenhouse gas emission (GHG) and energy policies.	4	*	Changed to "Implement CO2 emission reduction and energy saving in the cement industry."
	3: Create a new eco-labeling category for virgin fiber tissue products certified by a globally recognized standard of responsible forest management.	4	*	Changed to "Recognize pure virgin fiber tissue products in the EPA Green Mark system when certified by globally accepted standards of responsible forest management."
Human Resources	1: Reconsider proposed amendments to the Labor Standards Law to balance labor protection with the impact on business.	4	*	
	2: Further liberalize Chinese travelers' entry into Taiwan for business activities.	4	*	
	3: Amend the Labor Union Law to set reasonable rules for union representation.	4	*	Changed to "Clarify the application of the Labor Union Act..."
	4: Eliminate the work experience requirement for foreign employees of non-tech companies.	4	*	Changed to "Reconsider the 'Energy Development Guideline."
Infrastructure	1: Adopt a practical and achievable CO2 reduction target.	4	*	
	2: Expedite power plant development to prevent a future power shortage.	4		
	3: Remove barriers to meaningful international participation in Taiwan's government procurement market.	4	*	Changed to "Continue to build truly world-class infrastructure by assuring international participation in public projects."
	A. Eliminate tender awards based on Lowest Bid.	4		
	B. Accept requests for reasonable contract changes.	4		
	C. Fully privatize the prominent A/E firms.	4		
	D. Place more emphasis on turnkey projects.	4		
	E. Remove recently imposed restrictions on construction companies.	5		
	4: Follow international norms to improve terms and conditions of government model contracts.	3	*	Changed to "Continue to improve the terms and conditions in government model contracts."
	A. Lack of both ceiling on liability and consequential damage liability exclusion.	3		
	B. Lack of consistency in model contracts.	3		
	C. Lack of bilingual versions of tender documents and model contracts.	5		
	D. Nuclear damage insurance.	3		
	5: Improve government efficiency by reviewing and streamlining administrative procedures.	4		
Insurance	1: Seek solutions for the negative spread and capital adequacy problems.	3	*	Changed to "Increase the transparency and regulation of insurers' financial strength."
	2: Allow insurers an exception to the foreign investment limit for foreign-currency investments.	3		
	3: Allow life policyholders to pay and receive in New Taiwan Dollars for foreign-currency-denominated policies.	3		
	4: Maintain the previous taxation practice on unit link products.	4		
	5: Reconsider amendments to the Labor Pension Act.	3	*	Changed to "Exclude 'voluntary' contributions to labor pensions from the requirements set for mandatory pension contributions."
	6: Reserve credit for long-term life reinsurance	2		
Intellectual Property & Licensing	1: Institute more effective controls over the import of counterfeit and smuggled goods.	4	*	
	2: Review changes and proposed amendments to the laws on Trademark, Patent, Copyright, and Copyright Collective Management Organization.	3	*	Changed to "Enact amendments needed to strengthen existing IP laws."
	3: Strengthen judicial treatment of IP cases.	4	*	Changed to "Improve the operations of the IPR Court."
	4: Make Internet piracy a public crime.	4		
	5: Continue taking action against software piracy.	3	*	Changed to "Tighten Customs procedures against counterfeit goods."
	6: Continue to implement legalization strategies for business software in the public sector.	3	*	Changed to "Take steps to ensure the procurement and use of legal software in the public sector." and "Provide IPR training to prosecutors and judges at the district court level."

Medical Devices	1: Bring the TFDA mechanism for inspecting and registering medical devices in line with international practice.		*	Changed to "Harmonize the regulation of medical devices with global practices and international trends."
	A. Relax the definition of a "medical device manufacturer.	3		
	B. Enhance communication among the TFDA, medical device Notified Bodies, and the industry.	3		
	C. Establish standards for identifying changes to registered products.	4		
	D. Update the definition of new medical devices and high-risk medical devices.	4		
	2: Focus the regulation of advertising on direct-to-consumer medical devices.			
	A. Redefine the term "pharmaceutical advertising" as it applies to medical devices.	5		
	B. Place limits on pre-approval censorship.	5		
	C. To facilitate its development, a platform should be created for regular and open communication between the authorities and the industry.	5		
	3: Reform the National Health Insurance (NHI) payment system to raise Taiwan's competitiveness in medical services.		*	
	A. Formalize a balance billing program to protect patients' medical options.	2		
	B. Ensure the introduction of new medical technologies and devices under the Tw-DRG payment system	4		
	C. Rationalize PVS methodology and assure transparency of information.	4		
	4: Allow the import of medical devices manufactured by multinational enterprises in China.	4	*	Changed to "Lift the ban on imports of medical devices from China for products made there by multinational firms."
Others - Chiropractic	1: Provide a legal basis for chiropractic in Taiwan.	4	*	
Others - Tobacco	1: Reconsider proposals for a Unified Security and Anti-counterfeiting Mechanism.	3	*	Changed to "Consider the implications on smuggling when increasing tobacco taxes."
	2: Create the legal basis for a "report inventory" mechanism for changes in the cigarette health surtax.	4		
	3: Abstain from restricting the wording on tobacco containers and external packaging.	2		
	4: Exclude the tobacco health surtax from the base in calculating business tax.	5		
Pharmaceutical	1: Reform drug-pricing policy to reward innovation, and replace Price Volume Surveys with a Drug Expenditure Target system.	4	*	Changed to "Reform pricing policies for new drugs to reward innovation."
	2: Liberalize procedures for Certificates of a Pharmaceutical Product (CPP) and accelerate the regulatory approval process.	2		
	3: Strengthen post-approval drug quality requirements to ensure consistent drug quality delivered to patients.	4	*	Changed to "Assure consistent drug quality by strengthening post-approval quality requirements."
	4: Strengthen IPR protection through Patent Linkage and Data Exclusivity.	4	*	Changed to "Strengthen IPR protection through Patent Linkage and Data Protection."
	5: Implement a rigorous system of Separation of Dispensing from Prescribing (SDP).	4	*	
Real Estate	1: Ease regulations affecting real estate acquisitions by overseas Chinese from Hong Kong and Macao.	5		
	2: Allow Chinese capital to be invested in commercial properties.	3	*	Changed to "Allow mainland Chinese investors to acquire and develop commercial properties."
	3: Review regulations governing building usage and set up a single contact window for advice on business registration.	4		
	4: Establish a non-profit agency to facilitate urban renewal and speed up the urban renewal development.	4	*	Changed to "Expedite the review process for urban renewal projects and actively enforce demolition procedures."
	5: Encourage the opening to foreign enterprises of public tenders for projects valued below the GPA threshold.	3		
Retail	1: Bring regulatory approaches in line with international practices.	4	*	Changed to "Review and revise out-of-date labeling requirements."
	2: Accelerate the review and removal of China-import restrictions.	4	*	
	3: Reform the regulatory framework for cosmetics products.	3	*	
Tax	1: Rectify imbalances in the income tax structure.	4	*	
	2: Treat true-up and true-down adjustments consistently in accordance with Transfer Pricing Rules.	4	*	
	3: Mitigate the adverse tax impact from applying the AMT Law to expatriates in Taiwan.	4		
	4: Re-consider taxing foreign enterprises for drop-shipment transactions in Taiwan.	4	*	Changed to "Revise the current policy on taxation of foreign enterprises' drop-shipment transactions in Taiwan."
	5: Clarify whether the transfer of securities for purposes other than sale is not subject to securities transaction tax.	5		
	6: Clarify "hire of work" contracts under the Stamp Tax Act.	5		
	7: Remove obstacles to income payers' following the tax ruling on Taiwan-source income.	4	*	Changed to "Provide clear instructions for determining ROC-sourced income."
	8: Classify capital income from registered offshore funds as domestic income.	5		
Technology	1: Increase government spending on software, services, and intellectual capital.	2	*	Changed to "Increase spending on software and ICT services." "Improve government procurement terms and conditions for software."
	2: Provide more government subsidiaries and incentives to encourage renewable energy development in Taiwan.	3	*	
	3: Improve the effectiveness of the review and approval process for the R&D Investment Tax Credit programs.	3	*	Changed to "Continue to improve the effectiveness of the application, reviewing, and approval process for the R&D Investment Tax Credit program."
	4: Continue WTO initiatives to uphold Information Technology Agreement commitments.	2		
Telecommunications & Media	1: Create a progressive regulatory environment embracing an open-market approach.	4		
	2: Reposition the NCC for the betterment of industry and the economy.	3		
	3: Relax foreign investment restrictions for the telecom and media industry.	4		
	4: Minimize or remove pricing regulation.	4		
	5: Actively support the development of innovative technologies and services.	3	*	Changed to "Establish a new approval system to help speed the introduction of new technologies and services to the Taiwan market."
	6: Protect intellectual property rights for video content.	3		
Transportation - Express Cargo	1: Cultivate a sound regulatory environment for development of the express cargo industry.	3	*	Changed to "Cultivate a sound regulatory environment of Customs Clearance with sophisticated risk management for development of the express cargo industry."
	2: Take the express cargo industry's needs into account in designing the Taoyuan Aviation City infrastructure.	3		
Transportation - Automotive	1: Broaden the incentives for environmentally cleaner vehicles.	3	*	Changed to "Accelerate the introduction of new clean, environmentally friendly, and safe vehicles into the market."
	2: Replace older, higher emission vehicles.	3	*	
	3: Help Taiwan automakers take advantage of their regional competitiveness.	4		
	4: Align vehicle regulations and certification with international standards.	2	*	
Transportation - Shipping	1: Continue relief efforts for the shipping sector and reduce management fees.	4	*	
	2: Provide incentives to spur growth in the shipping sector.	4	*	
Travel And Tourism	1: Strengthen government efforts to promote Taiwan as a tourism destination.	3	*	
	2: Advance the training and development of tourism-industry talent.	3	*	
	3: Upgrade the Tourism Bureau and redefine its goals and mission.	3	*	

《2010台灣白皮書》議題處理進度

以下為《2010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。

《2010台灣白皮書》所提出114項議題，其中2項已解決，12項處理中，37項觀察中，50項擱置中，13項已刪除。

委員會	2010白皮書議題	進度	2011白皮書	備註
農化	1: 嚴格查緝偽劣農藥	3	*	今年改為『嚴查偽劣農藥販售管道』
	2: 整合作物分群的新產品登記制度	2	*	今年改為『農業登記制度應更清楚有效』
資產管理	1: 加速與盧森堡金融監管委員會簽署備忘錄	2	*	今年改為『促進與盧森堡CSSF簽署備忘錄』
	2: 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	4		
	3: 促進國內投信基金法令的發展	2	*	
	4: 進一步放寬對中國投資的限制	3	*	
銀行	1: 促進《境外結構型商品管理規則》及與其相關規定之合理化	3	*	今年改為『檢視《境外結構型商品管理規則》及其相關規定與商品審查程序』
	2: 支持財富管理及信託業務之發展	4		
	3: 排除外國銀行於「反自有資本稀釋課稅制度」之外	1		
	4: 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		
資本市場	1: 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	3	*	今年改為『強化台灣資本市場之效率、深度及廣度』
	2: 擴大證券研究及交易範圍以促進產業競爭力	2	*	今年改為『持續加強投資人教育，避免誤用或錯誤解讀証券商研究報告』
	3: 放寬期貨及期貨交易相關之外匯規定	3	*	
	4: 進一步開放有價證券借貸市場	3	*	今年改為『持續強化有價證券借貸市場』
化學製造商	1: 確保產業發展所需的原料供應充足	3	*	
	2: 精簡化學品生命週期管理的監管制度	4		
	3: 建立透明的溝通機制，以利企業與社區進行良性互動	4		
	4: 推動空氣分離廠/現場供應遠端操控中心系統	3	*	今年改為『同意現場供應空氣分離廠遠端操控中心系統之運作』
	5: 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	4		
	6: 高壓容器管理法規應符合國際規範	1		
教育與訓練	1: 持續鬆綁國外大學及學歷的法規	4	*	
	2: 消除現行體制障礙，促進學生的國際化流動	5		
	3: 承認國外文憑和證書課程	5		
環境保護（現為永續發展）	1: 加速公共汙水下水道建設計劃	2	*	今年改成『持續加速建設公共汙水下水道』
	2: 重新評估溫室氣體及能源相關法令	4	*	今年改成『落實水泥業的二氧化碳排放減量與節能』
	3: 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	4	*	今年改成『將獲得國際永續林木認證之原生紙漿衛生紙產品列入環保署綠色環保標章系統』
人力資源	1: 重新考量《勞動基準法》修正草案，兼顧勞動保障與企業衝擊	4	*	
	2: 進一步開放中國商務旅客進入台灣從事商業活動	4	*	
	3: 修正《工會法》以制定合理的工會代表規則	4	*	今年改為『《工會法》、《團體協約法》及《勞資爭議處理法》之適用，應使其明確，並兼顧勞工與雇主之權益』
	4: 移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: 採行務實的二氧化碳減量目標	4	*	今年改為『重新考量《能源發展綱要》』
	2: 解決電源開發困境	4		
	3: 降低阻礙，以促使國際廠商參與台灣政府採購市場	4	*	今年改為『引進國外廠商參與公共建設，已建立世界一流的基礎建設』
	A. 取消最低價標	4		
	B. 接受合理之合約追加減變更	4		
	C. 將主要之工程顧問公司徹底民營化	4		
	D. 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	4		
	E. 移除最近加諸於營建公司之限制	5		
	4: 依循國際慣例改進政府契約範本中之合約條款	3	*	今年改為『持續改善政府採購合約之契約範本』
	A. 缺少責任上限及排除衍生性損害之條款	3		
	B. 契約範本間之不一致	3		
	C. 缺少雙語的招標文件及契約範本	5		
	D. 核子損害保險不足	3		
	5: 改善政府效率，簡化行政程序	4		
保險	1: 為利差損以及資本適足性問題尋求解套	3	*	今年改為『加強保險業財務能力之資訊透明度及其監理』
	2: 允許保險公司外幣投資得例外不適用國外投資限額規定	3		
	3: 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	3		
	4: 給予投資型保險商品免徵所得稅及遺產稅之稅賦優惠	4		
	5: 重新研議修正《勞工退休金條例》	3	*	今年改為『將勞工自願提繳退休金排除強制提繳有關規定之適用』
	6: 訂定長期再保險責任準備金釋出規範	2		
智慧財產權及授權	1: 更有效的監控走私及仿冒品之進口	4	*	今年改為『對仿冒品及走私品的進口採取更有效之管制』
	2: 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	3	*	今年改為『修正草案需要加強現行的智慧財產權法規』
	3: 加強智慧財產權案件的司法處理	4	*	今年改為『促進智慧財產權法院的運作』
	4: 將網路盜版行為列為公訴罪	4		
	5: 繼續打擊軟體盜版行為	3	*	今年改為『加強數位媒體環境下之著作權保護執行工作』
	6: 持續落實政府公部門採購正版商業軟體之政策	3	*	今年改為『公家機關應採取措施確保合法軟體的採購及使用』

醫療器材	1: 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		*	今年改成『調和國內醫療器材法規與國際法規接軌』
	A. 放寬《藥事法》第十八條醫療器材製造廠的定義	3		
	B. 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	3		
	C. 建立查驗登記變更事項的判定標準	4		
	D. 更新新醫材及高風險醫材之定義	4		
	2: 醫療器材之藥物廣告審查與管理應針對DTC產品			
	A. 定位DTC醫療器材	5		
	B. 廣告事前核准（pre-approval）之審查原則	5		
	C. 建立廠商/協會與主管機關公平公開的雙向定期溝通平台	5		
	3: 修改健保給付制度，提升台灣醫療服務競爭力		*	
	A. 合法化差額負擔制度，保障病患就醫選擇權	2		
	B. 在Tw-DRGs給付制度下，保障新醫療技術及新醫療器材的引進	4		
	C. 價量調查調價合理化及資訊透明化	4		
	4: 開放跨國企業於大陸廠製造之醫療器材進口	4	*	今年改成『解除跨國企業於中國大陸製造醫療器材進口禁令』
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	*	今年改成『提供脊骨神經醫學在台灣合法基礎』
其他 - 菸品	1: 重新考量統一安全防偽機制	3	*	今年改成『審慎考量菸品稅捐上漲對走私菸品問題的影響』
	2: 因應菸品健康福利捐之調整，建立「補徵」之法源依據	4		
	3: 政府不宜限制菸包上之敘述性文字	2		
	4: 菸品健康福利捐不宜納入營業稅稅基	5		
製藥	1: 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	4	*	今年改成『改革新藥核價政策以獎勵創新』
	2: 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	2		
	3: 強化上市後藥物品質規範以確保病患用藥品質的一致性	4	*	今年改成『加強藥品上市後變更核准的品質監測制度，以確保藥品品質之一致性』
	4: 實施專利連結和資料專屬權，加強智慧財產權保護	4	*	
	5: 落實實施醫藥分業 (SDP)	4	*	
不動產	1: 放寬港澳僑胞購買台灣不動產的相關法規	5		
	2: 開放陸資投資商用不動產	3	*	今年改成『允許大陸地區投資人取得及開發商用不動產』
	3: 檢視建物使用的相關法律規範，並設置單一商業登記窗口	4		
	4: 成立推動都市更新之非營利機構	4	*	今年改成『加速都市更新案件審查程序，並積極執行拆遷程序』
	5: 放寬外國廠商參與低於《政府採購協定》門檻金額之採購案	3		
零售	1: 制定與國際接軌的法規	4	*	今年改成『檢視並修訂不符現勢之商品標示規定』
	2: 加速審查並解除中國進口產品禁令	4	*	今年改成『加速審查並解除進口中國商品的限制』
	3: 改革化妝品法規管理架構	3	*	今年改成『改革化妝產品相關的規章制度』
稅務	1: 修正失衡的所得稅制結構	4	*	
	2: 針對移轉訂價金額之調增與調減給予一致性的稅務處理	4	*	今年改成『釐清集團企業移轉定價調整之核准原則，對調增或調減有一致處理標準』
	3: 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	4		
	4: 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	4	*	今年改成『修正對外商委託國內廠商「境內加工境外轉售」所產生利潤的課稅政策』
	5: 釐清非屬買賣之證券移轉行為是否應免證券交易稅	5		
	6: 釐清印花稅法有關承攬合約之定義	5		
	7: 解決因《中華民國來源所得認定原則》無法完全適用之問題	4	*	今年改成『對於中華民國來源所得認定原則之適用及其中貢獻度之認定，應有更明確的指引』
	8: 將已登記之境外基金之資本利得納歸國內所得	5		
科技	1: 增加對軟體、服務與知識產權之重視	2	*	今年改成『增加政府軟體與資訊服務之年度預算』『改進政府軟體採購之合約條款』
	2: 提供更多的補助及誘因，以鼓勵台灣再生能源產業的發展	3	*	
	3: 改善投資稅負抵減辦法案件之審核程序及效率	3	*	今年改成『持續改善「公司研究與發展支出適用投資抵減辦法」案件之審核程序及效率』
	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: 擁抱開放市場模式，創造革新的法規環境	4		
	2: 重新定位NCC以促進產業及經濟發展	3		
	3: 鬆綁外資投資電信與媒體產業之限制	4		
	4: 儘量減少或解除價格管制	4		
	5: 積極扶持創新技術與服務的的發展	3	*	今年改成『建立新的審批制度，加快新技術和服務引進台灣市場』
	6: 保護影視內容之智慧財產權	3		
交通運輸委員會 - 快遞貨物業	1: 打造健全的法規環境，以促進快遞貨運業的發展	3	*	今年改成『建立快遞貨運通關風險管理分級的法規環境，促進快遞貨運業發展』
	2: 將快遞貨運業的需求，納入桃園航空城建設之整體計畫	3		
交通運輸委員會 - 汽車業	1: 擴大對潔淨車輛的獎勵措施	3	*	今年改成『加速清潔、環保暨安全車輛導入台灣市場』
	2: 汰換老舊高污染車輛	3	*	
	3: 幫助車輛業者開拓區域競爭力	4		
	4: 促進車輛法規及認證制度與國際接軌	2	*	
交通運輸委員會 - 海運業	1: 持續朝減輕航運業負擔的方向努力，並降低管理費	4	*	今年改成『持續為航運業解套，並降低管理費用』
	2: 提供獎勵，以刺激航運業成長	4	*	今年改成『提供誘因，刺激航運業成長』
旅遊與觀光	1: 加強政府行銷規劃，推動台灣成為國際觀光旅遊目的地	3	*	
	2: 加強旅遊產業人才的培訓和發展	3	*	
	3: 升等觀光局的位階，並重新界定其目標和使命	3	*	

註：*號代表該議題於《2011台灣白皮書》中再度提出　　研究彙整: 王先棠／於慧堅　更新日期: 2011年5月27日

Note: * indicates the issue has been raised again in 2011 *White Paper*
by Andrew Wang & Angela Yu　LAST UPDATED: May 27, 2011

For Early Action 宜優先解決議題

Although many of the issues raised in the *Taiwan White Paper* require medium- or long-range consideration, many others should be achievable in the relatively short term. Below we have chosen one issue from each committee position paper that we hope could be marked as "solved" when AmCham does its mid-cycle review toward the end of this year.

雖然美國商會《台灣白皮書》中不少議題必須以中、長期的眼光審視及處理，沒有立竿見影的解決之道，但仍有許多《白皮書》議題應該能在短期之內解決。我們在此分別列出商會每個委員會認為短期內應可解決的一項議題，期盼今年稍晚重新檢視有關單位處理議題的情形時，能將以下議題歸類為「已解決」。

Agro-Chemical 農化委員會

Clarify the rules and procedures for new product registration (Issue 1, Council of Agriculture).

農藥登記制度應更清楚有效（議題一／農業委員會）。

Asset Management 資產管理委員會

Relax regulatory restrictions by permitting full delegation of portfolio management to/by a third party, double hatting for SITE fund management, and concurrent management of segregated accounts (Issue 2, Financial Supervisory Commission).

准許將投信運用基金資產複委任與第三人／或接受基金投資業務之複委任；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；准許同時管理獨立帳戶（議題二／金融監督管理委員會）

Banking 銀行委員會

Exercise caution in requiring the relocation of data centers to Taiwan (Issue 4, Financial Supervisory Commission).

審慎評估跨國銀行境外資訊中心遷台是否必要，並考量可能之負面衝擊（議題四／金融監督管理委員會）。

Capital Markets 資本市場委員會

Allow personnel cross-registration and business outsourcing/insourcing for related financial industries (Issue 1.2, Financial Supervisory Commission).

允許人員跨業登記及跨金融產業業務外包／內包（議題一之二／金融監督管理委員會）。

Chemical Manufacturers 化學製造商委員會

Approve the use of Remote Operation Centers for on-site air separation units (Issue 4, Industrial Development Bureau of Ministry of Economic Affairs, Council of Labor Affairs).

同意現場供應空氣分離廠遠端操控中心系統之運作（議題四／經濟部工業局、勞工委員會）。

Education & Training 教育及訓練委員會

Allow Taiwanese schools to partner with recognized foreign institutions to create joint-degree graduate programs, recognizing credits and degrees earned regardless of the location and duration of the study (Issue 1, Ministry of Education).

允許並鼓勵台灣學校與教育部認可之美國或其他外國教育機構合作，設立雙聯制研究所課程，並且不對學生參與學習之地理位置與時間長短做特定限制，認可學生所取得之學分與學位（議題一／教育部）。

Human Resources 人力資源委員會

In the draft amendment to the Labor Standards Law, exempt senior professional employees from the overtime hours and pay provisions (Issue 2, Council of Labor Affairs, Legislative Yuan).

《勞動基準法》近期修法，應使部份高階高薪專業員工得豁免於現行《勞動基準法》對於延長工時及加班費之規定（議題二／勞工委員會、立法院）。

Infrastructure 基礎建設委員會

Reconsider the "Energy Development Guideline" (Issue 3, Ministry of Economic Affairs).

重新考量《能源發展綱要》（議題三／經濟部）。

Insurance 保險委員會

Remove restrictions on offering annuity products to Taiwan's workforce on a "voluntary" basis (Issue 3, Council of Labor Affairs).

對於壽險業提供台灣勞工適合的年金商品存在之重大障礙，就勞工自願提撥的部份，予以排除（議題三／勞工委員會）。

Intellectual Property & Licensing　智慧財產權與授權委員會

In the draft amendment to the Trademark Law, maintain the minimum penalty for infringement (Issue 3.2, Intellectual Property Office of MOEA, Legislative Yuan).

在《商標法》修正草案中，保持對於商標侵害之最低損害賠償下限規定（議題三之二／經濟部智慧財產局、立法院）。

Medical Devices　醫療器材委員會

Accept the company with legal liability for the product and responsibility for post-market surveillance as the "legal manufacturer" (Issue 1.1, Food & Drug Administration of Department of Health).

接受負有法律責任及產品上市後監控責任的製造廠（legal manufacturer）為產品許可證登記及符合醫療器材優良製造規範登記的製造廠（議題一之一／衛生署食品藥物管理局）。

Others – Chiropractic　其他－脊骨神經醫學

Begin a new dialogue on legitimization of the chiropractic profession in Taiwan (Issue 1, Department of Health).

針對建立脊骨神經醫學在台灣之合法基礎相關議題，與脊骨神經醫學專業人員充分溝通，開啟新的對話（議題一／衛生署）。

Others – Tobacco　其他－菸品

Refrain from amending the law to require that graphic health warnings cover 90% of the area of the container (Issue 2, Legislative Yuan).

《菸害防制法》修正草案中，不宜包含警示圖文面積必須占菸品容器90%之規定（議題二／立法院）。

Pharmaceutical　製藥委員會

End the generic price increase policy, including the requests for DMF, PIC/S or GMP documents from originators (Issue 1, Bureau of National Health Insurance of Department of Health).

停止現行導致學名藥健保價調高之政策，並取消要求各原開發藥廠檢送藥品DMF、PIC/S、GMP等相關資料之規定（議題一／衛生署中央健康保險局）。

Real Estate　不動產委員會

Stipulate a total investment quota for REIT funds (Issue 1.1, Financial Supervisory Commission).

訂定不動產投資信託基金（REIT）總發行額度上限（議題一之一／金融監督管理委員會）。

Retail　零售委員會

Revise out-dated labeling requirements for food multipacks, ice cream, and sock multipacks (Issue 1, Ministry of Economic Affairs and TFDA of Department of Health).

修訂不符現勢之商品標示規定，對象包括多包裝食品、冰淇淋、量販包襪類商品等（議題一／經濟部、衛生署食品藥物管理局）。

Sustainable Development　永續發展委員會

Recognize pure virgin fiber products like facial tissue, napkins, and kitchen towels in the Green Mark system (Issue 1, Environmental Protection Administration).

將經國際永續林木系統認證之原生紙漿製面紙、餐巾紙及廚房紙巾等產品類別，列入環保標章規格標準（議題一／環境保護署）。

Tax　稅務委員會

Provide clear instructions for determining ROC-sourced income and the percentage of contribution (Issue 2, Ministry of Finance).

對於中華民國來源所得認定原則之適用及其中貢獻度之認定，應有更明確的指引(議題二／財政部)。

Technology　科技委員會

Reduce the withholding tax for foreign entities supplying products or services to local entities (Issue 2, Ministry of Finance).

調降外國事業向本地公司提供產品或服務之營所稅（議題二／財政部）。

Telecommunications & Media　電信及媒體委員會

Implement a "Spectrum Release Roadmap" (Issue 2-A, National Communications Commission).

政府應擬定、公佈並逐年更新「頻譜釋出藍圖」（議題二之Ａ／國家通訊傳播委員會）。

Transportation　交通運輸委員會

Remove overly restrictive regulations on customs clearance for express cargo (Issue 1, Ministry of Finance).

現行快遞貨物通關法規已無法適用於所有業者，宜減少限制、增加彈性（議題一／財政部）。

Travel & Tourism　旅遊與觀光委員會

Devise a new travel theme (Issue 1-A, Tourism Bureau of Ministry of Transportation and Communications).

為台灣制定一個新的觀光主題，以更鮮明的形象吸引國際旅客（議題一之Ａ／交通部觀光局）。

AGRO-CHEMICAL

The Agro-Chemical Committee wishes to express its appreciation to the Bureau of Animal and Plant Health Inspection and Quarantine (BAPHIQ) of the Council of Agriculture (COA) for its implementation of crop-grouping regulations. Since coming into effect on March 31, 2009, the initiative has allowed growers of diversified crops a better and wider choice of appropriate crop protection products. The new crop-grouping process also provides farmers with greater flexibility in producing food crops in line with the country's Maximum Residue Level (MRL) standards and in ensuring that the crops produced are safe for consumption. The Committee commends both BAPHIQ and the Taiwan Agricultural Chemicals and Toxic Substances Research Institute (TACTRI) for their continuing efforts to raise the quality and safety standards of agrochemicals produced or distributed in this country.

While the COA has made some significant achievements in terms of food production, however, the Committee has been disappointed with the state of progress on two key issues raised in the *2010 White Paper*:

1. The new registration rules, and
2. The need for a stricter crackdown on retailers of illegal pesticides.

The Committee believes that our farmers need new technologies and innovative crop protection products to improve their productivity and better their livelihood. Clear and effective registration rules are critical to ensuring that new and innovative crop-protection products can be brought into Taiwan at reasonable cost and in timely fashion.

Regarding illegal pesticides, this issue has been brought up for many years. While some progress has been made, the Committee is dismayed that more effective action has not been taken against unscrupulous retailers who continue to be actively engaged in the distribution of non-registered agro-chemicals in the key vegetable-growing areas of Changhua and Yunlin Counties.

Issue 1: Adopt clear and effective rules governing new product registration.

The Committee appreciates the authorities' decision to implement crop grouping within the new registration rules, and we thank BAPHIQ for arranging for the Committee to participate in the task force setting up the new system. Under the previous registration process, bringing new technology into Taiwan was a long and costly undertaking. The new crop-grouping process will encourage multinational companies to introduce innovative, cost-effective, and safer active ingredients (AIs) into Taiwan and allow farmers better accessibility to new technologies. Although we commend the overall direction of adopting crop grouping, however, we are disappointed with the new registration rules as a whole, as many of the Committee's views were not taken into consideration in formulating the final version.

We have three primary concerns with the current registration process:

1. The procedure remains highly ambiguous. The guideline for drafting the trial protocol is overly complex and no clear official examples are provided. In addition, although two overseas residue/efficacy reports are allowed among the three residue/efficacy trials that are required, it is uncertain whether these reports can be accepted by the Pesticide Committee, as the standard requirements for trial reports have not yet been established.
2. The process is too costly for the Taiwan market environment. If all three residue/efficacy trials must be done locally, the estimated total cost per active ingredient is about NT$2.2–$2.5 million, seven times more than the old rate (NT$310,000–$350,000). Based on Taiwan's market potential, the appropriate cost per active ingredient should be NT$500,000-$600,000.
3. The rule on crop grouping for new registration is not linked to the Maximum Residue Levels (MRLs) set up by the Department of Health for individual crops.

The Committee urges the relevant authorities to review and revise the new registration rules to make them simpler, clearer, more effective, and more affordable for crop-protection companies within the context of the Taiwan market.

Issue 2: Shut down unscrupulous retailers of illegal pesticides.

The presence of unproven and potentially toxic agrochemicals in the key vegetable-growing areas of Changhua and Yunlin Counties is a major food safety concern. Such illegal products are distributed through unscrupulous retailers who aim to make huge profits without any regard for the quality and safety of crops produced by the farmers. While several arrests have been made in the past, the number of prosecutions has been miniscule compared with the volume of illegal pesticides being traded. In many instances, the violators were let off with minimum penalties.

The sheer volume of illegal pesticides in the market and the channels by which they are being distributed pose severe challenges to food safety. These illegal products are untested and represent a serious potential health risk to both consumers and farmers. Further, they create 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 access to new and innovative technologies.

While the Committee acknowledges the COA's past endeavors to combat this 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 unprincipled retailers engaged in this illegal activity. We propose that BAPHIQ:

1). Step up its enforcement by conducting regular checks on suspected retailers in central Taiwan.
2). Strengthen its cooperation with local-government authorities and revoke the licenses of retailers found guilty of distributing illegal pesticides.
3). Intensify the educational and advisory services to farmers in central Taiwan with special focus on the problem of illegal pesticides.

The COA has made continuous efforts and allocated substantial resources to raise the standards of food safety in Taiwan. It would be most unfortunate if those efforts were to be in vain, while the rampant sale and use of illegal and potentially hazardous pesticides goes on unabated.

The Committee believes that adopting the above proposals will greatly help to speed up the introduction of new technologies into Taiwan, reduce the illegal trade, and improve food production, thus improving the welfare of the many small farmers in this country.

ASSET MANAGEMENT

Taiwan is a highly regulated country with strict financial laws and rules to prevent money laundering. The Financial Action Task Force (FATF) is an international body tasked to set standards and promote policies to combat money laundering and terrorist financing. Although Taiwan is not a member of FATF due to certain political/diplomatic obstacles, Taiwan was previously recognized as a FATF-equivalent country by Luxembourg and was subject to the same anti-money-laundering (AML) requirements as other jurisdictions that are members of FATF.

Since 2009, Taiwan has no longer been treated as a FATF-equivalent country because of regulatory changes to the AML regime in Luxembourg. Distributors of Luxembourg-domiciled funds in Taiwan are therefore forced to comply with stricter AML requirements, such as more complex procedures for new subscriptions and the opening of new accounts, which have significantly impacted the distribution of Luxembourg-domiciled funds in Taiwan.

The FSC is negotiating with Luxembourg's Commission de Surveillance du Secteur Financier (CSSF) to sign a second-stage Memorandum of Understanding. We believe the AML issue could be properly addressed in the MOU to enable Taiwan to resume its previous position as a FATF-equivalent country, especially for fund distribution purposes. Taiwan is a member of the Egmont Group, which was set up mainly for financial information exchange based on FATF's recommendations. Taiwan is also the member of the Asia/Pacific Group on Money Laundering, a FATF regional body. Moreover, Taiwan has had stringent AML laws on the books for many years, and based upon those laws each financial sector has also established its own AML implementation measures. The Ministry of Justice (MOJ) is the competent authority in Taiwan to enforce AML laws, and any suspicious cases will be reported to the MOJ for further investigation. For all of the above-mentioned reasons, we believe Taiwan is fully qualified to be treated as a FATF-equivalent country.

Issue 1: Accelerate the signing of a Stage II MOU with Luxembourg's CSSF.

The FSC last year signed a general purpose (Stage I) MOU with its Luxembourg counterpart, the CSSF, establishing the basis for the exchange of general financial supervisory information between the two jurisdictions. The Committee urges the FSC to continue coordinating with the CSSF to accelerate the adoption of a mutual recognition of investment funds (Stage II of the MOU), the result of which would be to ease the position of Luxembourg-domiciled funds with regard to the following regulatory hurdles in Taiwan:

A. Qualifications of Offshore Funds.

(1) One-year track record. Under current regulations, offshore funds either especially 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 approval by the FSC for exemption 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 Stage II MOU would designate Luxembourg as an FSC-recognized jurisdiction, thus qualifying Luxembourg-domiciled funds as eligible for the waiver.

(2) Derivatives limit. We recommend that the Stage II MOU include a provision for each side to adopt and recognize the financial supervisory regime 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 of 40% of the net asset value of the fund 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 a Stage II MOU could 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 officially reinstate a risk-based approach). If intermediaries are requested to comply with this disclosure requirement, it would have a huge impact on Luxembourg-domiciled funds distributed in Taiwan because it conflicts with Taiwan laws.

The Stage II MOU is anticipated to 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.

Considering that Luxembourg-domiciled funds account for approximately 70% of the offshore fund market in Taiwan, completing the Stage II MOU between the two jurisdictions would be a major step forward in facilitating the growth of this business sector.

Issue 2: Relax regulatory restrictions to increase Taiwan's attractiveness to world-class talent.

One of the Committee's goals is to foster the growth and development of the local Securities Investment Trust Enterprise (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 work in 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. **Permit full delegation of portfolio management to/by a third party.** For many years, a SITE was not allowed to delegate onshore-fund investment business to a third party or vice versa (that is, to be fully delegated by a third-party international fund company). But on December 21, 2009, the FSC issued a ruling allowing a SITE to delegate the onshore 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 not only to third parties within Asia and Oceania but also full delegation by third-party international fund companies, so as to increase the global opportunities available to onshore funds as well as to broaden the available business scope for SITEs.
2. **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 as 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.
3. **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.

Issue 3: Further relax China-investment restrictions.

Recently the authorities relaxed the 10% limit on a Taiwanese onshore fund's investment in securities listed in China (also known as China A/B shares) by raising the ceiling to 30%. While the Committee is pleased by this positive development, it continues to be concerned that the 10% limit remains in place for offshore funds. We understand the SFB's recent intention to cool the offshore fund market, but do not believe that treating onshore and offshore funds differently with respect to their China content is a good approach. Currently only a very few companies qualify for QFII (Qualified Foreign Institutional Investor) quotas, meaning that the demand for China investment opportunities will continue to seriously outstrip supply and investors will continue to go to Hong Kong and Singapore to make these types of investments if they cannot do so in Taiwan.

Issue 4: Allow more product selections for funds beyond the existing investment boundaries of securities only.

During the past few years, there has been a growing international trend for the diversification of fund investments into various targets such as commodities, soft and hard materials, currencies, etc., beyond the traditional securities targets of equities and bonds. It is the responsibility of the FSC to help investors enjoy access to better investment vehicles that reduce their risks while at the same time serving their investment needs. Mutual funds have been a well-developed mechanism to assist investors in diversifying their risks in a professional way. By investing through funds, whether they are equities, bonds, commodities, materials, or currencies, the related risks and volatilities can be greatly mitigated compared with direct investment.

According to existing Taiwan regulations, however, funds are limited to investing in equities or bonds only. As this concept lags far behind the global consensus on fund investment, we urge the FSC to respond to the needs of investors by amending existing rules to broaden the definition of permissible investment by funds. In addition, we would also like to point that holding a local futures license should not be a requirement in this regard, as the funds in question are offshore funds that are managed by offshore portfolio managers, not by a local team.

Besides the earlier-mentioned objective of creating a more attractive environment for international talent, broadening the fund definition would have these additional far-reaching benefits:

1) By investing through funds, local investors would face far lower risks than if they invested directly in commodities, materials, currencies, etc.
2) The change would align Taiwan with the rest of the world regarding fund definition.
3) Widening the selection of product available in Taiwan, rather than forcing investors to seek them overseas, would be in line with the goal of developing Taiwan into a regional financial center.

The Asset Management Committee supports the FSC's efforts to embrace new markets and new needs, and appreciates the FSC's willingness to depart from the status quo when necessary to make improvements.

BANKING

The Banking Committee believes that the enactment of relevant regulations following last year's signing of the Economic Cooperation Framework Agreement (ECFA) with China will significantly enhance the development of the financial industry in Taiwan and benefit Taiwan's overall economy by furthering cooperation and interaction across the Taiwan Strait. We also appreciate that the PRC government is willing to open up cross-border RMB currency flows, and encourage the Financial Supervisory Commission (FSC) to take advantage of this opportunity by boosting the development of RMB-denominated business in Taiwan.

The Committee recognizes the steps taken by the FSC over the past year to address issues covered in last year's *White Paper* – in particular its role in convincing the Legislative Yuan not to impose the thin capitalization tax rules on banks that had been proposed. However, we consider that there is still room for progress as several significant issues remain unresolved.

For example, while the Committee notes that the offshore-structured-products (OSP) rules have been relaxed slightly for professional investors, little progress has been made in rationalizing the OSP regulations and supporting the growth of the wealth management and trust businesses. We hope the FSC will promote a more consistent approval process across industry associations.

We acknowledge that the banking industry in Taiwan has weathered the global financial crisis well, and recognize the FSC's contribution to this success. The Committee encourages the FSC to make best use of this strength in Taiwan's banking industry to accelerate the development of the banking sector. The Committee believes that the FSC should seize this opportunity to position Taiwan as a regional financial center, and looks forward to working with the FSC to close the competitive gap between Taiwan and its peer markets in Asia.

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

Issue 1. Review the "Regulations Governing Offshore Structured Products" and its operating rules, as well as the product approval process.

The "Regulations Governing Offshore Structured Products" and its operating rules have been promulgated for a year and a half. The Committee appreciates that the FSC has revised certain requirements for offshore structured products (OSP) aimed at professional investors. However, there has been little change to the rules and the tedious approval process for the issuance of OSPs to non-professional investors, even though the risk-disclosure requirements and selling process have been greatly strengthened and the capital adequacy of most financial institutions has been further enhanced since the financial crisis. The current regulatory regime not only prevents investors from allocating their assets as they desire, but also hampers the growth of Taiwan's financial markets. The Committee therefore recommends that regulators revise the Regulations along the following lines:

1. ***Remove the requirements that provide no additional protection but only add financial and operating costs that are not in the interest of investors:***
   - The double rating on the issuer/guarantor and the note itself. Rating on the note should not be necessary unless it is a subordinated note.
   - The mandatory cancellation of the note issuance upon rating downgrade. This decision should be at the discretion of investors.
   - The need for legal opinions stating that investor protection at the places of registration of the OSP issuer and the product are comparable to that offered in Taiwan, and that the transaction conditions, if any, applicable in such jurisdictions are also applicable in Taiwan. These requirements do not provide any real additional protection to investors in Taiwan.
2. ***Relax the fee caps.*** Given the tedious approval and selling process, and the low fee (especially for short-tenor OSPs), it is not economically viable to issue/sell short-tenor OSPs in the Taiwan market. The shortage of such notes in the market has prompted investors to invest in bond funds, which bring higher costs to investors without necessarily lowering the risks, as an alternative to foreign-currency time deposits for diversification and yield enhancements.
3. ***Standardize the product approval process:***
   - The approval standards, process, and documents required across industry associations and review committees should be made uniform, to reduce the time and resources needed for the product providers, as well as the industry associations and review committees, in amending documents and engaging in the review process.
   - The approval/rejection criteria should focus on the protection of investor interests and investment risks instead of minor document defects that could be amended quickly and have little impact on investor interests. The requests for technical details in the financial models should be limited to those that have direct and material impact on client interests.
   - More than 20 issues of OSPs for non-professional investors have taken place in the market, all bearing the same structure – principal and interest protected, with underlying assets on stock exchange-linked/announced indices, the movement of which has low impact on the pay-off of the note. Such products have low complexity and low risk, and we therefore suggest that for additional such products issued by the same issuer, an expedited approval process should be adopted.
4. ***Simplify the Reporting/Public Notice process:***
   - To improve market efficiency, the obligation to report the amount of daily and monthly note subscriptions and outstanding redemptions could be accomplished by allowing the data to be directly uploaded to the Taiwan Depository and Clearing Corp. (TDCC) by distributors instead of being provided by distributors to the master agent/issuer's local branch for further uploading to the TDCC.
   - For professional-investor products, the requirement for public announcement and TDCC reporting should be removed as unnecessary.

Issue 2. Permit a foreign bank's subsidiary or branch to enter into intra-group placements with its parent bank, branches of the parent bank, or other affiliates.

The FSC has recently expressed its concern about intra-group placement between the subsidiary or branch of a foreign bank in Taiwan and its parent bank and other affiliates. The Committee urges the FSC to clarify that such intra-group placement is by nature interbank placement, not credit extension. It should refer to the legislation adopted by other Asian countries in applying proper principles of supervisory management to this matter.

1. ***Considering that offshore placement between a foreign bank's subsidiary/branch and its parent bank and other affiliates should be categorized as inter-bank placement and not credit extension, it should not be subject to the single lending limit under the Banking Act.***
   - It is not proper to refer to the single lending limit when setting a placement limit. Offshore placement between a foreign bank's subsidiary/branch and its parent bank is for liquidity fund management and should be categorized as inter-bank placement, not credit extension. In its reply to the 2010 European Chamber of Commerce in Taipei position paper, the Central Bank indicated that foreign currency placement, either for intra-group placement from the local subsidiary of a foreign bank to its branch in Taiwan or to its offshore branches, currently should be deemed as an unsecured placement and is not subject to Article 32 of the Banking Act.
   - Clause 4 of the "Enforcement Rules of the Banking Act" provides an exemption to Articles 32 and 33 of the Banking Act for offshore financial institutions in

which local banks have a shareholding equal to 50% or more. Under the same legislative spirit, locally incorporated bank subsidiaries of foreign banks with shareholdings equal to 50% or more should be excluded from the regulations on "Enterprises" referred to in the Banking Act. They should therefore be exempt from the collateralization requirement or single counterparty limit.

Hong Kong and Singapore provide regulatory exemptions in which offshore placements between a foreign bank's subsidiary or branch and its parent bank and other affiliates are not subject to the collateralization requirement or single counterparty limit.

2. ***Consider the regulatory practices of other Asian countries when adopting supervisory management principles.***

Most Asian countries, including Japan, India, China, Indonesia, and Malaysia, do not set limits on intra-group placement between a foreign bank's subsidiary/branch and its parent bank and other affiliates. Hong Kong and Singapore enter into separate supervisory agreements with each bank and only impose limits on the bank subsidiaries' conduct of consumer banking business. The placement limits all exceed multiples of net worth. No placement limits are set for bank branches conducting corporate banking business.

Australia sets an industry-wide, large-exposure limit, but only applies it to subsidiaries conducting consumer banking business, while branches conducting corporate banking business are not regulated. Unlike Hong Kong, Singapore, and Taiwan, which all have surplus foreign currency liquidity, Australia is not a major foreign currency provider and is not one of Taiwan's major competitors in the financial market. Its considerations in limit setting are therefore different from Taiwan's.

More relevant for Taiwan to learn from are the regulatory approaches adopted by Hong Kong and Singapore, which are Taiwan's major competitors in the Asian financial market. Their competent authorities in general consider the following principles in adopting regulatory practices on placement:

- Placement between a foreign bank's subsidiary and its parent bank within the limits of the local net worth should be deemed as a secured placement. If any credit or financial event occurs, the subsidiary can exercise its security rights over the placement amount by deducting the placement from the net worth. Therefore, placement within the scope of net worth should not be restricted.
- The foreign-currency deposits of foreign banks mainly come from the working capital of multinational enterprises. These corporate customers at the same time obtain loans or credit facilities from the banks and therefore maintain both loan and deposit relationships. If any default occurs, the banks are able to set off or exercise security rights over such deposits. This is the reason most Asian countries do not set limits for foreign banks whose major business is corporate banking. The placement limit should therefore include the actual amount of deposits of corporate customers who maintain both loan and credit relationships.
- Placement between financial institutions is in principle based on the overall risk evaluation of the counterpart and is generally executed on an unsecured basis. Placement should therefore be allowed on an unsecured basis above the amount of net worth. Hong Kong and Singapore most likely used this rationale in setting the placement limit as exceeding the value of net worth.

A few foreign banks have transformed their branches into subsidiaries in the past two years and have remitted huge amounts of capital from their parent banks in the subsidiarization process. The capital structure and solvency capability of subsidiaries are much stronger than that of branches, thereby providing greater protection to depositors. Setting placement limits even less than local net worth would imply that Taiwan is imposing more restrictions on how foreign bank's subsidiaries utilize their capital and conduct their business in Taiwan. It would have negative impact on future foreign investment. Rather than bring more capital into Taiwan for subsidiarization, foreign banks would probably choose to maintain their branch status. That would reduce the capital requirements and restrictions imposed on them, but would also provide less protection to depositors.

Furthermore, if too strict a limit is set, the existing funding arrangements of Taiwan's multinational enterprises, which utilize the platforms of foreign banks in Taiwan to centrally manage their global funds, would be greatly affected. Considering that Hong Kong and Singapore do not impose any placement limits on corporate banking business, Taiwan-based multinational enterprises would be forced to move their funding management centers – currently located with foreign banks in Taiwan – to foreign banks in other nearby countries in order to continue utilizing their global banking networks. This trend would affect the long-term development of Taiwan's banking industry, which has been supporting Taiwan multinational enterprises' growth and expansion into global markets for the past few decades. It would also impact the longstanding plans of Taiwan multinational enterprises to maintain Taiwan as their base country to manage their working capital from global operations.

Currently the Taiwan market has excess foreign-currency funds of more than US$110 billion. Most foreign-currency fund providers rely on the foreign bank's global networks to enable them to utilize that excess liquidity in international markets. If the limit is set too strictly, excessive foreign-currency liquidity would remain in Taiwan, affecting supply and demand and the price equilibrium in the foreign-currency market. To utilize the excess liquidity, foreign banks would be forced to aggressively engage in price competition, which would further compress the already thin interest margin in the Taiwan banking industry.

Issue 3: Open RMB-related financial service businesses.

Since the signing of ECFA, cross-Strait economic ties have grown even closer. In 2010, Taiwan-PRC bilateral trade reached about US$113 billion and the amount of new investment by Taiwan enterprises in the PRC came to approximately US$14.8 billion. Cross-Strait remittances amounted to US$441 billion. Without doubt, the PRC has become one of Taiwan's most important trading partners and its largest export market. For the sake of minimizing foreign-exchange risk and enhancing trade convenience, enterprises have a pressing need for cross-Strait Renminbi (RMB)-related financial services, such as the cross-border trade settlement, foreign exchange, deposit, and credit-extension businesses.

The Chinese authorities have taken a few significant steps to speed up the RMB's internationalization. They plan to expand the pilot area for cross-border RMB trade settlement to the whole country, for example, and the People's Bank of China is also continuing efforts to enter into bilateral currency swap agreements with the central banks of various countries. Those recent initiatives suggest that China has made significant progress toward enabling the RMB to take off as an international currency used for cross-border trade closures. Banks in China conducted more than 500 billion RMB worth of cross-border RMB trade closure in 2010, a huge increase of 49 times the amount in 2009. It is expected that within the next five years, nearly half of the cross border trade between China and its trading partners in emerging markets will be settled in RMB. In view of this overall trend, the Taiwan government should proactively consider feasible solutions to allow Taiwan enterprises to engage in RMB cross-border trade settlements through Taiwan financial institutions.

Among the major financial markets, Hong Kong has aggressively positioned itself as a global offshore RMB hub. Other major financial centers such as London and Singapore are also aiming to tap the huge potential of RMB business and would like to become major offshore RMB hubs. If Taiwan financial institutions are unable to engage in RMB-related business, Taiwan companies and individuals will have no choice but to engage in RMB cross-border trade closure and other RMB-related business through other financial markets, causing a significant capital outflow to those other markets.

Currently, Taiwan companies are using dollar-denominated balance sheets to engage in cross-Strait trade. Due to the recent fluctuation of the U.S. dollar exchange rate, Taiwan companies are facing growing exchange-rate risk stemming from the cross-Strait trade. Although Taiwan companies may settle cross-Strait trade in RMB through financial institutions in Hong Kong and China, this would be a departure from those companies' general practice, which is to transfer overseas funds back to the Offshore Banking Unit (OBU) of a Taiwan bank as their treasury and cash dispatching center.

The purpose of establishing OBUs was to make Taiwan financial institutions more competitive in the Asia Pacific region and to pave the way for Taiwan to become a regional financial center. Since the start of cross-Strait financial liberalization, OBUs have played an important role in cross-Strait trading and in acting as capital dispatching and treasury centers for offshore Taiwanese companies in China. But in the current situation, it is very likely that the OBUs will be marginalized if they are not allowed to engage in RMB business, with Hong Kong and Chinese financial institutions gradually taking their place in the conduct of cross-Strait business. In order to help Taiwan companies keep Taiwan as their base for capital dispatching and as a treasury center, to reduce exchange-rate risk in the cross-Strait trade, to enhance the convenience of trading activity, and to prevent capital outflow to other financial markets, the Taiwan government should proactively consider allowing Taiwan OBUs to engage in RMB settlement for cross-border trade.

Another factor is that the opening of Taiwan to Chinese tourists has led to an inflow of Yuan into Taiwan, creating a strong need for currency clearing and related financial services. In addition, public depositors in Taiwan also have an interest in holding Yuan, given the expectation of currency appreciation. Taiwan depositors, however, may now only open RMB accounts in Hong Kong or the PRC. Alternatively, they could hold RMB currencies in cash. If onshore RMB financial services were allowed, private holdings in RMB could be directed into the financial system.

We strongly recommend that the Taiwan authorities permit Taiwan financial institutions to launch RMB-related business services in stages. In the short run, the authorities could allow OBUs to conduct RMB settlement business for cross-border trading on the condition that such business does not involve TWD/RMB conversion. Further, before Taiwan enters into a bilateral currency-swap agreement with China, OBUs should be permitted to open RMB interbank accounts with financial institutions in China, Hong Kong, or other third markets for offshore RMB clearance. Such arrangements would mitigate any potential negative impact on the domestic money market and financial security. In the long run, financial institutions could gradually engage in other RMB-related business, such as remittances, deposits, credit extension, investment, wealth management, foreign exchange, and financial derivatives. In this way, Taiwan financial institutions would be able to remain competitive by having a direct RMB clearing platform for dealing with RMB-related business. We understand the rule-making process is on-going and we look forward to new regulations for RMB-related financial services.

Issue 4. Exercise caution in requiring the relocation of data centers to Taiwan.

The FSC recently began to collect and evaluate information covering Offshore Data Centers (either regional or global) owned and operated by multinational banks that service Taiwan clients through their locally established banking subsidiaries. The FSC also requested that these local banking subsidiaries estimate the alternative costs associated

with building and operating local data centers to service their clients exclusively from onshore data sources. It appears that the FSC is assessing the feasibility of requiring the multinational banks to relocate all or most of their already established Offshore Data Centers back to Taiwan.

While we understand that a consensus has yet to be reached on the final policy requirement, the Committee would like to present our views on the subject and recommend alternative regulatory and oversight mechanisms.

Although we fully appreciate that the FSC's motivation in considering this policy may be grounded in a sincere desire to enhance the privacy, information security, and/or business continuity necessary to protect Taiwan customer data transmitted overseas to foreign data centers, we are gravely concerned that this regulatory intervention is likely to lead to unintended adverse consequences – such as incremental costs and IT risks – with no corresponding benefit for Taiwan consumers, since the multinational banks already manage efficient and well-protected centralized data operations, even if located offshore:

- First and foremost, adding a local data center to address sovereignty or other concerns, without valid economic justification, not only would undercut long-established multinational IT data/resource management strategies that promote centralization to leverage natural economies of scale, but also reverse the current global trend toward cloud computing. It would even contradict the Taiwan government's stated policy of reducing its carbon footprint.
- Second, increased restrictions on how multinational banks conduct their business would not only increase their operating costs in Taiwan significantly, but also introduce an element of regulatory unpredictability that could undermine investor confidence in Taiwan as a rational and open business operating environment. For the past few years, the largest amount of foreign investment coming into Taiwan has gone into the financial sector. Requiring data centers to relocate back to Taiwan, effectively reversing longstanding acceptance of multinational bank practices with respect to centralized data processing, would seriously raise investors' concerns about unpredictability and inconsistency.
- Third, relocating well-established regional/global data centers that are already operating efficiently is not only counterproductive, but actually diverts bank resources and managerial focus away from investment initiatives that could otherwise result in even more job opportunities in Taiwan. Such relocation could easily require an initial investment of several billion NT dollars, along with annual recurring costs totaling over NT$1 billion. In contrast, if multinational banks are free to focus instead on product and distribution-channel upgrades that increase their local sales and servicing capabilities, the potential for expanding local employment would be far greater than building highly automated data centers. Competing for a share of the ever-shrinking global data center employment pie would be far less beneficial than building a bigger pie for local banking financial services.
- Fourth, building superfluous data centers actually increases information security risk by adding unnecessary potential points for data compromise. It would also undercut efficient regulatory supervision by multiplying the number of international venues that all country regulators would need to cover in the future. If multinational banks are forced to build smaller-scale data centers either within Taiwan or across an ever wider set of multiple country venues to satisfy economically inefficient demands, this burden inevitably erodes their ability to invest in necessarily comprehensive risk-management frameworks that only make sense for larger, more viable centralized data operations. The result would be to increase the level of in-country information security risk as both banks and their regulators struggle to cover more venues, while fewer and fewer venues offer the operational scale necessary to build and maintain world-class expertise.

To counter the many undesirable consequences associated with relocating data centers back to Taiwan, while still addressing the compelling need to provide quality data- center control and regulatory supervision, we believe that the most effective solution involves cross-border regulatory cooperation to build and share best practices. This approach would involve shared audits and global/regional (rather than country-centric) data center supervisory guidelines. Moreover, the banks and local regulators need to work together not only to enhance the quality of information security risk management, but also to increase the relevance of their cross-border audits so that they address mutual needs.

Across most Asia Pacific jurisdictions and G20 countries, banking industry standards, rules and regulations, as well as market practices covering data center operations essentially match those currently implemented in Taiwan as regulated by the FSC and its related departments. Almost all regional regulators permit multinational banks to determine their choice of data center location based upon their natural business footprint and operating model. We are aware of exceptions only in China and Korea, which impose certain restrictions on financial institutions for the transfer of information, data processing, and storage.

However, according to the U.S.-Korea Free Trade Agreement (KORUS FTA) signed on June 30, 2007: "Each Party shall permit a financial institution of the other Party to transfer information in electronic or other form, into and out of its territory, for data processing where such processing is required in the ordinary course of business of the institution. For Korea, this commitment shall take effect no later than two years after entry into force of this Agreement." When the KORUS FTA comes into effect, it is expected that Korean law

will be amended to allow for offshore data transmission.

Such a principle has also been adopted by the "Understanding on Commitments in Financial Services" of the WTO, which states clearly that "No Member shall take measures that prevent transfers of information or the processing of financial information, including transfers of data by electronic means, or that subject to importation rules consistent with international agreements, prevent transfers of equipment, where such transfers of information, processing of financial information or transfers of equipment are necessary for the conduct of the ordinary business of a financial service supplier." Applying the principle of reciprocity arising out of the spirit of free trade espoused by the WTO, no country where customer-level financial data is either used or stored – especially WTO members such as Taiwan – should unreasonably impose restrictions on either international data transmissions or the physical location of data centers necessary for efficient and secure data storage. All sovereign jurisdictions benefit when customer-level financial data is properly stored and comprehensively protected. All suffer (including banks and their shareholders) when it is not.

For more than 40 years, multinational banks operating in Taiwan have effectively provided a rich palette of international financial services and related data processing through offshore data centers. These offshore data centers deliver operational efficiency and in all major aspects fully comply with Taiwan's laws and regulations. Multinational banks have regularly imported global financial best practices to ensure high standards of data control and information security buttressed by robust business continuity plans. In essence: why try to fix what is not broken?

We therefore endorse the proposition that all multinational banks should continue to strengthen their management and supervision of offshore data centers as follows:

- All banks should maintain sound audit and monitoring mechanisms. Results from regular data-center reviews should be reported to their boards of directors periodically to ensure both compliance and comprehensive execution.
- Subsidiaries of multinational banks operating in Taiwan should properly supervise their offshore data centers to ensure that comprehensive customer data privacy and information security is maintained according to Taiwan regulatory requirements without exception.
- All banks should establish and routinely update comprehensive business continuity plans and execution plans to ensure that no interruption to business occurs in offering key financial services to their customers;
- All banks should regularly assist and accommodate Taiwan regulators to conduct on-site audits covering customer data confidentiality, related risk management, and business continuity plans.

The multinational banks operating in Taiwan will continue to import international best-practice standards covering data center operations management and supervision, and remain willing to accommodate all reasonable regulatory requests as well as to supply details covering international data-center implementation standards along with relevant operating policies and procedures for reference.

Issue 5. Review the "Regulations Governing Foreign Bank Branches and Representative Offices."

We appreciate that the FSC would like to ensure that foreign bank branches in Taiwan maintain sufficient NT dollar liquidity. However, the "Regulations Governing Foreign Bank Branches and Representative Offices" limit the NT dollar credit that a foreign bank branch may extend to one person, concerned party, or affiliated entity to NT$7 billion (or the amount calculated pursuant to Article 33-3 of the Banking Act, which is even lower unless the branch has an extremely high level of local net worth). This restriction has constrained foreign banks from offering loans or guarantees to large public- or private-sector projects that may easily exceed NT$7 billion, which may be contrary to the best interests of both local corporations and the Taiwan economy as a whole. We suggest that this NT-dollar single-borrower limit be either increased or eliminated altogether, since limits are already in place on the total amount of NT-dollar credits that a foreign bank branch can offer – that is, NT-dollar loans shall not exceed 20 or 30 times of the branch's net worth, and other credits shall not exceed 15 or 20 times of the net worth, depending on whether it is a retail or wholesale bank.

At the same time, a "retail bank" is currently defined as a bank branch that accepts deposits of less than NT$1.5 million from individuals and has more than 500 such accounts, and whose total deposits in such accounts from individuals exceeds 1% of the total amount of NT-dollar deposits accepted by the bank. We believe that the NT$1.5 million deposit balance is not a real reflection of whether such accounts are "retail" in nature. Many individual clients are high net worth and/or professional investors having other NT-dollar investments in trust accounts or large foreign-currency deposits.

We suggest revising the definition of a retail bank to be a bank branch that accepts investment assets (rather than NT-dollar deposits only) of less than NT$1.5 million from an individual client, and has more than 500 such clients – excluding dormant account with credit balance below NT$1.5 million. Alternatively, the 1% threshold on the total deposit amount of individual-client accounts with less than NT$1.5 million as a proportion of total NT-dollar deposits could be increased to 2% to be more reflective of the actual "retail" nature of a bank.

CAPITAL MARKETS

The Committee applauds the regulators' tireless efforts in advancing the Taiwan capital market's international profile, while maintaining order in the home market in the wake of global financial dislocation. We especially wish to thank the

Financial Supervisory Commission (FSC) for listening to the Committee's concerns and issues on an on-going basis.

Since the publication of last year's position paper, we are pleased to note that one of the many important issues the Committee has raised in the past – broadening the permissible coverage of Taiwan-based research to include the offshore affiliates of Taiwan enterprises – has been resolved. This is an encouraging development, since global capital markets are highly intertwined. As Taiwan's capital market progresses towards developed-economy status, it cannot set its own unique market practices or raise hurdles for industry participants without damage to its international reputation. Indeed, it is time for Taiwan to focus intently on enhancing the efficiency of its capital market, broadening its product offerings, and increasing its market depth and breadth to attract further global investments. In this regard, the Committee would also like to echo many of the issues raised in this document by other AmCham financial-services committees, which stress the need for streamlining market practices and avoiding onerous regulatory requirements that substantially increase the cost of doing business in this market.

As always, the Committee stands ready to assist the Taiwan government in its endeavors to ensure an efficient and competitive capital market. In this spirit, the Committee makes the following suggestions:

Issue 1: Enhance the Taiwan capital market's efficiency, depth, and breadth.

1.1 ***Consolidate the existing exchanges.*** Within the global financial arena, the size of the securities market in Taiwan is not considered to be especially large. The market is further fragmented by the existence of four different exchanges: the Taiwan Stock Exchange (TWSE) and GreTai Securities Market (GTSM) for equities and bond, the Taiwan Futures Exchange (TAIFEX) for listed derivatives, and the Taiwan Depository and Clearing Corp. (TDCC) for depository and settlement rules.

Competition in the financial sector has been moving forward from regional to global consolidation; the accompanying demand for an efficient market infrastructure is imperative and urgent, as evidenced by the recent merger discussions among international market operators, such as those between the Singapore Exchange Ltd. (SGX) and Australia's ASX Group (although it was eventually rejected by the Australian regulator), between the London Stock Exchange (LSE) and Canada's TMX Group, and between NSYE Euronext and Deutsche Bourse.

Efficiency could be enhanced and costs reduced if the four agencies were to be consolidated, as was done with the Hong Kong Stock Exchange (HKEX). We understand that existing legislation would need to be amended before this development could take place, but we urge the regulators to include serious study of this proposal on their priority list.

1.2 ***Allow personnel cross-registration and business outsourcing/insourcing for related financial industries.*** To establish Taiwan as an Asia-Pacific Regional Financial Center has long been an objective pursued by the government and the financial industries. One of the key elements in achieving that objective is to build a business environment aligned with international best practices that aim to optimize operational efficiency and cost-effectiveness in processing flows and in integrating risk control across countries and financial industries.

Among the major barriers to reaching this goal in Taiwan are the rigid restrictions preventing skilled professionals in international securities and financial institutions from serving multiple legal entities and financial industries. In contrast, cross-registration of such personnel is a prevalent practice in most international markets, generally accepted from the point of view of corporate governance. Moreover, the restrictive outsourcing/insourcing rules in the banking industry provide limited relief in this regard. Due to these operating restrictions, global financial firms with "universal banking" organizational structures and/or "one-stop shopping" business models will be discouraged from expanding business activities in this market, rendering Taiwan much less attractive as a regional financial center.

To realize the potential opportunities in synergy and efficiency, we call on the competent authorities to liberalize the regulations to permit the cross-industry registration of financial professionals as long as they meet the specified qualifications for each respective financial industry. For instance, skilled risk or financial controllers working in a global financial group could register with both the bank and securities arm of the group. The integration would not only help to achieve synergies, but would also enable financial groups engaged in multiple financial businesses to adopt a consolidated and comprehensive approach to aggregate risk, rather than taking an isolated and single-dimensional view of risk control.

1.3 ***Review rules governing Offshore Structured Products.*** The Committee strongly recommends that the regulators undertake a thorough review of the "Rules Governing Offshore Structured Products," which have been in force since July 2009. The result of the rules has been to create regulatory hurdles making it impossible for securities firms to offer offshore structured products to clients. We would like to suggest several practical ways to improve the situation. First, the Committee strongly urges revision of the relevant regulations to allow a Financial Holding Company (FHC) to be the issuer

or guarantor of offshore structured products, even if it does not directly own the securities, banking, or insurance license. Second, the Committee proposes relaxation of the long-term debt rating requirement (the equivalent of S&P AA- or above) of the issuer or guarantor of the relevant offshore structured products sold to general investors, as this stringent rating standard has ruled out many highly qualified potential issuers and guarantors maintaining an A or A+ rating. Third, the Committee requests that the FSC provide flexibility in the job scope of registered brokerage personnel who are not involved in order-taking, to allow them to concurrently engage in the Master Agent business. The above changes would provide investors with a broader choice of products, while providing them with the same protection as enjoyed by international investors in other jurisdictions.

Issue 2: Continue to enhance investor education to minimize misuse or misinterpretation of brokers' research.

2.1 ***Understand foreign securities brokers' control practices and enhance 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. Upon receiving the complaints, the regulators usually conduct reviews and request additional explanations from the foreign securities brokers. Such constant inquiries cause a serious administrative burden for the brokers.

In fact, foreign securities brokers provide the research reports only to clients for their reference, and any trading decisions performed through brokers are at the clients' full discretion. Based on our understanding, under their internal guidelines foreign securities brokers will not provide research reports to the media. The issuance of press releases and any other contact with the media occurs only when relevant internal approvals have been given. The Committee hope that the regulators will recognize the foreign brokers' control practices and place their emphasis on continuing to enhance investor education through public seminars and printed materials, cautioning investors not to base their investment decisions on information published in newspaper or magazine articles. In addition, the current requirement of posting an explanation and/or disclaimer on the Taiwan Securities Association website whenever a client complaint is received should be abandoned.

2.2 ***Relax restrictions on investment in the Taiwan market by Chinese investors.***

Following the trend of regional integration in Asia and also the expanded business cooperation across the Taiwan Strait in recent years, the economic relationship between Taiwan and China has entered a brand new era. But despite the considerable progress, cross-Strait investment in Taiwan's capital market remains highly restricted. Liberalizing those restrictions becomes especially imperative following the implementation of the Economic Cooperation Framework Agreement (ECFA) and financial MOUs with China. An open and free capital market for trading and investment would provide a positive boost to Taiwan's economic performance.

Issue 3: Relax futures trading and 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.
- Remove or increase the position limits of the contracts listed in TAIFEX to provide Foreign Institutional Investors (FINI) with an incentive to trade in Taiwan instead of other markets. The application to increase the position limits is time consuming and laborious, creating an artificial barrier to entry that weakens TAIFEX's competitiveness.
- Allow FINIs 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 dollars would contribute to stimulating the Taiwan futures market.

Issue 4: Continue to enhance the Securities Borrowing and Lending (SBL) market.

Taiwan continues to be regarded as one of the most important markets in the Asian region for securities lending and borrowing (SBL). We appreciate the collective efforts of the TWSE, Ministry of Finance, and the FSC in reforming

and implementing enhancements in recent years. However, the unique features of Taiwan's SBL market means that further adaptation is still needed. Over the long run, we believe that an SBL system that is able to interface with global practice will attract more investor participation. Yet considering Taiwan's market infrastructure we are also fully aware of the challenge of totally overhauling the current system. We therefore offer the following key recommendations in the hope that they will help resolve some of the near-term settlement and delivery issues for negotiated SBL orders.

4.1 ***Improve the recall process and allow borrowers to access the "For Settlement Borrowing System" as the last resort when market restrictions prevent them from obtaining the recalled securities to meet the lender's settlement obligation.*** 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 responsibilities and costs. Under the current rules in Taiwan, the lender can recall and sell on the same day (T day) and meet T+2 settlement under certain conditions. The rules, however, do not consider the possibility that the borrower may be unable to purchase/borrow from the market and in turn may cause a settlement failure with penalty on the lender's part. While the selling broker of the lender is allowed to access the "For Settlement Borrowing System" when this situation occurs, the associated costs and the ultimate responsibilities still remain with the lender. We suggest that the borrower be given the same access to the "For Settlement Borrowing System" via its broker in the event of the stock in question reaching the Daily Fluctuation Ceiling or Foreign Ownership Limit, as both situations can be substantiated by the records of the buying brokers.

4.2 ***Improve market efficiency by allowing the custodians to report to the TWSE the free delivery of lent/ borrowed securities under an SBL transaction.*** Current TWSE regulations stipulate that the lender and borrower follow the terms and conditions of the negotiated agreement between them. However the process still requires inputting the negotiated SBL orders by brokers on both sides for the Exchange to confirm matching of the details, followed by share delivery through brokers, just as in a normal trade that does not have a counter party. As a negotiated SBL transaction is already agreed or "matched" between the lender and the borrower, it does not need to be matched again on the Stock Exchange via input by SBL brokers. We suggest that delivery and receipt of the loaned securities follow the "Taiwan Stock Exchange Corporation Securities Borrowing and Lending Rules." These rules allow the custodians to report the transaction details to the TWSE, which in turn would instruct the TDCC to transfer the shares directly to and from the accounts of the borrower and lender without going through the accounts of the broker. This procedure would improve the processing efficiency substantially for the negotiated transactions.

CHEMICAL MANUFACTURERS

Addressing environmental challenges such as the setting of clear greenhouse gas emissions for the domestic chemical industry, ensuring a sufficient supply of raw materials for the industry's future development, and fostering convenient access to the mainland Chinese market for Taiwan's petrochemical products continue to be among the main concerns of this Committee.

The Taiwan government has the strategic intent to establish Taiwan as an important hub for Foreign Direct Investment that could facilitate companies' ability to do business with mainland China. This objective has become particularly relevant with the signing in June 2010 of the Economic Cooperation Framework Agreement (ECFA) with China and the continuing efforts to strengthen the foundation of cross-Strait economic relations. In the chemical sector, one area where significant scope exists for improved cooperation is in the shipping and logistics of trade cargo.

Below are the issues that the Committee believes require attention to improve trade flow and volumes:

Issue 1: Improve regulations on greenhouse gas (GHG) emissions.

To achieve CO_2 emission reduction and energy-intensity targets, the government has established GHG emission efficiency standards and a corresponding CO_2 emission measurement mechanism. But there is a need for more clarity on the expected levels of GHG emissions that will be allowable in the Taiwan chemical industry.

The industry acknowledges that GHG emissions should be reduced and that this process requires regulations and controlled measurement and reporting. It is crucial, however, that the standards adopted are reasonable and that they are enforced fairly and strictly. To set high standards followed by lax enforcement is of no value. The chemical industry would prefer to know clearly what standards it must meet and what to expect from enforcement.

We believe that the regulations should also provide for support for carbon credit trading, which is a practical way to create some flexibility for industry while the government seeks to meet overall GHG goals. The government could help by establishing a carbon credit trading exchange (functioning similarly to a commodities exchange) as many other countries around the world have already done, to enable companies to efficiently and effectively utilize any allowable carbon credits. One joint-venture petrochemical company in Taiwan,

which 10 years ago set up GHG emission standards and measurement systems, has reported its GHG intensity levels back to the foreign parent company for carbon and paper trading in Europe. Over the past decade, the company's GHG intensity levels have been reduced by 30% through energy management projects.

The chemical industry would like to see a more thorough and comprehensive policy on incentives for manufacturers to use renewable energy, such as solar and wind power. Such a policy would include tax credits on capital investments and lower tax rates for companies that achieve a specified level of usage of alternative energy. Many countries around the world currently offer such incentives, and Taiwan could borrow freely from these existing models. Currently the incentives are either unclear or not yet developed.

Issue 2: Ensure a sufficient supply of feedstock for the industry's continued development.

President Ma Ying-jeou's announcement in April that the proposed petrochemical complex belonging to Kuokuang Petrochemical will not go forward at the intended site in Changhua County for environmental-impact reasons answers the immediate questions about the project. But it still leaves open whether adequate alternative means can be found to supply sufficient feedstock to assure the future viability of Taiwan's petrochemical industry.

Changhua was already the second site to be rejected, and it is questionable whether another potential location can be found within Taiwan. Now the feasibility of moving the project to another country in the region, with much of its output to be shipped back to Taiwan, will need to be explored. The Committee is confident that the Ministry of Economic Affairs will be exploring this possibility in detail.

At the same time, the government needs to take the failed Kuokuang experience as a case study, coming up with ways to ensure that this type of problem does not repeat itself in future. The prolonged environmental assessment process, with its uncertain standards and lines of authority, kept investors in a state of limbo over many years. The Committee urges the authorities to set clear environmental protection standards that apply equally to existing and new players, and to ensure an expeditious decision-making process.

The Kuokuang complex is not the only project in this sector whose fate is uncertain. Also facing environmental hurdles is the proposed fifth-phase expansion of the private Formosa Plastics Group's Sixth Naphtha Cracker at Mailiao in Yunlin County. In addition, the Fifth Naphtha Cracker of the state-owned CPC Taiwan Corp., located at its Kaohsiung Refinery, currently supplies more than 45% of the total feedstock needed by the industry. But due to the scheduled relocation of the refinery in 2015 as the government promised the neighboring community years ago, 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 without substitute arrangements in place.

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 closure of the Fifth Naphtha Cracker would cause significant impact to the Taiwan petrochemical industry's supply chain. According to a *Petrochemical Industry Report* by the Taiwan Institute of Economic Research, it would mean an annual decline in production value of 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.

To partially resolve this problem, CPC is currently renovating its Third Naphtha Cracking unit, built in 1978 in Kaohsiung's Lin-Yuan Petrochemical Industrial Zone with an annual capacity of 230,000 metric tons of ethylene. The revamped facility, to be completed next year, will have production capacity of 720,000 tons of ethylene.

Still uncertain is whether the Fifth Naphtha Cracking unit can remain at the present site after the refinery is relocated. CPC's own opinion survey showed majority support among local residents for the facility to remain in the current 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.

Issue 3: Consult with the PRC to facilitate the export of petrochemical products to China by dry-bulk vessel.

The petrochemical product trade across the Taiwan Strait has been booming recently. However, the use of dry-bulk vessels, which would facilitate the export business, is hampered by regulations on the Chinese side. The Committee requests support from the Taiwan organizations responsible for cross-Strait negotiations to help resolve the problem.

The Ministry of Communication of the PRC announced verbally in 2006 that non-routine bulk carrier runs across the Taiwan Strait need to obtain a Shipping Operation Permit before carrying cargo. Starting from that year, only ships registered in China, Hong Kong, or Taiwan have been eligible to receive such a Shipping Operation Permit with a one-year duration. Ships not registered in one of these three locations – and many of the Taiwan shipments go on flag-of-convenience carriers such as those from Panama, the Marshall Islands, and other locations – can only apply for a temporary Shipping Operation Permit, effective for one shipment and one unloading harbor only. Re-application for the permit is required if the unloading harbor is changed, but the re-application process is complicated and time-consuming, often seriously impacting the shipping schedule. Moreover,

the PRC has not been applying the same restrictions on dry-bulk shipping coming from Korea, Japan, and other countries, which aggravates the impact by putting Taiwan producers at a competitive disadvantage.

This regulation has tremendously affected the export business of Taiwan's petrochemical industry. Narrowing the options for the country of ship registration not only limits the total shipping capacity but also increases the shipping cost. As a result, Taiwan's export efficiency and competitiveness in this sector have been greatly reduced.

Though most petrochemical products were not included in the ECFA early harvest list, the petrochemical industry looks forward to future further liberalization of the cross-Strait trade. For the industry to take full advantage of that opportunity, it will be necessary to resolve the shipping problem as well.

Issue 4: Approve 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 long-term business competitiveness.

To further this progress, we suggest that the government continue to evaluate and successfully conclude its efforts to support the roll-out of Remote Operation Centers (ROCs). These ROCs should be applicable to smaller plants, such as nitrogen generators and air separation units, for which plant control systems have now developed to the point that these simpler plants can be remotely operated across the region. The ROC would be equipped with operation alarm monitoring and process optimization technology, operated 24/7 by a group of experienced operators, and supported by a full range of specialized engineering staff with access to global advanced technology.

The advantage of these ROCs is that they allow manufacturers to build a national team of experts that has the highest level of experience in plant operation efficiency, continuous improvement, safety, and other critical operating parameters. By virtue of the centralized operation, the availability of data and the expertise developed to analyze and act on this data is at a much higher level than found in operating models where operators staff only one small plant and see only a limited range of data and experience. Additionally, the ROC allows a manufacturer to redeploy labor to other key skill areas such as the operation of more complex facilities, quality enhancement, etc.

This mode of remote operation for on-site air separation units has been internationally recognized for years. In the United States, Europe, and even China, the gas companies have all set up remote operation centers to integrate, monitor, and operate air separation units remotely. Although the industrial gas associations of the European Union, United States, Japan, and other advanced countries have acknowledged such a management system, it has not yet been recognized in this country.

This Committee was pleased to learn that during the past year the government has started to explore the concept of Remote Operation and has conducted a research study. The government has also initiated communications with industrial circles on this matter. We appreciate this positive response and hope to continue working closely with government agencies to establish the relevant standards and guidelines to enable such a management system to be adopted. In the meantime, we recommend that the government approve applications for pilot runs of remote control systems at workplaces in the coming months to allow manufacturers to gain familiarity with international levels of advanced technology in this field.

Issue 5: Reduce the environmental footprint of automotive manufacturing and refinishing processes.

The Committee requests that the government adopt measures to require or encourage the use of waterborne refinish paint instead of organic refinish paint for automotive manufacturing and refinishing processes. For these processes, waterborne refinish paints provide the most environmentally friendly approaches to reduce organic solvent use and emissions, mitigate the exposure hazards to the operators at the workplace, and promote productivity and energy saving.

The global trend in more and more developed countries is to make the use of waterborne refinish paint mandatory or at least promote it by regulatory means. The EU imposed a regulation in 2007 requiring waterborne paints to be used for car refinishing, and Canada implemented regulations on Volatile Organic Compounds in 2010 to control VOC emissions in the workplace for auto OEM/refinishing processing. In the United States, several state governments are expected to implement regulations similar to Canada's before 2015.

In Asia, both Korea and Hong Kong are planning to launch VOC regulations prior to 2012. In Taiwan, although no specific VOC regulations for auto OEM/refinishing have been adopted, several multinational auto manufacturing companies have voluntarily switched to waterborne refinish paints since 2007, significantly reducing the amount of VOC emitted in their manufacturing processes. The Committee recommends that the government take a more active approach in promoting the use of these environmentally friendly refinish paints.

EDUCATION & TRAINING

The Business Climate Survey of AmCham member companies conducted at the end of last year spotlighted manpower issues as among the major concerns as companies look ahead to their future requirements. Will Taiwan have sufficient quantities of the technical and managerial talent it will need to retain its competitiveness in key industries? Will

the quality of the workforce meet the needed standards in terms of international mindedness, creativity, and the ability to take initiative?

The answers to those questions will depend to a large degree on the performance of Taiwan's educational system. The curriculum needs to be constantly adjusted to assure that sufficient talent is being trained in new fields such as e-commerce management and cloud computing. And more opportunities need to be created for Taiwanese students to participate in international programs that cultivate creativity and initiative.

Although the Ministry of Education (MOE) has been open to communication and discussion, its responsiveness to international trends in recent years has been far slower than that of other Asian countries, chiefly Hong Kong, Singapore, South Korea, and China. 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.

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

Over the past several years, some of the barriers to the establishment of foreign schools in Taiwan have been eased. 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 MOE's decision to allow credits from distance-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 and throughout the world.

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 Taiwan, 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, the Johns Hopkins University's Nanjing Center, the New York University in Shanghai campus, and Duke University's medical center in Singapore and branch campus in Kunshan, 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 Taiwan government has long viewed the recruitment of students from developing countries to attend (and help subsidize) domestic colleges as the benchmark of internationalization. Taiwan's unwillingness to allow good U.S. educational institutions to set up branch campuses or deliver programs in Taiwan leaves less choice for domestic students. As a result, many local students are going to China for their studies, while Taiwan has less opportunity to attract top students from developed countries to come and study in Taiwan.

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

- Allow – and in fact encourage – 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 duration and geographic location where the credits toward the degree are earned.
- Allow and encourage 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 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 qualified 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 prestigious 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 the location and duration.

HUMAN RESOURCES

The Committee would like to take this opportunity to applaud the Taiwan government's efforts over the past few years to make the Taiwan employment market more accessible to foreign professionals and relevant laws more complete and comprehensive. The Committee recognizes

the need to balance the opening up of Taiwan's employment market with the revision of relevant labor regulations in order to increase business competitiveness while at the same time protecting the local labor force.

Among the issues raised below, the Committee would particularly like to express its concern about the potential ramifications of the new three major labor laws – the Labor Union Act, Collective Bargaining Agreement Act, and Settlement of Labor Disputes Law – as well as the draft amendments to the Labor Standards Law currently under consideration. The Committee also looks 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.

Issue 1: Clarify the application of the Labor Union Act, Collective Bargaining Agreement Act, and Settlement of Labor Disputes Law and balance the rights and benefits between labor and management.

The newly amended and promulgated three major labor laws took effect on May 1 this year, while their enforcement rules will be published soon. The three laws facilitate the establishment of labor unions, assure labor unions' right to undertake protest activities, and strengthen the bargaining power of labor unions with regard to collective bargaining agreements. Hence, they will have a significant impact on labor-management relations in Taiwan. The Committee appreciates the opportunity it has had for dialogue with the competent authority, the Council of Labor Affairs (CLA), to express our concern about potential problems arising from the new legislation and to provide some recommendations for solutions. We hope our efforts will facilitate the enforcement and comprehensiveness of the relevant laws.

Collective Bargaining Agreement Act (CBAA)

1. Article 6 of the newly amended CBAA provides that "while negotiating a collective bargaining agreement, both labor and management shall proceed in good faith"\ and that neither side may reject the collective bargaining agreement proposed by the other side without just cause. As part of proceeding in good faith, it also states that neither side may refuse to enter into negotiations when the other side has proposed reasonable and appropriate contents, time, site, and format for such negotiations.

   In practice, it will usually be the labor unions that request negotiations on collective bargaining agreements. But due to business or time constraints, employers may be unable to cooperate immediately when labor unions propose a time and place for negotiations. Such situations are often regarded by labor unions as blocking or delaying the negotiation process. The Committee suggests that the CLA issue a ruling clarifying how it will be determined whether the proposed time, place, and other conditions for negotiation proposed by labor unions are "reasonable and appropriate" and what latitude management may have for requesting a postponement without being deemed to be refusing to cooperate in the negotiation process.

2. Subparagraph 3, Paragraph 2 of Article 6 further states that when one side has made a proposal to negotiate, the other side may not refuse to "provide necessary information for proceeding to negotiation." No definition has been given as to the scope of "necessary information for proceeding to negotiation." Theoretically, labor unions might request highly sensitive or confidential information, for example the salaries paid to high-level executives as reference for a proposed adjustment in general salary levels. Compliance with this request could have a significant negative impact on the company's business operation.

   The Committee suggests adopting one of the following approaches as a way to resolve this problem:

   (1) Either by amending the law or through a CLA ruling, stipulate the scope of the information that the union may request, and clarify that companies are not required to provide information related to business confidentiality or personal privacy.

   (2) Create a mechanism for a neutral third-party to review the requested information to determine whether it falls within the scope of confidential information and to decide whether it needs to be submitted to the other party.

   (3) Ensure that those given access to the information have the obligation to maintain confidentiality, with the provision that if any confidential information is disclosed, the company is entitled to claim indemnification. Article 7 of the newly amended CBAA does require the recipient of the information to maintain confidentiality, but makes no provision for indemnification.

3. Article 13 states: "A collective bargaining agreement may provide that, unless having justifiable reasons, an employer bound by the agreement may not adjust the working conditions of workers who are not the interested party of the agreement while those conditions are agreed upon under the agreement."

   No definition of "justifiable reasons" is provided in this Article, making it difficult to apply. Besides, if the conditions in the collective bargaining agreement would be advantageous to workers who are not the interested party of the agreement (that is, they are not members of the union), it is unreasonable to prohibit the employer from adjusting their working conditions along the lines provided for in the agreement. Our recommendation is to further amend the CBAA to delete this Article.

Labor Union Act

1. Article 6 of the newly amended Labor Union Act defines a "corporate union" as a "labor union jointly organized by employees of the same factory, of the same enterprise,

of enterprises with controlling/subordinate relationships between each other in accordance with the Company Act, or of financial holding companies and their subsidiaries in accordance with the Financial Holding Company Act."

The article does not clearly stipulate that the employees referred to must be direct employees. It is therefore arguable whether dispatched workers are qualified to join the corporate union in the company where they provide services. The CLA is urged to issue a ruling to clarify this point at the earliest possible date.

2. Article 35 provides that: "The employer or people who exercise the right of management on behalf of the employer may not commit the following acts: (1) Refuse to employ, dismiss, demote, reduce the salary of, or extend other unfavorable treatment to an employee who establishes or joins a labor union, attends the activities held by the labor union, or holds an office in the labor union; (2) Require an employee or job applicant not to join the labor union or hold an office in the labor union as a condition to be hired; (3) Refuse to employ, dismiss, demote, reduce the salary of, or extend other unfavorable treatment to an employee who asks to engage in collective bargaining or participates in matter relating to collective bargaining; (4) Dismiss, demote, reduce the salary of, or extend other unfavorable treatment to an employee who attends or supports protesting activities; (5) Improperly influence, obstruct, or restrict the establishment, organization or the activities of the labor union. Any dismissal, demotion, or reduction of salary made by the employer or people who exercise the right of management on behalf of the employer as prescribed in the preceding Paragraph shall be null and void."

   The intent of this Article is to prohibit management from improperly impeding labor unions, but it often happens in practice that if a union member or worker supporting union activities is dismissed or demoted, the employer will be deemed in violation of this Article by employees or the competent authority and will have to strive to prove that there is no causal relationship between the dismissal or demotion and the union membership. The Committee recommends that the CLA quickly specify the standards for determining violations of this Article, and stipulate that labor should bear the burden of proof in such cases.

3. Paragraph 1 of Article 4 of the "Rules Governing Organization of Employees' Welfare Committees" provides that for business entities having a union, at least two-thirds of the welfare committee members should be elected by the union, and that for business entities without a union, the labor representatives shall be elected by all employees. Article 4 of the "Organizational Guidelines for the Supervisory Committees of Workers' Retirement Reserve Funds of Business Entities" states that "Workers' representatives on the supervisory committee shall be elected by the unions; where a union does not exist, they may be directly elected by workers and substitute members may also be elected." But what happens when a labor union is newly established at a company? Does a new election of committee members have to take place immediately or do the existing committee members first complete their period of service? The answer is unclear.

   The Committee suggests adopting different approaches depending on the situation. If the names of the committee members have already been registered with the competent authority, they should be considered the legally elected committee members and serve out the remainder of their terms. But if the establishment or re-election of the committee has not been reported to the competent authority as a matter of record, it is not a legally constituted committee. If a labor union is established during the service period of such committee members, the union should have the power to request a new election. It is suggested that the CLA swiftly announce a ruling to clarify this point.

Settlement of Labor Disputes Law

1. Paragraph 1 of Article 54 of the newly amended law provides that "A labor union shall not call a strike or set up a picket line unless it has been approved by a majority of the members of the labor union via direct secret balloting."

The point of revision in this Article is to delete the requirement in Article 26 of the original Labor Union Law that calling a strike shall be decided by a meeting of the union members. If no such meeting occurs, arguments may easily arise about the voting results and whether the conditions for calling a strike have been met. Also questionable is whether "voting by telecommunications" should be permissible. We suggest that the CLA swiftly announce rulings to clarify how the voting should take place, how the voting shall be supervised in the absence of a membership meeting, and how to resolve any disputes. A ruling is also needed to confirm that the competent authority has the power to step in to supervise the voting or confirm that a lawful resolution has been reached. Before a determination has been made as to whether the procedural requirements have been fulfilled, no protest activities should be allowed and the union should be responsible for indemnification if they occur.

Issue 2: Reconsider proposed amendments to the Labor Standards Law to balance labor protection and the impact on business.

Proposed amendments to the Labor Standards Law were announced by the CLA on January 11, 2010. The Committee appreciates the opportunity it has had for dialogue with the competent authority since that announcement, and some of the suggestions proposed in the *White Paper* last year have been adopted by the competent authority. But our members continue to stress the importance of those suggestions that were not adopted. The Committee urges the CLA to give serious consideration to the following points, as they are

crucial to the ultimate goal of protecting labor without undermining business competitiveness:

Labor Dispatch

1. "Labor dispatch" means sending workers employed by one entity to another entity to provide services under the second party's supervision and management. The draft amendment to the Labor Standards Law 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? The Committee recommends 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 Labor Standards Law 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. The Committee recommends that no constraints be imposed on fixed-term contracts or labor dispatch regarding severance or termination, so as to help maintain Taiwan's competitiveness.
3. Article 9-1 of the draft amendment would require an enterprise 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 20% 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 labor, 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 deleting the requirement for approval by the labor union or labor-management meeting, and removing or easing (either across the board or for certain types of dispatch services) the proposed limit on the percentage of dispatched workers in the company's workforce. 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. The rationale for this requirement is unclear, and it is more likely to spur labor disputes than to serve any positive purpose. The Committee recommends deleting this requirement.
4. 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.
5. 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 appropriate protection to dispatched workers' rights and interests. The Committee suggests the setting of basic qualifications for participation in the dispatch service industry (for instance, that an applicant has a good performance record, provides comprehensive employee training, and implements a business plan). Dispatch service companies should also be required to report regularly to the competent authority to help prevent irregularities. Otherwise, law-abiding dispatch service companies will be at a disadvantage competing with those doing business in a gray area or illegally.
6. 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 "ask for" should be more clearly defined, or some explanation provided to remove the ambiguity.
7. The draft does not explain how existing dispatched workers would be affected by the amendment's passage into law. The Committee suggests 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 the Labor

Standards Law, 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 new 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 when there is "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 same 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. The Committee recommends revising the paragraph to specify that "severance pay is to be calculated based on the actual separation date."
2. During the period of advance notice, employees should 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.

   The Committee suggests 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 based on 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, this situation refers to circumstances in which the employee terminates the labor contract under Article 14 of the Labor Standards Law or Article 489 of the Civil Code. The Committee suggests 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." In practice, the standard of "reasonable compensation"– as it is to be applied in the stipulation that "non-competition clauses shall provide reasonable compensation to employees for their losses and damages arising from not conducting competing activities" under Subparagraph 4 of this Article – also gives rise to many disputes. This standard 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 merger, 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 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 Labor Standards Law now requires the merged 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. The Committee suggests revising Article 20 of the Labor Standards Law to be consistent with the provisions under Articles 16 and 17 of the Business

Mergers and Acquisitions Law.

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, the Committee suggests that the draft be revised to be made fully consistent with the Business Mergers and Acquisitions Law. 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. The current Labor Standards Law provides very strict limitations on extended working hours and overtime pay. In fact, however, some senior or professional employees are entitled to flexible working hours and have sufficient bargaining power to negotiate with their employers; they do not depend on protection under the Labor Standards Law. The Labor Standards Law should therefore reserve space for employers and senior professional employees to together determine the working hours and leaves of such employees. The Committee suggests revising the draft of the new law to exempt employees with higher positions or a monthly salary exceeding a certain level, such as NT$200,000, from the articles about extended working hours and overtime pay under the current Labor Standards Law.

Average salary calculation

1. The average salary calculation under Article 2 of the Labor Standards Law 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 3: Enforce current regulations more strictly to prevent employee deaths by over-exhaustion.

For cases of employee deaths suspected of arising from over-exhaustion due to excessive working hours over a long period (a situation that has come to be known by the Japanese term "Karoshi"), the CLA is considering adding articles to the Labor Standards Law to impose criminal punishments on the employers as a deterrent against the recurrence of such cases. The Committee notes that the definition of Karoshi is unclear, and it will be extremely difficult to determine whether an employee death is in fact attributable to excessive overtime or other actions that should be the responsibility of the employer. Rather than over-regulating by imposing criminal penalties, it is suggested that the competent authority emphasize stricter enforcement of current regulations. If it is then deemed necessary to take other steps to prevent Karoshi, alternative disciplinary schemes could be considered.

Issue 4: Further liberalize Chinese travelers' entry into Taiwan for business activities.

The Committee notes that the Taiwan government seems to have adopted stricter standards in the past year for reviewing applications from prospective mainland Chinese visitors. Given the growing amount of cross-Strait business being done and the consequent need for frequent and convenient business travel, the Committee offers the following recommendations for streamlining and liberalizing procedures so as to remove unnecessary barriers to the entry of mainland Chinese professionals for commercial purposes:

1. ***Establish a Straits Exchange Foundation office in China.*** Although the achievement of this objective is not totally within the control of the Taiwan government, the Committee continues to encourage the organizations representing the two sides of the Strait – Taiwan's Straits Exchange Foundation (SEF) and China's Association for Relations Across the Taiwan Straits (ARATS) – to strive to exchange representative offices under the existing negotiation mechanisms. In current practice, when an applicant in mainland China wishes to visit Taiwan for business purposes, the inviting organization in Taiwan needs to apply on his or her behalf to the National Immigration Agency (NIA) of the Ministry of Interior. The process includes the submission of certain documents from the invitee in support of that application. Because there is no Taiwan representative office in mainland China, these materials need to be forwarded to the NIA in Taiwan for review and approval, prolonging the processing time. That delay often creates problems for certain mainland Chinese visitors – for example, first-time applicants and those who previously violated relevant regulations during their stay in Taiwan. In such cases, the inviter is required to submit the application at least 10 business days prior to the date of departure from China.

   If an agreement to exchange offices could be reached, the Taiwan office in mainland China could facilitate the application process for visitors to Taiwan from the PRC, saving considerable time for the applicants and facilitating the conducting of cross-Strait business activity.
2. ***Establish a mechanism for multiple-entry visas.*** Currently, except for mainland Chinese employees of cross-border companies that have established affiliates or branches 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 three months, with the option of applying for additional single-entry permits. Although the application process is not complicated for additional

single-entry permits, the process is still quite time-consuming, as it entails re-obtaining the consent letter from the inviter, compiling a new itinerary, and submitting those documents to the NIA. The Committee suggests broadening the eligibility for multiple-entry permits to reduce the time and effort needed for travelers in applying for numerous one-time entry permits or additional successive single-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 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 applicant's stay in Taiwan to only one month. In light of the increasing volume of cross-Strait business exchange, the Committee recommends extending the one-month limit to two months and the three-month limit to six months to better accommodate practical business needs.
4. ***Eliminate the ceiling on the number of permitted invitees per year for the Taiwanese inviters.*** While the government last year again relaxed the restrictions on the number of persons that each inviter is allowed per year, the Committee urges the competent authorities to remove the restrictions entirely. Under current law, if the inviting organization has been established for less than one year or has annual revenue under NT$10 million, the number of mainland businesspeople it may invite within one year may not exceed 50 visits; if the inviter has annual revenue of NT$10 million but under NT$100 million, the maximum number of invitees per year increases to 200 visits; and if the annual revenue is NT$100 million or above, the maximum is 400 visits.

   Considering the increasingly frequent commercial exchanges across the Strait and the gradually improved relationship between the two governments, as well as the Taiwan government's great efforts to promote the development of the Meetings, Incentive, Conference and Exhibition (MICE) and related businesses in recent years, the above restrictions seem out of date and unnecessary. Removing them would facilitate the expansion and development of relevant businesses.
5. ***Establish an alert system for the period of stay of mainland Chinese coming to Taiwan.*** For mainland Chinese coming to Taiwan for business visits, an eligible inviter in Taiwan must not only submit the application on their behalf but also serve as a guarantor. If their invitees breach their allowed period of stay due to personal negligence or unfamiliarity with relevant laws, the inviters may be penalized, including suspension by the competent authorities of their eligibility to apply for additional mainland Chinese visitors for a specified length of time. For companies with substantial cross-Strait commercial activity, such a suspension could present a significant obstacle to the promotion of their business. The Committee therefore suggests that the competent authorities establish an alert system for mainland Chinese business visitors. Using text messages or e-mails, the system could remind the visitors of the upcoming expiry date of their period of stay. It would help inviters avoid difficulties in promoting their business due to a few cases of overstaying invitees.

Issue 5: Eliminate the two-year work experience requirement for foreign professionals.

Except for those engaged in technology-related industries or those being assigned to Taiwan after working for cross-border companies for no less than one year, current regulations still require foreign professional technical people to have earned a university bachelor's degree and have at least two years of related work experience in order to be hired to work in Taiwan. This Committee considers encouraging foreign professional technical talent to work in Taiwan to be a highly effective way to continually upgrade domestic industries and to provide a more internationalized working environment for the benefit of Taiwan's own talent.

Since neighboring countries are competing to provide favorable immigration visas and living environments to attract the best and brightest from all over the world, the Taiwan government's longstanding conservative and protectionist approach is both unnecessary and counterproductive to its own policy goal of enhancing Taiwan's international ties. Further, it has been seen that the founders of many prominent cross-border companies, such as Bill Gates of Microsoft, Steve Jobs of Apple, and Mark Zuckerberg of Facebook, did not obtain bachelor's degrees. Can it thus be concluded that they are unqualified to work in Taiwan? The Committee urges the Taiwan government to revise the regulations to eliminate this requirement without delay.

INFRASTRUCTURE

From power and water supply to transportation networks and land-use management, public infrastructure planning is the cornerstone of a country's economic strength. Taiwan's major infrastructure investments – airports, highways, power plants, high-speed rail, and MRT systems – have consistently made a positive contribution to spurring economic growth. As Taiwan prepares to move to the next stage of its economic development, it needs to make that infrastructure commitment again, this time to the infrastructure of an advanced world-class economy.

The tragedy caused by the earthquake and tsunami in Japan reminds us once again of the national security implications of major infrastructure; of the critical needs

for reliability, safety, and redundancy in Taiwan's power and water resources and distribution; and of the need to coordinate these economic essentials with land-use planning and land development. It is essential that the Taiwan government tackle these issues, not on a piecemeal basis, but as a cluster of interconnected long-term national development challenges of the highest priority. In short, Taiwan needs a "plan" – both an upside plan that enables Taiwan's economy to continue to grow long into the future, and a downside plan that allows Taiwan to respond promptly and sensibly to whatever emergencies or crises may arise.

During the past several months, the government has substantially increased its effort to attract foreign investment into Taiwan. The Council for Economic Planning and Development (CEPD), for example, has led various government agencies in pursuit of foreign capital investment in 10 major sectors. Except for the Taoyuan Aerotropolis project and urban renewal, most of these sectors are not directly related to infrastructure. But the indirect connection is substantial. Within an environment of intense regional competition, the presence of world-class infrastructure undoubtedly serves as a necessary condition for expanding the level of foreign investment into Taiwan.

In last year's *White Paper*, the Committee pointed out that the government's short-term CO_2 reduction targets are so ambitious as to be unachievable in practice. We urged the government to adopt a more realistic long-term target to avoid any grave adverse impact on Taiwan's economy. In a recently issued draft "Energy Development Guideline," the Ministry of Economic Affairs (MOEA) for the first time admitted that the only way to reach these targets is to incur major expenditures (at least NT$100 billion annually) to purchase carbon credits and switch to gas-fired plants. We have elaborated on this point in this year's position paper.

As predicted in the 2010 *White Paper*, the current political atmosphere has caused further delays in the start of construction of new coal-fired power projects. No progress occurred during the past year in approving the four pending coal-fired units (two in Changgong and two in Suao). In order to meet future power growth, Taipower has had no choice but to expand the use of gas-fired power projects, which are considerably more expensive and raise questions of energy security. Four gas-fired units (in Tonghsiao) were approved and will come into commercial operation before the suspended coal-fired projects, whose ultimate fate seems unpredictable.

We sincerely hope the government will face the current situation clearly and adopt a more reasonable energy policy.

Issue 1: Continue to build truly world-class infrastructure by assuring international participation in public projects.

Last year, this Committee recommended certain action items to the government to remove barriers to meaningful international participation in Taiwan's government procurement market. Although we understand that issues cannot be resolved overnight, the outcome so far has been inconsistent. The Public Construction Commission (PCC) has initiated some corrective efforts, but due to a lack of concrete support and insufficient coordination among other government entities, there has been no major increase in international participation in public projects. The Committee urges the government to take the following steps to bring about the needed changes:

1. ***Place more emphasis on the planning of infrastructure projects.*** Infrastructure projects necessarily start with the planning process, which will be a key determinant of the success of all follow-up action, including engineering, construction, and operations. Taiwan has been performing its planning activity mainly by relying on local personnel. While the quality of domestic talent is high, Taiwan would benefit substantially from bringing in more international expertise to complement their efforts for the all-important planning phase. World-class projects that bring pride to a country invariably start from extraordinary creativity, experience, and expertise in the planning stage, and failed "mosquito-breeding facilities" tend to be the result of an insufficiently thought-through planning effort.
2. ***Benchmark project performance with the world's best practices.*** As a tool to monitor and enhance project performance, benchmarking is widely used in various industries and organizations around the world. For many aspects of infrastructure development, "best practices" have been widely documented. For example, airports are regularly surveyed, tested, and ranked globally.
   For Taiwan to achieve a world-class ranking in the upcoming Taoyuan Aerotropolis project, it is therefore advisable to benchmark the best-ranked airport in the world and follow its best practices to ensure a favorable outcome. All other major infrastructural systems, such as water resources, flooding control, energy, and others, can be similarly benchmarked in the pursuit of excellence. In this respect, many international companies have the broad experience that can contribute to carrying out such an effort.
3. ***Create a friendlier environment to attract international firms to participate in public infrastructure projects.*** Over the years, this Committee has recommended many steps to open the market more fully. Although the government has achieved some major preliminary advances, such as Taiwan's accession to the WTO's Government Procurement Agreement (GPA) in 2008, more still needs to be done to successfully create a friendly environment to attract international firms to this infrastructure market. We particularly recommend that the government avoid tender awards based strictly on price, incorporate design and construction together in turnkey projects, increase the numbers of projects that can be covered under GPA terms, eliminate corruption and favoritism toward quasi-government firms, and revise the terms in the Government Procurement Law and Private Participation in Infrastructure Projects (PPP) Law. The procurement

law and PPP law were mainly formulated in the pre-GPA era, and contain certain terms and conditions that do not conform with current international practices. While we agree that each country has its own cultural and political backgrounds, we strongly recommend the government conduct a study to compare its related laws against all GPA countries. Unless major changes are made, it will not be easy to attract foreign firms to enter this market.

Issue 2: Build a fair business environment for government procurement in the software market.

In today's economic environment, software and other technology services constitute an increasingly important part of a nation's public infrastructure. Although Taiwan represents an attractive market for international vendors in this field, it can also be a frustrating market because of various unreasonable conditions at variance with standard international practice. The Committee urges the PCC – and the Ministry of Finance, which will take over the public procurement functions of the PCC under the government reorganization scheduled to take place next year – to improve the government-procurement business environment for software. We support the measures advocated in the Technology Committee paper elsewhere in this document as important steps toward reaching that goal.

Issue 3: Reconsider the "Energy Development Guideline."

In order to comply with the Energy Management Code, the MOEA's Bureau of Energy has prepared a "Draft Energy Development Guideline." When the final version is passed, all future energy development in Taiwan will need to be in compliance with this Guideline, which will have binding legal status. Given its broad ramifications, the draft Guideline deserves the highest attention. While some of the contents are quite good, the Committee has serious reservations on some other points.

One important purpose of the draft Guideline was to investigate the potential impact of extending the life of the existing nuclear power units. The report recommended granting such life extension to the two nuclear units currently scheduled to be retired before 2020. If the plants are shut down, it will be very difficult to fill the gap in power supply, as it takes many years for base-load fossil units to be constructed and put into operation considering the current unfriendly attitude toward coal-fired power plants due to the CO_2 emission issue. The draft Guideline was prepared before the recent nuclear disaster in Japan, however, and it is now also uncertain whether public opinion in Taiwan would support keeping the six units in operation beyond their original retirement dates.

The draft Guideline's proposal that the CO_2 emission targets be met through the purchase of carbon credits needs careful reconsideration, as it would entail the expenditure of more than NT$40 billion (about US$1.4 billion) annually by 2020, even with the life extension of the current nuclear units. Another recommendation in the draft Guideline is to increase LNG (Liquefied Natural Gas) usage from the current 8.8 million tons a year to 14 million tons by 2020. Such an increase would mean that approximately 40 billion kilowatt-hours of additional electricity would be generated by gas compared with current levels. The extra power-generation cost compared with that of base-load coal-fired power plants will come to more than NT$60 billion (over US$2 billion) a year by 2020.

The reason for these huge numbers is to meet the Taiwan government's self-imposed CO_2 emission targets (year 2020 emissions returning to the level of 2005 and year 2025 emissions to the level of 2000). The general public is unaware of the high price tag of more than NT$100 billion annually that reaching the carbon-reduction targets would entail. We believe that this issue should be seriously re-evaluated so as not to cause grave impact to Taiwan's economic competitiveness.

Issue 4: Revamp the environmental impact assessment process.

The uncertainty of the Environmental Impact Assessment (EIA) review process threatens to create a disincentive for foreign direct investment (FDI) in various sectors in Taiwan. It has become clear that even ministries in charge of major projects have no real power over the project implementation; the sole determining factor is the EIA review result.

As in many other countries in the world, all major projects in Taiwan need to prepare either an Environmental Impact Statement (EIS) or Environmental Impact Analysis Report (EIA) for submission to a committee set up by the Environmental Protection Administration (EPA). The EPA's role in many other countries is limited to reviewing and making suggestions on the projects. It does not have the power to make the final decision, as is the case of Taiwan.

Taiwan's EPA has become over-burdened by having sole yes-or-no responsibility regarding the projects under review, with the result that decision-making often gets prolonged as additional studies are conducted or more information requested. Many major projects going through the EIA review have ended up being stuck in limbo for years. The most noteworthy cases have been the Kuokuang Petrochemical Complex (which President Ma Ying-jeou eventually stepped in to cancel), the Suao-Hualian Expressway (which was finally vetoed and an alternative solution had to be adopted), the Baseball Complex in Taipei City, and Taipower's coal-fired power plants, to name a few.

The individual ministry in charge of a project is best equipped to make a judgment about the necessity of the project. For example, the Ministry of Transportation and Communications (MOTC) would invariably include the environmental impact as one of the issues when doing feasibility studies on highway or other transportation projects. The same goes for petrochemical and power projects, where in addition to environmental considerations,

MOEA has the responsibility to promote industrial development and provide adequate electric power supply to all the people of Taiwan. But under the current system in Taiwan, an important project may face the destiny of being cancelled or put on hold if it cannot pass the EIA review, as decided by the EPA alone.

If the ministry in charge lacks final decision-making authority over its projects, how can it be held accountable for meeting its responsibilities? We suggest modification of the current EIA laws to reposition the EPA, which next year will be reorganized as the Ministry of Environment and Natural Resources, as playing a supportive role. It would make recommendations from an environmental viewpoint to the ministries in charge, but the responsibility for final decision-making would rest with the individual ministry.

This change would also be fairer to the EPA, allowing it to concentrate on environmental factors and relieving it of the burden of bearing the negative political consequences of holding up important development projects.

Issue 5: Continue to improve the terms and conditions in government model contracts.

Although the PCC has added an optional clause to exclude "loss of profit" in some of its model contracts, which is an improvement on the previous contract terms, we still suggest that treatment of the consequential damage exclusion could be more thorough. Specifically, damages should be capped at actual direct damages. In addition, the liability limit in the model contract of 200% of the contract price is too high; according to international norms, it should not exceed 100%. Finally, with regard to the clauses related to the liability limit and consequential damage exclusion, there should be consistency among the different types of model contracts. Currently, for example, limited-liability exclusion is provided for in the Construction Work Procurement model contract but not in the model contracts for Property Procurement and Service Procurement.

INSURANCE

Transparency, financial strength, customer choice, and prudent and consistent regulations: these are all principles that members of the AmCham Insurance Committee believe need to be enhanced in order to improve the functioning of the insurance market in Taiwan and to make Taiwan a more attractive place to do business.

The Committee appreciates the positive steps taken during 2010:

- The adoption of new reserve credit provisions are expected to greatly enrich the range and quality of insurance products offered in Taiwan.
- The decision to create a Financial Ombudsman Service (FOS) to arbitrate complaint cases is a highly favorable development. The Committee fully supports this program, and looks forward to seeing the FOS well balanced with staff members who can represent the interests of consumers as well as the insurance industry.

Although the industry has a growing number of concerns, we know that all issues cannot be addressed at once, and are therefore focusing in this paper only on the three issues we believe are most critical for the industry. With cooperation from the Executive Yuan, Legislative Yuan, Insurance Bureau of the Financial Supervisory Commission, Central Bank of the ROC, Council for Economic Planning and Development, Council of Labor Affairs, Consumer Protection Commission, and other government organizations where appropriate, we believe that measurable improvements in these areas can be achieved in 2011.

Issue 1: Increase the transparency and regulation of insurers' financial strength.

The Committee is concerned that frequent changes to the local Risk-based Capital (RBC) requirements, although designed to help insurers during the global financial crisis, have caused confusion and reduced transparency in customer awareness of the degree of financial strength of companies within the industry. We believe that a consistent benchmark is necessary to provide customers with a tool to evaluate companies fairly and allow market discipline to work. At the same time, we recognize the difficulty of adopting a set of new international accounting standards that has yet to be finalized and may not provide an appropriate solution for Taiwan. As an interim solution, we therefore recommend that the Life Insurance Association of Taiwan consider the following self-disciplinary guidelines for industry members:

1. Allow companies to disclose their reserve and capital adequacy and the assumptions they use to reach those conclusions to enable the market to evaluate the companies' risk profile. This process would include:
   - A clear valuation of company assets and liabilities on a market-consistent basis for accounting and solvency purposes.
   - A clear delineation between insurance contracts and investment contracts (with consistent tax treatment).
2. To ensure long-term capital and reserve adequacy, the above should be carefully reviewed for insurance companies paying dividends.

Insurance is a unique industry that is supported by favorable tax and legislative guidelines to encourage individuals to take greater responsibility for their own financial security and thereby reduce the overall burden on society as a whole. Consequently, insurers have a strong responsibility to maintain prudent reserve, asset, and liability management to assure that they are able to meet their obligations to the insured. As of year-end 2010, even with the revisions to RBC guidelines, six of Taiwan's 28 life insurers had failed to maintain the minimum RBC required under Taiwan law, raising concerns about the overall health of the industry.

Therefore, in addition to the above issues to be addressed by the LIA, we request that the Insurance Bureau:

- Accelerate the capital strengthening or dissolution of companies operating below the minimum RBC threshold.
- Until capital is strengthened, require companies operating below the minimum RBC standards to mitigate future liabilities by increased disclosure of the potential risk presented by companies with a low RBC.

Issue 2: Amend Article 146-4 of the Insurance Act to allow companies to implement proper asset-liability matching as the law intended.

We fully agree with the spirit of the law restricting foreign-currency investing in cases where those investments are used to back Taiwan-dollar liabilities. But the rule, which was written before the introduction of foreign-denominated policies in 2007, still retains a cap tied to "the maximum foreign investment limit of 45%," despite the fact that the FSC recently added a new Article 15-1 to the "Regulations Governing the Management of Foreign Investment by Insurance Enterprises" to provide more flexibility to foreign-investment restrictions.

The cap is the key element that is restricting small and new insurers from offering foreign-currency-based policies to Taiwan consumers, as it would require them to undertake the same imprudent asset-liability mismatch that the law was specifically put in place to avoid: selling foreign-currency policies backed by Taiwan-denominated assets. The Committee therefore proposes that the Insurance Act, in particular Article 146-4, be further 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 for proper asset/liability matching as well as efficient product management for new business written under traditional insurance policies denominated in the same foreign currency." As the crucial objective is appropriate risk management through proper asset-liability management, no reference to foreign-currency investment limits is necessary.

Issue 3: Exclude "voluntary" contributions to labor pensions from the requirements set for mandatory pension contributions.

The Committee requests the Council of Labor Affairs (CLA) to consider removing the serious barriers that restrict life insurers from offering suitable annuity products to Taiwan's workforce on a "voluntary" basis. The three restrictions that should be removed for "voluntary" plans are that a company must:

1) Employ at least 200 people,
2) Get consent/participation from at least 50% of employees and,
3) Offer only plans that provide a guaranteed minimum return equal to or above the two-year time-deposit rate.

Removing these restrictions would open the door for a large number of Taiwan citizens to voluntarily start saving for retirement through efficient and affordable pension products that can be tailored to their individual long-term financial needs. Such removal does not require legislative amendment of the Labor Pension Act (LPA), since Article 35 of the LPA – which requires two-year time-deposit guarantees for annuity insurance – only refers to the employer compulsory contribution as provided in Article 6, Paragraph 1 of the LPA and does not cover the voluntary contribution portion as provided in Article 14, Paragraph 3 of the LPA. The Committee therefore urges the adoption of this proposal by the CLA through an administrative ruling without any further delay.

Following that revision, we hope that the CLA will take the next step of amending the LPA to remove the same three restrictions for compulsory contributions.

INTELLECTUAL PROPERTY & LICENSING

The Committee commends the Intellectual Property Task Forces and the National Police Agency for their continued efforts to independently investigate and prosecute intellectual property infringers.

The availability in Taiwan of counterfeit pharmaceuticals continues to be a matter of concern. Then Health Minister Yaung Chih-liang said last year that the proliferation of counterfeit pharmaceuticals has become a global problem more serious than illegal narcotics trafficking. We support Yaung's calls to combat counterfeit drugs by simultaneously cracking down on manufacturing, distribution, and promotion channels, and by stepping up public education. We also support the coordinated efforts of the Department of Health, Ministry of Justice, Ministry of Interior, Ministry of Finance, Coast Guard Administration, National Communications Commission, Government Information Office, and Consumer Protection Commission to counter fake drugs.

Further, we would like to voice our support for the Pharmaceutical Committee's call for the adoption of Patent Linkage and Data Exclusivity protection for pharmaceuticals in Taiwan. Those steps would strengthen Taiwan's IPR protection while also encouraging investment and innovation in the pharmaceutical industry.

In addition, the illegal copying of textbooks remains a problem. The Committee supports such government initiatives as the 2010 IPR Service Group educational tour held last year, the three-year IPR action plan of the Ministry of Education (MOE) to combat unauthorized textbook copying and illegal downloads on academic computer networks, the efforts of the Taiwan Intellectual Property Office (TIPO) to remind campus photocopying centers and businesses about the unlawfulness of illegally photocopying copyrighted works, and other programs of the MOE and TIPO to increase IPR awareness among students at all levels

within Taiwan.

AmCham member companies also continue to face problems with the protection of trade dress in Taiwan. This issue has been covered in previous *White Paper* submissions, and the Chamber recognizes that the Taiwan government has been trying to remedy the lack of effective trade dress enforcement mechanisms.

We have commented in many past *White Papers* on the massive amounts of counterfeit and contraband agro-chemical products coming in from China. This situation is a serious health and safety issue deserving more attention from the authorities.

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 focus on improving Customs, treasury department, and Coast Guard efforts 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 to bring those responsible to justice. The Committee suggests that the Taiwan government:

1. Develop a more systematic, speedy, and transparent mechanism for Customs to take action against those found to be importing counterfeit or smuggled goods. The 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. These 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 the 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.
2. 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.

Issue 2: Improve the operations of the IPR Court.

Establishment of the specialized IPR Court in July 2008 was a major step forward in Taiwan's IPR regime. Although the court continues to play an important role, after three years of operation, the need for certain improvements has become evident. The Committee calls attention to the following current shortcomings:

1. ***Inadequate funding.*** The court needs more judges and more and better technical staff in order to carry out its assigned mission effectively.
2. ***Poor quality of fact investigation.*** This problem is not exclusive to the IPR Court but exists throughout Taiwan's judicial system. Although Taiwan's laws on perjury and the submission of false documentation to the courts are very similar to those of Germany, Switzerland, France, and other civil-code jurisdictions, its handling of the massive amounts of false and bad-faith information churned through the courts is a systemic problem. Multinational companies routinely find that in multi-jurisdictional litigation involving Taiwanese parties, Taiwanese companies commonly provide information to American and European judges that they pretend is "missing" or "doesn't exist" in Taiwan litigation covering precisely the same issues. Essentially, Taiwan courts do not use the means at their disposal to compel the provision of information, constituting a consistent failure on Taiwan's part to comply with the "effective action" requirements under the TRIPS ("Trade-Related Aspects of Intellectual Property") agreement of the WTO.
3. ***Insufficient award of damages.*** Once fact investigation is improved by requiring parties to provide true and correct documents and testimony, it will then be possible to dramatically improve the calculation of damages in Taiwan lawsuits. Currently, the courts generally do not look back at records of past infringement, and by simply accepting excuses as to why information cannot be produced, they limit the evidence needed to ascertain the damages suffered by the plaintiff. Damages sufficient to cover the losses of a rights-holder are a key component of WTO TRIPS compliance, and Taiwan currently falls far short in this respect.

Issue 3: Enact amendments needed to strengthen existing IP laws.

1. ***Patent Law:*** Taiwan still needs to amend its compulsory-licensing provisions to avoid the sort of situation that has threatened to bring the European Union and Taiwan to a WTO dispute-resolution panel. The current wording of the Patent Law is ambiguous, leaving open the possibility for further future attempts at unwarranted government interference in the pricing of technology. So far, no draft implementation guidelines have been put out for review to ameliorate those concerns. Since Taiwan is one of the world's great technology countries, it is important to resolve this issue so as to offer technology companies a mature IP-protection environment.

2. ***Trademark Law:*** There are many positive aspects to the current draft for revisions to Taiwan's Trademark Law, but the proposed change to Article 63's minimum penalties for trademark infringement would have an unfavorable effect. The law currently provides for a penalty multiplier range of 500 to 1,500 times the value of an infringing product seized, but the draft amendment would eliminate the bottom level. If the set minimum is removed, it would weaken the law significantly, as a judge could simply order damages of only one or two times the value of the product. In addition, the provisions of Article 62 regarding infringements of famous marks should include the awarding of statutory damages for trademark dilution situations where actual damages are hard to evaluate. A minimum valuation should be specified – for instance, NT$1 million – for companies who free-ride on famous reputations in the naming of companies, buildings, or promotions.

Issue 4: Tighten copyright enforcement in the evolving electronic media sector.

1. ***Adopt a "three-strike" implementation rule.*** Taiwan enacted Internet Service Provider (ISP) liability legislation as an amendment to the Copyright Act in April 2009, and it took effect on May 13, 2009. The ISP legislation introduces a "notice and takedown" procedure, grants ISPs a safe harbor, and adopts the principle of graduated response toward repeat on-line infringers. This graduated response, known as the "three-strike" provision, obliges an ISP to partially or completely terminate services to users who have infringed on copyright three times.

   The "three-strike" provision is the most effective weapon available for fighting against the P2P infringements that continue to badly damage the Taiwanese music industry. But when TIPO issued implementation regulations for the ISP legislation in November 2009, it did not include any rules covering the "three-strike" provision, claiming a lack of legal basis.

   In the absence of the implementing rule, nearly all ISPs have concluded that there is no legal obligation as part of the new graduated response provision for them to pass on right-holders' warning notices to P2P infringers, and TIPO has supported that position.

   To date, as most warning notices sent by the Recording Industry Foundation in Taiwan (RIT) for infringing P2P users are withheld by the ISPs, there is no deterrent effect at all. The result is to weaken the ISP legislation. The Committee urges the Legislative Yuan to urgently further amend the new ISP liability legislation to explicitly authorize TIPO to set implementation rules for the "three-strike" provision.
2. ***Pass legislation adopting "Internet Border Control" measures to block access to illegal websites engaged in serious infringing activities.*** RIT's investigations in recent years have uncovered websites like "Baidu" in China and many forum sites located elsewhere outside Taiwan territory offering thousands of unauthorized music files for download or online streaming. These illegal websites have caused immense damage to the Taiwan music industry, but it has been difficult to do anything about them for the following reasons:
   - The infringing activities of those foreign websites take place outside of Taiwan law enforcement agencies' legal jurisdiction.
   - Rights-holders are unable to ascertain the identities of the people conducting infringing activities through sites located outside Taiwan.
   - The ISP providing the internet connection service is the only one who knows the identity of the infringer and has the ability to block the infringer from accessing those infringing websites. According to current Taiwan laws, however, ISPs who only provide connection service are not liable for their users' infringements on foreign websites. In addition, the Telecommunication Act and the Individual Data Protection Act restrict ISPs from disclosing their users' information without due cause and due process. Therefore, even if ISPs are willing to help rights-holders to deter their users from accessing infringing foreign websites, the ISPs are not able to actively provide any assistance.

     The most efficient way to deter the above-mentioned infringement would be to adopt "Internet Border Control" measures to block the general public from accessing those infringing websites. In February this year, the Spanish Parliament enacted a law creating an expedited procedure to remove illegal content from websites and to block access to those illegal sites. We urge Taiwan's Legislative Yuan to pass similar legislation.
3. ***Pursue legal action against internet pirates as a deterrent against infringement.*** According to RIT's statistics, 100% of the defendants in the 52 internet piracy cases brought in 2009 received suspended indictments by the Prosecutors' Office, and in 2010 suspensions were given in 11 of the 12 cases. Defendants receiving a suspended indictment were in return requested to make small donations to public welfare causes, but this high proportion of suspended indictments erodes the deterrent effect of efforts to combat internet piracy. We request that the prosecutors exercise greater prudence in deciding which cases deserve suspension.
4. ***Reevaluate recent amendments to the Copyright Collective Management Organization Act (CCMO Act). Taiwan's*** laws applicable to the collective administration of rights were substantially amended in the CCMO Act passed in February 2010. These new amendments, when applied in practical situations, inhibit the proper functioning of the licensing market and undermine the interests of both rights-holders and users.

   Collective Management Organizations (CMOs) play a

key role in facilitating the licensing of recorded music in certain segments of the business-to-business market. Their services allow users easy access to a broad range of content, while ensuring that rights-holders are remunerated for the use of their rights. The activities of CMOs should be treated like that of any other commercial enterprise, with the state avoiding interference in their operations and commercial decisions.

a). **Allow collective administration bodies to use commission agents for collecting royalties.** One of the major challenges faced by rights-holders seeking to license their rights is to locate potential users. This problem is acute in the area of public performance, because commercial users are often based in different geographic locations and rarely seek to obtain a license on their own initiative. CMOs acting on behalf of rights-holders face serious difficulty reaching all the commercial users who publicly play recorded music, educating them on the need to obtain a license, and issuing the relevant licenses to them.

CMOs all over the world constantly evaluate their ability to reach commercial users in their particular markets and develop ways to do so more efficiently. In many countries, the CMOs for record producers use commission agents to help to identify commercial users and collect royalties. It should be stressed that such agents always act on behalf of the CMO and the responsibility for the collections remains with the organization.

In Taiwan, the record producers' CMO also used commission agents to assist in covering different geographical locations more effectively – until a TIPO ruling in September 2008 stipulated that the practice should be discontinued. Examples of countries where record-industry CMOs utilize commission agents include Austria, Belgium, Canada, Chile, Colombia, Croatia, the Dominican Republic, Ecuador, Germany, India, Italy, Malaysia, the Netherlands, Panama, Poland, Romania, Russia, Spain, and Turkey. In some other countries/territories such as Australia, France, Hong Kong, Ireland, and Singapore, commission agents are not used to help in the collection of royalties for record producers, but there is no government regulation prohibiting that practice. Clearly, the Taiwanese approach is quite uncommon among the major countries of the world.

The inability to use commission agents has a direct negative impact on rights-holders' licensing activities, making it possible for a large number of businesses to operate without a license and thus denying the rights-holders the remuneration they are entitled to. There is no justifiable reason to prevent rights-holders from using agents for licensing and royalties collection, and the underlying reason for the Taiwan policy has never been adequately explained. Any concerns about licensing practices could be addressed more 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.

b). **Refrain from obliging rights-holders of different categories to collect royalties together.** Experience has shown that licensing markets function most effectively when rights-holders remain free to find the most efficient way to administer their rights. To ensure that such conditions exist in Taiwan, rights-holders should be allowed to determine for themselves which CMO to join and entrust their rights to, and even whether or not to collect jointly with other rights-holders. In fact, obliging all rights-holders to collect their performance rights jointly would likely result in conflicts regarding 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.

Although the amended Article 30 of the CCMO Act will not take effect until February 2012, a recent attempt to implement Article 30(1) of the law has demonstrated the many practical difficulties involved in applying the "single-window collection" concept called for in the legislation. TIPO notified three CMOs that they should adopt a joint royalty rate for a particular type of exploitation: "public performance by the use of computerized karaoke machines." Although TIPO stated that it made this decision because the users have not made payment to these three CMOs, this is not a valid reason since in fact some users have already made payment to certain CMOs without knowing they should also make payment to other CMOs.

In practice, it has been very difficult for the three music composers' CMOs to achieve consensus for a joint tariff, as the quantities of use of their titles are very different. It has also been very difficult to agree on a single window to collect the royalty. Small CMOs may lack the ability to carry out the collection work, while it is unfair to select a large CMO to serve as the "single window" simply because of its bigger size. Even if the CMO is paid an administrative fee for its service, it is unlikely that the remuneration would be sufficient to provide an incentive to undertake such a burdensome task.

Given these practical problems in implementing "single window collection," the executive and legislative branches of government are urged to take action to re-amend this article before it goes into force. Most countries leave it to rights-holders to decide how to license their rights. Experience has shown that rights-holders of the same type usually 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.

5. ***Strengthen IPR protection for the era of digital convergence.*** Strong IPR protection is a key factor in encouraging the cable industry to invest in digitization and for the content industry to supply the high-quality programming needed to drive the adoption and growth of digital service. For Taiwan to remain competitive in high-quality content production and state-of-the-art network investment and innovation among its Asian peers, it must squarely face the challenge posed by Over-the-Top (OTT) services and establish an effective legal framework to solve the problem of cable piracy.

   OTT services – video streamed over the internet, often by overseas operators – are becoming increasingly prevalent in an era of digital convergence in which content can easily be distributed over digital networks. The IPR ramifications are extremely serious, as the unlawful distribution of unauthorized content by these OTT service providers is taking revenue away from the local content industry, lessening its willingness to invest in the development of new products and services.

   The overseas OTT operators do not contribute any direct investment to Taiwan, pay no local taxes, and create no employment opportunities here. They are also not subject to the same regulatory framework as their Taiwan counterparts, opening the way for socially unhealthy content such as pornography and cyber-betting to enter the domestic market.

   We therefore urge passage of a law outlawing distribution of unauthorized content through any channel, combined with public education to discourage consumers from accessing such content.

   Another important IPR issue that needs to be addressed is cable piracy, which causes substantial losses to Taiwan's cable industry and impedes the development of CATV digitization. In September 2007, the head of the Government Information Office's Radio and Television Affairs Department estimated that around 15% of total households in Taiwan engage in signal theft – meaning that approximately 1.14 million households were illegally watching cable TV, causing an annual revenue shortfall of US$230 million for the cable operators. Such a significant revenue loss not only discourages cable operators from further investment to upgrade networks, but may also discourage content providers from creating new digital content.

   In recent years, Taiwan has earned a reputation for improved IPR protection, and in recognition of its progress was removed from the Special 301 Watch List maintained by the Office of the U.S. Trade Representative. But to maintain its favorable status, Taiwan needs to demonstrate that it is continuing to bolster its IPR protection to meet new challenges. A major test will be whether it can institute an effective legal framework to protect the IPR of video content transmitted via unauthorized access to cable networks.

Issue 5: Tighten Customs procedures against counterfeit goods.

In Taiwan, Customs is responsible for the inspection of shipments of optical media and other goods to determine whether they contain infringements of copyrighted works. When Customs confirms that such products contain infringing works, the case is then usually transferred to the Aviation Police Bureau for investigation (since most of the infringed copyrighted works are shipped in by express delivery) and then to the Prosecutor's office. In recent years, however, the number of reported cases of infringement resulting from Customs inspection has decreased dramatically. Members of the Business Software Alliance, for example, report that the number of inspection cases initiated by Customs in 2010 was only one-third the volume of the year before.

The Committee's understanding is that a key reason for the decrease is the slowness of the Aviation Police Bureau in completing its investigations and transferring the cases initiated by Customs to the Prosecutor's office. In some cases, that process has taken as long as two years.

We urge the Aviation Police to work closely with Customs to speed up the transfer process. Alternatively, since the Intellectual Property Task Force is well-trained and effective in the investigation of cases involving optical media, the National Police Agency could assign the Task Force to work with Customs on such cases.

Issue 6: Provide IPR training to prosecutors and judges at the district court level.

The investigation and trial procedure for a typical copyright infringement case usually takes at least eight months and as long as one to two years at the district court level where a criminal complaint is filed. Reasons for the prolonged process could be: (i) the heavy case load of prosecutors and judges; (ii) the frequent transfer of judges from one case to another; and (iii) the lack of familiarity by prosecutors and judges with the software industry and internet piracy. Training courses and seminars in this area will be helpful in improving prosecutors' and judges' knowledge of these subjects in the hope it that will accelerate trial procedures.

The Ministry of Justice (MOJ) formerly conducted at least one IPR training program a year for prosecutors on software, movies, music, and other copyright infringements, but this training was not held in 2008 and 2010. We urge the MOJ to resume the annual schedule for such training. We also suggest that the Judicial Yuan conduct similar training for judges to increase their ability to handle cases regarding software and the internet. Currently judges' lack of familiarity with internet technology may cause the legal process to be prolonged, or lead judges to "strongly request" rights-

holders to settle internet piracy cases with the defendants without justification.

Issue 7: Take steps to ensure the procurement and use of legal software in the public sector.

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

1. Update the procurement guidelines issued by the Directorate General of Budget, Accounting and Statistics, which are 14 years old and also lack a clear definition of the audit process. In particular, the guidelines need to specify the competent agency empowered to carry out enforcement and to authorize the conducting at least annually of a software asset audit of valuable software deployed within the government.
2. Increase the IT budget for purchasing legitimate software so that government can set an example for the protection of intellectual property rights.
3. Continue to cooperate with rights-holder groups to provide training to the relevant staff at government and educational institutions on software copyright issues, including ways to differentiate between genuine and counterfeit software. Such training of government and school officers responsible for the procurement of software will help them avoid being defrauded by dishonest dealers during the course of purchasing and government tenders.

MEDICAL DEVICES

The Legislative Yuan and the executive branch, particularly the Department of Health (DOH) and its Bureau of National Health Insurance (BNHI), deserve credit for enactment early this year of the "Second Generation" National Health Insurance Act, which restores Taiwan's health insurance program to a sounder financial footing. This Committee also appreciates the inclusion in the law of provisions for a "balance billing" system for medical devices, which will benefit patient access to optimal treatment without putting additional strain on the NHI budget.

At the same time, in the paper below we would like to propose ways to 1) improve Taiwan's regulatory process for medical devices by bringing it more in line with international practice, 2) further strengthen the reimbursement system following enactment of the "Second Generation" NHI law, and 3) open the market to medical devices manufactured in China by multinational companies and certified for sale in the United States or European Union.

We thank the authorities for their attention to our proposals, and look forward to discussing them in greater detail in follow-up meetings.

Issue 1. Harmonize the regulation of medical devices with global practices and international trends.

Taiwan is one of the few countries in the world that regulates both medical devices and pharmaceuticals under the same legislation. Japan was another, but it has been moving away from this practice in recent years. Because of the numerous differences between medical devices and pharmaceuticals in the way they are manufactured and marketed, and the type of safety concerns that exist regarding their use, medical-device companies have been seriously disadvantaged by being included under the same regulations as apply to drugs.

If it would be too difficult to write an entirely new law to cover medical devices, the Committee suggests that medical devices be treated in a separate Article, still within the Pharmaceutical Affairs Act. Following are points we especially ask the TFDA to consider in revising the regulatory approach:

1. A medical device may be assembled from components from many different sources or its production outsourced to a contract manufacturer. As a result, differences of opinion may arise over what company should be identified as the "manufacturer" of the product for purposes of registration and labeling. For product licensing and listing as the Good Manufacturing Practice (GMP) manufacturer, the Committee urges the TFDA to accept the company that has legal liability for the product and is responsible for its post-market surveillance as the "legal manufacturer."
2. A transnational division of labor is increasingly common in the manufacturing process for medical devices, which may lead to a discrepancy between the location of the legal manufacturer and the country of origin (COO) listed on the labeling, as Customs will tend to regard the COO as the place the goods were shipped from. We urge the TFDA to communicate with the Directorate General of Customs to develop a reasonable rule to resolve the issue.
3. Modifications to products or labeling require TFDA registration, but the Taiwan regulators sometimes reject an application – even when their U.S. or European counterparts have already approved a similar request – on the grounds that what is involved is an entirely new product, not a revision to an old one. We suggest that the TFDA refer to international practice in establishing clear and consistent criteria and procedures for amendment registration.

We urge the TFDA to set a reasonable time schedule for drafting proposed solutions to the above-mentioned problems and to discuss them with industry representatives before implementation.

Issue 2. Reform the National Health Insurance (NHI) payment system to raise Taiwan's competitiveness in

medical services.

The funding shortages in the National Health Insurance (NHI) system have called into question the long-term sustainability of the high-quality, low-cost universal healthcare services that Taiwan citizens currently enjoy. As a result of these financial pressures, the introduction of new medical technologies and medical devices may encounter difficulties. The "balance billing" payment program for medical devices – in which patients may cover a portion of the cost for devices that are not reimbursed by the NHI system completely – not only makes more treatment options available for patients but also utilizes medical resources more effectively to help prevent NHI finances from becoming a barrier to the introduction of new medical devices.

This Committee would like to express our appreciation for the inclusion of provisions authorizing "balance billing" in Article 45 of the "Second Generation" NHI Act. This accomplishment, a key milestone in NHI reform, was made possible through the great efforts exerted by the officers of the DOH and BNHI. The result will be to facilitate the introduction of new medical technologies by offering reasonable payments and ensuring the continued competitiveness of Taiwan's medical services.

At the same time, we have some suggestions to offer BNHI on additional ways to improve the system:

1. ***Set up the "balance billing" program in a way that preserves free market competition.***

   The "balance billing" program is an intermediate stage to allow new medical devices to be included in the NHI reimbursement system by means of partial patient self-payment. After referring to published relevant information, patients will have the option of paying extra to select optimal products not covered by the insurance program. Since the objective of "balance billing" is to facilitate the introduction of internationally developed new technologies into the Taiwan market, rather than to create another barrier to their entry, the committee urges BNHI to set up the program in a way that reflects the variance in value among different products and to allow each hospital to set its own pricing based on its management costs and the value of the product. Through the resulting free market competition and information disclosure to the public, the amount of extra payment to be contributed by the patient will decrease gradually over time. This approach will not only encourage the industry to introduce new medical devices into the Taiwan market more aggressively, but also respects the patients' right to choose which products they believe will provide them with optimal treatment.

2. ***Ensure the introduction of new medical technologies and devices under the Tw-DRG payment system.*** The Tw-DRGs (Taiwan-Diagnosis Related Groups) payment system – in which hospitals are reimbursed as a package for the entire treatment of a particular ailment in a patient – is a new initiative. Considering the long learning curve that inevitably accompanies the introduction of new medical technology and new medical devices, the Committee recommends the following revisions to the proposed system:

   - **Repeal the individual medical-device reimbursement.** The DRGs system categorizes diseases with the same diagnostic results and treatments in the same group, and sets a standard reimbursement to be paid to hospitals for the course of treatment of diseases in that group – with minor adjustments based on the patient's age, gender, complications, and subsequent discharge status. The purpose of the system is to ensure that the best and most effective medical care is provided by developing clinical pathways to patients.

     The many countries that have already implemented DRGs payment systems include Australia, Belgium, Canada, the Czech Republic, France, Germany, Ireland, Japan, New Zealand, Norway, Portugal, Singapore, Spain, South Korea, Sweden, and the United States. Unlike all these countries, Taiwan is proposing to simultaneously continue setting reimbursement prices for individual medical devices used in the DRGs procedures. The Committee asks that the individual reimbursement be eliminated as unnecessary and redundant once the DRGs payment system is in place.
   - **Set the payment point value of Tw-DRG at NT$1 per point.** BNHI is implementing the Tw-DRGs system within the parameters of the "global budget" mechanism, which sets a cap on a hospital's annual allowed expenditures. If this constraint impedes the introduction of new medical devices due to hospitals' budgetary concerns, it would seriously affect the quality of healthcare. To achieve the intended objectives of implementing the DRGs system, hospitals need to be able to preserve their financial soundness while providing patients with quality healthcare service. As the global budget operates on a point system, with the value of the points unknown until the year-end accounting is completed, the Committee suggests that the payment point value for Tw-DRG be fixed at NT$1 per point in order to create greater financial certainty and stability for the hospitals.

3. ***Cancel the Price-Volume Survey (PVS) for medical devices.***

   PVS is the tool used by BNHI in seeking to eliminate the differential between the reimbursement to the hospitals and the actual selling price of the medical devices. But in practice, the floating point value for device reimbursement leads to continuous enlargement of the price difference. In addition, the PVS process lacks both transparency and a reliable auditing mechanism, and the functional grouping method for setting reimbursement prices does not take into consideration the differences in production cost or product quality among individual products. With the multiple

payment schemes under Tw-DRG restricting the optimal choice of clinical treatment, conducting the PVS would result in encouraging an emphasis on cost control and price only, to the neglect of medical quality and the value of the device itself.

The Second Generation NHI legislation was passed by the Legislative Yuan and promulgated by the President this January. In this reform, the previous sole focus on cost and price control has given way to encouraging the promotion of medical quality. As no article can be found in the new NHI Act to authorize the conducting of a PVS, we request that BNHI revoke the PVS system for medical devices.

4. ***Maximize participation and the transparency of information in the policymaking process.*** The Committee urges DOH and BNHI to respect the industry as an important partner in Taiwan's healthcare system by establishing a mechanism for industry representatives to systematically participate in the discussions leading to the setting of healthcare and NHI policies with an impact on the medical-device business. Under the new NHI payment system, different NHI reimbursement policies are closely related to one another and will affect the ultimate medical quality and clinical outcome. Representatives of the medical devices companies should not only be invited periodically to participate in meetings concerning medical-device reimbursement and the setting of reimbursement guidelines, but also take part in the National Health Insurance Supervisory Committee and the NHI Payment Committee. Receiving input from the industry and obtaining its full cooperation can only help ensure that NHI policies are sound and practical.

   Also needed are transparent review criteria and processes for medical-device reimbursement. The list of participants in the Special Materials Expert Group and its meeting minutes should be published, for example, and the meeting agenda announced two weeks prior to the meeting date. Representatives of medical-device companies whose cases will be discussed at the Special Materials Expert Group meeting should be invited to attend to answer questions about their product if necessary.

   Through more effective platforms for communication, BNHI and the industry can work together to encourage the introduction of high-quality and high-technology medical devices to Taiwan and enhance the level of medical care and the business environment in Taiwan. This approach would be line with the spirit of maximum participation and disclosure of information emphasized in the Second Generation NHI Law.

Issue 3. Lift the ban on imports of medical devices from China for products made there by multinational firms.

The Committee urges the Bureau of Foreign Trade (BOFT) to accelerate trade liberalization by adopting a more open-minded attitude toward restrictions on imports from China. More and more international medical-device companies are setting up manufacturing facilities in China to accommodate their manufacturing needs and global trends. Multinational companies producing in China apply the same level of quality control as in their home countries, and these products are certified for sale in the United States, the European Union, and other major markets. But in many cases, Taiwan continues to prohibit their import.

With the steady improvement in cross-Strait economic relations, including the signing last year of the Economic Cooperation Framework Agreement (ECFA), the Committee hopes that the importation rules could be further liberalized. We recognize, however, that for medical devices, concerns about public health and the assurance of medical-care quality may continue to be a factor. We therefore urge the government to make special provision to allow the import from China of medical devices manufactured by multinational companies, especially products that have already proven to be of high standard by obtaining market approval in the United States and the European Union.

On many occasions, BOFT has recommended to members of this Committee that we attempt to resolve outstanding issues through private negotiation with the relevant domestic industry associations to gain their approval. But we believe that instead of relying on the opinion of the domestic industry associations, the BOFT should follow a transparent review process and be willing to take the responsibility for making decisions.

Importing the items recommended by this Committee would pose no threat to Taiwan's national security nor have any serious negative impact on domestic industry – the two conditions stipulated for including product categories on the list of items banned from entry from China. We urge BOFT to urgently re-evaluate the situation, with priority attention to opening the market for the medical-device products listed below:

CCC Code	Product Description
Completely Banned Items	
3005.10.10.00-5	Surgical adhesive tape
9018.90.30.00-7	Intravenous administration sets
9018.1200.00.8	Ultrasonic scanning apparatus
Partially Banned items	
3005.10.90.90-9	Other adhesive dressings and other articles having an adhesive layer
9018.90.80.00-6	Other articles of heading No. 9018: Orthopaedic Surgical Instrumentation and appliances
9018.90.90.90-5	Parts and accessories of other articles of heading No. 9018

OTHERS

CHIROPRACTIC

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

Each year for the past several years in this section of the *Taiwan White Paper*, the U.S.-trained and U.S.-licensed doctors of chiropractic (DCs) among the members of AmCham Taipei have presented what we believe are cogent and persuasive reasons why it is not only fair and reasonable – but also in the best interests of the healthcare of the Taiwan public – for the Taiwan government to respect the legitimacy of our internationally recognized profession. To our disappointment, however, there has been no discernible progress toward this goal. Worse, the communications we have received from the Department of Health have been somewhat demeaning, and despite our lengthy past explanations, continue to display significant misunderstandings about the profession of chiropractic.

Last year, the DOH provided a two-point response to our position paper, which we quote here (after some polishing of the English):

1. With regard to bringing chiropractic technique to Taiwan, DOH has an open attitude, except that at the present time there is no rule directly allowing [those with] foreign licenses to work in Taiwan. Establishment of the various healthcare professional systems in Taiwan has all followed the procedure of "education-examination-practice," by going through a complete health professional education and taking the national license examination. Therefore, it is recommended to start setting up chiropractic technique courses in a college or medical school, and after its therapeutic effect is scientifically proven and researched, it will then be included in the regular education system, and after the technique becomes mature, it will be put into the regular healthcare professional education and has a basis for the related legislation. The licensure should be obtained by following [the same] professional regulations as other healthcare providers, which means going through a legitimate medical training and passing Taiwan's national examinations.
2. If the practice of chiropractic technique is within the scope of the "DOH ACT 0990207052 Folk Healing Regulation" announced on April 15, 2010, as long as it is without claims of therapeutic effect, does not solicit medical-treatment business, and does not violate other medical acts, then it will not be subjected to investigation and prosecution.

In response to that response, we would like to emphasize the following points:

- The "open attitude" toward chiropractic has frequently not been evident. We cite, for example, DOH's past avoidance of scheduling meetings with representatives of the World Federation of Chiropractic, an affiliated organization of the World Health Organization, when they sought to visit.
- Chiropractic is a unique, distinctive healing system and should not be denigrated as merely a "technique." Qualified DCs are educated in 5-1/2-year programs (after the pre-requisite of a four-year university course) at accredited colleges of chiropractic, which is longer training than required of Taiwan medical doctors. The DCs in Taiwan have therefore already gone through "a complete health professional education" in the United States
- "At the present time there is no rule directly allowing [those with] foreign licenses to work in Taiwan." Several years ago, there was an attempt by several members of the Legislative Yuan to introduce legislation to recognize the chiropractic profession and permit holders of valid foreign licenses to practice here – similarly to what Hong Kong has done in the absence of its own educational and licensing system in this field. The initiative was blocked due to the staunch opposition of the Taiwan Medical Association, which erroneously views chiropractic as a source of competition rather than potential collaboration in providing patients with optimal opportunities for care.
- There is no legal basis for insisting on the "education-examination-practice" model, which has been consistently used as a smokescreen and defies logic. Would Taiwan medical schools agree to set up courses in a discipline in which they have no background or qualification? For the profession to begin in Taiwan, the best approach remains our proposal for "grandfathering" the qualified practitioners who are already in this market. A new system can be introduced when Taiwan's own educational and national licensing systems are in place.
- The reference to "after its therapeutic effect is scientifically proven and researched" ignores decades of international studies and resulting scientific evidence of the efficacy, safety, patient satisfaction, and cost-saving benefits of chiropractic healthcare. Examples of such documentation have been previously presented to the DOH and at public hearings.
- "After the technique becomes mature" is an inappropriate comment, considering that chiropractic has a history dating back to 1895, which was 16 years before the founding of the Republic of China. The first formal college of chiropractic was established in 1897, whereas the precursor of National Taiwan University was founded by the Japanese colonial government in 1928.
- With regard to the second of the DOH's above-mentioned points – that chiropractic will not be subjected to investigation and prosecution if viewed as coming under "folk-healing regulations" and

abstaining from therapeutic claims – for highly trained health professionals to be labeled as "folk healers" is denigrating. At the same time, we must express appreciation that some "breathing space" has been given DCs in Taiwan and that past abuse directed toward them (raids, home invasions, exorbitant fines, threats of imprisonment, etc.) have diminished.

It should be noted that Taiwan's treatment of U.S.-licensed chiropractic professionals has risen to the level of a U.S.-Taiwan bilateral trade issue. The subject was raised at the latest Trade and Investment Framework Agreement (TIFA) talks held in 2007, and it was mentioned in the 2011 National Trade Estimates report released by the Office of the U.S. Trade Representative (USTR) as an example of a trade barrier.

We understand that over the past several years, the DOH has had a number of other priority concerns, particularly the financial risks to the long-term sustainability of the National Health Insurance program. But with passage early this year of the "Second Generation" NHI law having resolved that problem for at least the foreseeable future, and with a new minister in office at DOH, we hope that we may start a new and constructive dialogue leading to the full acceptance of chiropractic in Taiwan. Our objective is to contribute our knowledge and skills to the health and welfare of the Taiwan public, including the growing proportion of senior citizens.

TOBACCO

Issue 1: Consider the implications on smuggling when increasing tobacco taxes.

The major policy objective of increases in the tobacco health surtax or tobacco tax is to "prevent tobacco hazards and promote the health of the people" by discouraging consumption through higher prices. But it should be noted that after the government increased the rates of the tobacco health surtax and tobacco tax, the higher market price caused a marked rise in the prevalence of smuggled tobacco products in the marketplace.

According to the results of a survey conducted by The Tobacco Institute of the R.O.C. (TIROC) in 2010, the market share in Taiwan for the illicit cigarettes known as "cheap whites" is about 5.2%, which would mean that around 100 million packs of these unregulated, untaxed products are sold in the market every year. Smuggled onto the island, they are subject to no quality testing or submission of ingredients, and deprive the government treasury of revenue by taking sales away from legitimate, tax-paid products. Thus raising the tax rate on legitimate products may in fact bring about an overall decrease in tax income.

The results of TIROC's survey show that price sensitivity primarily affects consumers of low-priced tobacco products. For people in this category, raising the tobacco health surtax or tobacco tax simply encourages them to switch to illegal and low-priced tobacco products, which serves no social policy interest. We therefore suggest that any adjustment in the scale of the tobacco health surtax or tobacco tax be carried out in a reasonable and gradual manner so as not to simply increase the use of illegal products. For the same reason, it would be advisable for the finance and health authorities to coordinate their actions to prevent proceeding with separate hikes in the tobacco health surtax and tobacco tax at the same time.

A sound approach for the tobacco health surtax would be to adopt a mechanism for raising the surtax at specified intervals by a given amount, or by an amount below a specified ceiling, in the interest of maintaining market order and a more stable and predictable source of financing for the health authorities for health-promotion purposes.

Meeting the goal of reducing the smoking rate depends on carrying out a comprehensive program, including effective consumer education. Constant increases in tobacco prices through taxation are not a solution to all existing problems.

Issue 2: Fully enforce existing laws rather than enacting frequent amendments.

Reviewing the history of amendments to the Tobacco Hazards Prevention and Control Act (THPCA), past experience shows that frequent amendments to the law have generated significant administrative, social, and economic costs. The increase in the tobacco health surtax in June 2009 is an example. Because of the complexity of the implementation measures that were introduced, it was necessary to paste new identifying labels on all products in inventory, causing a delay in the levying of the incremental tobacco health surtax. Besides the heavy extra burden imposed on legitimate tobacconists in terms of labeling and transportation, the situation aroused confusion in the marketplace and raised public doubts about government efficiency.

Another current law needing more effective enforcement is the proscription against smuggling. Currently, joint investigation teams formed by the Department of Health, together with the finance, Customs, tax and other authorities, are charged with this responsibility, but as mentioned above, illicit products smuggled in from abroad still account for a sizeable share of the market. To make the anti-smuggling operation more effective, we urge the government to expand the number of personnel assigned to the joint investigation teams and to increase the frequency of investigations.

In addition, the authorities could consider allocating an appropriate percentage of the amount of tobacco health surtax collected to be used to increase the awards for successful investigations or to better equip the investigation teams. These practical enforcement measures could have more impact than frequent amendments to the relevant laws.

For example, there is currently a move in the Legislative Yuan to further amend the THPCA to require graphic health warnings to cover 90% of the area of the tobacco product container and to limit the outside surface of the container, aside from the labeling, to a single, uniform background color. Such requirements would exceed normal

legislative purposes, violating both the spirit of free trade and Constitutionally guaranteed freedom of commercial speech, as well as infringing on the intellectual property rights of tobacconists. The huge space covered by the graphic health warnings would also make it difficult to identify particular brands, resulting in unnecessary communications problems between sales staff and consumers.

This industry consistently dedicates itself to following government policies and fully abiding by relevant laws and regulations. But considering the past challenging experiences generated from amendments to the THPCA, we sincerely request that the competent authorities, before initiating any additional amendments, fully evaluate the feasibility and reasonableness of the proposed law and invite industry representatives to participate in the process. Through such advance communication, potential implementation problems can be immediately addressed and a stable market environment assured for the benefit of both industry and consumers.

PHARMACEUTICAL

The AmCham Pharmaceutical Committee congratulates the Department of Health (DOH) and its Bureau of National Health Insurance (BNHI) on the passage of the Second Generation National Health Insurance Act by the Legislative Yuan on January 4, 2011. The enactment of this legislation is a critical step in assuring the long-term sustainability of the NHI system. The Taiwanese people should all benefit from this reform by gaining a more efficient and effective healthcare system.

Although the effective date of the 2G NHI law has not yet been confirmed, the R&D-based pharmaceutical industry urges the government to undertake immediate implementation of the Drug Expenditure Target (DET) mechanism provided for in the new legislation. Implementing DET should be used as an opportunity to replace the planned 7th Price Volume Survey (PVS), as the continuous post-PVS price cuts of recent years have made drug prices in Taiwan among the lowest in the world, disadvantaging patients by forcing many quality drugs out of the market due to unfavorable price conditions.

Although the PVS system has served the government's immediate goals of budget savings, the resulting price reductions have been extremely disruptive to the pharmaceutical industry, hospitals, and patients. They have also been administratively burdensome for BNHI, and most importantly, have not succeeded in resolving the underlying problem of the "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 the providers are reimbursed by BNHI. In discussions about DET implementation, DOH and BNHI have shown little willingness to consider canceling the PVS for 2011. The industry therefore seeks an alternative to the 7th PVS during the transition period while preparations are made to adopt the longer-term DET model. Government should find a better way to manage this issue before Taiwan's pharmaceutical market is even further damaged by the current PVS system.

At the same time, the R&D-based pharmaceutical industry would like to thank BNHI for announcing a new drug pricing and reimbursement principle in January 2010 under the spirit of rewarding innovation. Currently, the pricing system for new drugs does not reflect the degree of innovation of the products, which lowers Taiwan's attractiveness as a market for introducing new and innovative drugs. The next step is to implement this new principle into the pricing and reimbursement system and to add a Category 1B new drug to recognize "significant improvement" over existing drugs, so that innovation is properly rewarded and patient access to new drugs is expedited.

The Taiwan Food and Drug Administration (TFDA) deserves commendation for shortening the new drug review process by relaxing the Certificate of Pharmaceutical Product (CPP) requirements, creating a streamlined procedure for new drug review and registration, and establishing a mechanism to issue approval letters. The R&D-based pharmaceutical industry looks forward to continuing partnership with TFDA to further expedite the process for new drug review and make further advances to protect people's health.

The Committee appreciates the willingness and commitment of the government to engage in meaningful dialogue with the research-based pharmaceutical industry. This communication will help achieve the common goal of both government and industry of enabling patients in Taiwan to live longer, healthier, happier, and more productive lives.

Issue 1: Implement the Drug Expenditure Target (DET) system as early as possible.

Over the past several years, in order to manage soaring drug expenditures, BNHI has conducted six rounds of price cuts that affected a total of around NT$50 billion in pharmaceutical business. Taiwan is now one of the countries with the lowest drug prices in the world, with prices of original drugs now, on average, only 28% of the level in the United States. In the long run, patients may suffer from reduced access to innovative drugs, as the number of such drugs introduced into the Taiwan market diminishes as a result of the low prices.

After industry's repeated communication with government about this problem, DOH held a National Health Conference on December 31, 2008, where one of the conclusions was "to completely delink drug price adjustments from PVS." Based on this conclusion, industry proposed to set an annual Drug Expenditure Target (DET) to meet two objectives: 1) Ensuring patients' access to innovative medicines and 2) helping to create a financially sustainable healthcare system.

Under the DET system, BNHI and the medical and pharmaceutical industries would negotiate an annual drug expenditure target based on the historical data of actual

drug expenditures. Should the actual drug expenditure the following year exceed the preset target, industry would make up the difference through various possible mechanisms, such as a clawback or price adjustment. It has been the industry's hope that DET would be implemented immediately to replace the planned 7th PVS and subsequent drug price adjustment. Mainly due to the devastating price cut conducted in October, 2009, NHI pharmaceutical spending in 2010 grew by only 0.86% over 2009. BNHI should try to limit the scale of the next price adjustment, so that the pharmaceutical industry is not further damaged and patients will continue to have stable access to medicines.

In a related issue, BNHI has adopted the practice in its previous PVS and price cuts of "grouping" products of the same chemical composition. This practice has led to a much narrower price differential between off-patent originators and generic products, although the discounts offered by generics companies are much larger than from R&D-based companies. After BNHI introduced the "same quality, same price" principle at the time of the 6th PVS and price cut, the reimbursement prices for hundreds of generic products were increased, based on the criteria set by government. It has been evident, however, that the premium does not go to the generics companies, but is passed on to hospitals, and since the adoption of this new grouping mechanism, the market discounts for generic products have increased further. This will lead to an even bigger PVS-based price cut for groups of similar ingredients in the next PVS – meaning that a policy that was intended to give incentives for higher quality is instead being used to drive prices down faster.

Moreover, BNHI is requesting that the R&D-based companies also submit Pharmaceutical Inspection Convention Scheme (PIC/S) documentation, Good Manufacturing Practices (GMP) certifications or a Drug Master File (DMF) to prove that the originators have met the quality definitions. Should R&D-based companies not submit these additional certifications, the originators may no longer be treated as the standard, and the price may be reduced to 20% of the standard drug price. The R&D industry considers the request for this certification to be wholly unnecessary, as the DOH has already verified the originators' standards during the quality and efficacy review – and those standards are used as a 100% benchmark in bioequivalent studies and specifications before registration approval for all follow-on generic products. As any request to the R&D companies for further certification is redundant, we urge the DOH to sort out this issue between the TFDA and BNHI.

Although additional discussion is needed to reach consensus on detailed implementation of DET and price adjustments, industry's initial recommendations are as follows:

- Involve the biopharmaceutical industry in negotiating the annual DET together with other stakeholders.
- Replace any further PVS/price adjustment by implementing DET based on the actual drug expenditure in the previous year plus a negotiated growth rate. Government should stipulate a mechanism whereby only excess expenditures would be adjusted.
- Exempt products newly added to the reimbursement list, particularly on-patent drugs, from price adjustments.
- After taking the initial reimbursement price into consideration for originator drugs that have just gone off-patent, adopt a step-by-step approach for reasonable price reductions.
- Refrain from grouping products of the same chemical composition.
- Drop the BNHI request for DMF, PIC/S or GMP documents from the originators, since those products have already been approved by PIC/S member countries or 10-advanced countries based on the highest international standards and have also been used as benchmarks for approving generics by Taiwan's DOH. BNHI should continue using originators as the benchmark of product quality for generics, as is done in the reimbursement systems in developed countries.

Issue 2: Reform pricing policies for new drugs to reward innovation.

Following two innovation workshops organized by the industry in 2009 to engage DOH and BNHI in a constructive dialogue on reimbursement-pricing policy, a third workshop was held in December 2010 to evaluate the implementation of the new drug pricing principle and to propose actions for 2011.

The trend of decreasing reimbursement prices offered to new pharmaceutical products in Taiwan has continued. In 2010, the average price granted to new drugs reached a new low of 47.81% of the A10 (10 benchmarked advanced economies) median and 68% of the A-10 lowest price.

The severe price cuts carried out over the past few years are one of the major reasons for the low prices for new drugs, as the majority of new drugs are priced based on a comparison with existing products. In 2010, none of the new drugs was recognized as a breakthrough innovation to be classified into Category 1, eligible to be granted an A-10 median price. (The first Category 1 drug was finally approved in March 2011; we hope that a larger number of new breakthrough innovative drugs will be recognized by BNHI.)

Another issue is the price-volume agreement (PVA) system. BNHI requires companies to sign a PVA so as to share the financial risk with government when most new drugs or indications are approved for reimbursement. We urge BNHI, through discussion with the industry, to develop guidelines to make the PVA process more transparent and the results more predictable.

In addition, Health Technology Assessment (HTA) procedures were introduced in the amended NHI Act in January 2011. DOH/BNHI should work together with the key stakeholders to come up with a phased-in plan to implement HTA in a way that ensures that patient access to new drugs is not delayed. Considering that the prices

of the comparators continue to be lowered through price cuts, it has become increasingly difficult to judge a drug's cost effectiveness when compared with the reference drug. The HTA review process should be transparent, and the authorities also need to consider the requirements of data confidentiality.

Recommendations:

- Implement the new drug pricing principle to award A-10 median pricing for Category 1A breakthrough innovative medicines, a 10% price mark-up for local clinical trials, and a maximum 10% price mark-up for locally conducted pharmaco-economic studies
- Add Category 1B (based on head-to-head or indirect comparison data showing significant improvement over existing drugs) into the new drug pricing principle, so as to allow greater market segmentation among innovative products. Set a reasonable percentage for category 1 products, based on international experience.
- Develop clear guidelines governing PVAs, including:
  a. First-year incremental drug expenditure > NT$200 million
  b. A more reasonable rebating scheme
  c. No price adjustment if the price is higher than the A-10 lowest/median
  d. Elimination of exchange-rate uncertainty
- Ensure the transparency of HTA implementation and secure data confidentiality.

Issue 3: Strengthen IPR protection through Patent Linkage and Data Protection.

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 about 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 a drug into account when issuing regulatory approval to generic versions. In 2009 (the most recent data available), 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. However, 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 Protection

The regime in Taiwan for data protection – 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 (small-molecule) products, and not new indications and biologic (large-molecule) drugs. Also, the five-year 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 data protection. For instance, the European Union provides 10 years of data protection 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 data protection for chemical drugs, six years for biologics, and an additional one year for pediatric indications. Japan provides eight years of data protection 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 for a stated period of time (30 months in the United States) until the parties reach agreement or the generics company proves the patent right is not affected or not valid.
3. Provide DE for new drugs and indications as follows:
   a. For small molecules, three years for new indications / new uses.
   b. For new biologics, 12 years.

Issue 4: Assure consistent drug quality by strengthening post-approval quality requirements.

In order to deliver drugs to patients with consistently good quality, a comprehensive post-approval regulatory system exists in most developed countries. The system includes advanced GMP regulations and routine inspection, active pharmaceutical ingredient (API) management systems, 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 with the well-established practices in advanced countries – for example, in governing changes in API sourcing that may impact drug quality. We urge DOH to strengthen the local regulatory system on post-approval variations in order to ensure patients' access to good quality medicines.

DOH also needs to establish a database of API sources for each finished product before it can effectively monitor API source changes. Currently, DOH asks companies to voluntarily submit comprehensive dossiers to validate the API quality. Generics companies can use a system similar to the Drug Master File (DMF) used in the United States since 2009 if they would like to apply for a DMF certificate to get a higher NHI reimbursement price based on the current BNHI quality standard classification. Since the 10 reference countries for product approval have already had well- established API review systems for many years, and the review results are well-recognized, we recommend that DOH not duplicate the review result from the New Drug Application (NDA) process, and recognize the quality of the products sourced from these 10 reference countries so as not to create a redundant regulatory requirement. .

In addition, DOH asks companies to submit comprehensive documents on each manufacturing site for imported products to prove its PIC/S status, which is stricter than GMP requirements. Manufacturing sites from PIC/S-certified countries, even those whose GMP standard are comparatively high, often receive a lot of questions or are even rejected during the review by DOH, which delays the product approval or the importation of currently approved products. We strongly urge DOH to make the review process more rational and to minimize the technical barriers imposed on manufacturing sites for imports, especially those from countries with higher international GMP standards.

Recommendations:

1. Strengthen the current post-approval drug quality management system and establish an API monitoring system.
2. Avoid creating a redundant regulatory requirement for products sourced from the 10 reference countries.
3. Create a more rational process for reviewing applications of sites in PIC/S member countries, as well as the review of the Plant Master File (PMF) and procedure for on-site inspection.

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. There should be a regulated margin on drug management for pharmacies.

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. Besides, according to study by Asia University, releasing prescriptions for chronic diseases will improve adherence to the prescriptions, which could have a positive effect on patient's clinical outcomes and even reduce overall medical costs.

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. Adopt an SDP roadmap so that the direction of implementation is clear, even if it must be carried out in stages. An integrated implementation plan should include measurements of SDP compliance as part of the hospital accreditation system, and public hospitals should serve as a role model by setting a target rate for the release of prescriptions. 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. Provide more extensive education 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. Provide sufficient government funding to improve the community-pharmacy infrastructure in preparation for meeting SDP demand.
4. Adopt clear regulations to ensure good dispensing practice by the pharmacies and to prevent drug substitution without the doctor's consent.
5. Arrange for the government to 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 foster the development of the real estate market and accelerate urban renewal projects. By making appropriate revisions to current regulations, we believe that the government has the opportunity to create a healthy property market that serves the interests of the public as well as institutional investors. The Committee looks forward to discussing the issues below with the relevant government agencies to further improve the overall market environment.

Issue 1: Revive the Taiwanese REIT market.

A total of eight Real Estate Investment Trusts (REITs) have been listed on the local bourse over the past several years, following the launching of the first REIT in March 2005. Insurance companies have been the dominant investor in the REIT market, along with the participation of some retail investors. While REIT investors receive a number of tax benefits that include exemption from withholding tax and a very low dividend tax of 0.03%, most of the assets under the REIT portfolios are underperforming the real estate market, possibly due to the following factors:

- No incentive mechanisms have been put in place to encourage the asset manager to manage the properties to a high level.
- There is also no incentive mechanism to encourage the trustee bank, which acts as the portfolio manager, to take an active investment approach.
- Most of the REIT sponsors have appointed one of their subsidiaries to serve as the asset manager.

The Committee suggests that the government offer incentives to REIT managers, in order to ensure the long-term development of REITs as an investment vehicle. By encouraging the managers to adopt an active asset-management approach and the trustee banks to support the managers to actively purchase quality properties, the government could further strengthen and promote the Taiwanese REIT market, and also avoid having undervalued REITs applying for delisting. Our recommendations are as follows:

1. ***Stipulate a total investment quota for REIT funds.*** Under the "Real Estate Securitization Act," the trustee is allowed to apply to issue an additional amount of REIT funds through public offering or private placement. However, the Committee recommends that when the fund is first established, the competent authority clearly stipulate the amount of additional issuance to be allowed. According to the existing rules, the trustees must apply for approval from the competent authority when issuing additional beneficiary securities or undertaking any property transaction. But the long review and approval process makes it difficult for the fund managers to time new investment to coincide with an upturn in the real estate market. Eliminating the current application process for additional issuances would allow the trustees to invest in a more efficient and professional manner, which in turn will bring better returns to investors.
2. ***Increase the credit ceiling for REITs investing in development projects.*** According to Article 11 of the "Regulations Governing the Public Offering or Private Placement of Real Estate Investment Trust and Real Estate Asset Trust Beneficiary Securities by a Trustee," the maximum amount of borrowing may not exceed 50% of the total amount of trust assets, even for REIT funds rated grade 1 by two credit-rating agencies. Due to the high-risk nature of development or renovation projects, however, it would not be easy for REIT funds whose underlying assets are in such projects to obtain a relatively high rating. The Committee therefore suggests either relaxing the maximum borrowing amount or exempting development-project-based funds from this restriction.
3. ***Offer incentives to REIT managers.*** According to the Financial Supervisory Commission's management

principles (Principle 7, Chapter 5, Part 3), neither the trustees nor the asset management companies shall be subject to any kind of performance bonus. The Committee recommends removing this stipulation from the principles, so as to enable the trustees and management firms to install incentive mechanisms that would encourage the managers, at both the property and asset levels, to maximize beneficiaries' profits.

Issue 2: Expedite the review process for urban renewal projects and actively enforce demolition procedures.

As reported on the website of the Taipei City Government's Urban Redevelopment Office, the municipal government over the years has approved a total of 421 applications for urban renewal projects. In contrast, however, only 104 urban renewal implementation plans have been further approved and a mere 26 projects have been granted building permits since 2006. In view of the low completion rate of such urban renewal projects, despite the crucial role they can play in facilitating urban regeneration, the Committee urges Taipei City's Urban Renewal Review Committee to find ways to heighten its efficiency. We believe that the necessary legal processes are in place, but the actual inability to consolidate land into usable parcels remains the stumbling block. Our recommendation is for the government to be more forceful in ensuring that the project goes ahead once 80% of the site owners agree.

To encourage more private developers to participate in urban renewal projects, the Taipei City Government last year enacted an ordinance offering a floor-area bonus to developers who carry out urban renewal of old apartment complexes. A total of seven applications have been submitted in compliance with this ordinance, but all of them have been deferred for later review by the Urban Renewal Review Committee due to a lack of review and assessment guidelines. The unavailability of detailed guidelines to be utilized as reference by the review committee not only prolongs the already lengthy review process but also greatly hampers developers' ability to negotiate with property owners. The Committee calls on the Taipei City Government to recognize the urgency of drafting such assessment principles for old apartment complexes to be redeveloped through urban renewal.

In addition, Article 36 of the Urban Renewal Act obligates the local government, upon the request of the urban renewal developers once the required proportion of property owners have consented to the project, to enforce the demolition of existing structures on the site so that redevelopment work can begin. But the fact that no such case has been implemented by the Taipei City Government since one in June 2010 raises doubts about the effectiveness of Article 36 and the efficiency or determination of the government in enforcing removal activity. The Committee once again urges the government to take an active role in promoting urban redevelopment projects and to strictly enforce the measures stipulated in Article 36.

Issue 3: Allow mainland Chinese investors to acquire and develop commercial properties.

Since September 2010 when the Economic Cooperation Framework Agreement (ECFA) took effect, an increasing number of mainland Chinese companies have set up business operations in Taiwan. The Committee welcomes this development and believes that the domestic commercial property market has benefited from the new demand generated from mainland Chinese enterprises, albeit on a small scale to start with.

While the Committee notes that the government is currently introducing several cooling-off measures to prevent a potentially overheated property market, we would like to reiterate our plea that the government revise Article 7 of the "Regulations on Permitting People of the Mainland Area to Acquire, Create or Transfer the Property Rights of Real Estate" in order to allow mainland Chinese investors to purchase commercial properties in Taiwan. At present, only PRC enterprises in the industries explicitly opened for investment are permitted to purchase business premises in Taiwan, and then only for their own use. As a result, investors from mainland China – unlike their counterparts from other parts of the world – cannot simply invest in the Taiwanese real estate sector. As commercial buildings are usually income-producing and the general public is unlikely to be affected by a robust commercial property market, the Committee urges the government to revise the relevant regulations to allow PRC capital to be injected into the local commercial property sales market.

The Committee appreciates the government's effort to continually liberalize cross-Strait trade and investment, and to further improve Taiwan's competitiveness. So far, a total of 205 industries have been included on the list of categories opened for mainland Chinese investment. Nevertheless, it has still not been possible for mainland Chinese companies to invest in Taiwan's real estate development industry, despite the stipulation in Article 9 of the "Regulations on Permitting People of the Mainland Area to Acquire, Create or Transfer the Property Rights of Real Estate" that PRC enterprises may invest in development projects beneficial to the Taiwanese economy, including residential complexes and industrial parks, upon receiving approval from the competent authorities. The fact that the Ministry of Economic Affairs has yet to allow mainland Chinese companies to tap into Taiwan's property development sector has rendered Article 9 irrelevant. The Committee strongly urges the government to utilize the opportunity available under Article 9 to permit the entry of PRC companies into the real estate development industries in Taiwan.

RETAIL

The Retail Committee is pleased to have witnessed some significant efforts in the past year by the Taiwan government

– the Food and Drug Administration (TFDA) of the Department of Health (DOH) in particular – in improving harmonization with international practices regarding certain consumer goods, such as cosmetics. These include a draft revision of the Cosmetics Hygiene Administration Law, which removes the pre-air censorship of advertisements. We are also gratified to learn that TFDA is actively partnering with the Taipei Cosmetics Industry Association in designing a mechanism to establish product safety standards, as well as industry-practice guidelines for advertisements to ensure effective consumer protection.

The Committee further appreciates the willingness of the Consumer Protection Commission of the Executive Yuan to take our views into consideration earlier this year when deciding to exercise caution in implementing a "Consumer Bill of Rights."

We also commend the initiative taken by various government agencies to improve the quality of the regulatory environment and to reposition the government's role in setting standards.

On the other hand, the Committee notes that these positive directions are not always broadly embraced among government offices. In fact, we have observed that the tendency to create "Taiwan-unique" regulatory solutions has grown even more prevalent. As mentioned in past *White Papers*, harmonizing Taiwan's regulations with internationally accepted practices would significantly boost Taiwan's global competitiveness, not to mention government efficiency.

The "Taiwan-unique" approach, which causes unnecessary administrative burdens for both domestic industry and multinational companies alike, can be seen in all of the issues cited below. This persistent phenomenon has already been a serious impediment to Taiwan's competitiveness, and if not corrected will be more so in the fast-developing and increasingly competitive global economy of the future. We urge the relevant government agencies to undertake an urgent effort to harmonize Taiwan's regulations with those of other major countries.

Issue 1: Review and revise out-of-date labeling requirements.

In President Ma's 2010 National Day Address, he spoke of Taiwan as a small country with big aspirations, eager to take on the challenges of globalization. Sharing that vision, the Retail Committee has been continuously suggesting ways in which local regulatory practices can be brought into greater conformity with international approaches so that business here can operate on the same playing field as our global counterparts and competitors. But unfortunately for many importers, Taiwan's current unique and stringent labeling requirements make it difficult or impossible for certain items to even enter the market – and in other cases the cost of compliance becomes an extremely onerous burden. Further, as the buying trend shifts from small individual packs to large multipacks, some of Taiwan's current labeling requirements seem particularly obsolete and in need of reconsideration.

1. ***Food Multipacks.*** Under Article 13 of the "Enforcement Rules of the Act Governing Food Sanitation," importers are required to affix Chinese labels prior to import. While we understand that some multipacks may be unpacked and resold individually, and that it is the consumer's right to have access to all product information regardless of the size or form of what they have purchased, importers cannot and do not always have the flexibility to open, label, and reseal such packs just for the Taiwanese market. Taiwan is the only market that requires Chinese labels, thereby requiring an additional step in a standardized mass-production process. We propose clarifying the labeling responsibility to make it the duty of the retailer to affix Chinese labels based on the size and pack of the product that they are actually selling, without regard to the sales unit that someone else might choose to re-sell it in.
2. ***Frozen Goods – Quality Ice Cream.*** One of the difficulties in importing ice cream is controlling and maintaining proper storage temperature. While shelf-stable products can be labeled at bonded warehouses, ice cream importers are unable to follow suit due to the limited temperature controls of such facilities. For items such as ice cream that cannot be labeled in bonded warehouses or meet criteria for officially postponing the labeling process until after customs clearance, the Committee would like to propose a special application procedure. To approve products for delayed labeling, the TFDA currently requires that the merchandise packaging be changed, repacked, or processed domestically, but this procedure would require the use of paper boxes, which by increasing the volume of packaging would be contrary to the Ma Administration's emphasis on environmental protection and consciousness. The proposed special application procedure could allow interested parties to apply for the right to complete Chinese labeling at a designated non-bonded facility after customs clearance and prior to point-of-sale.
3. ***Sock Multipacks.*** Similar to the above-mentioned situation regarding multipack foods, more and more socks are being bought in bulk as they are a basic commodity. However, Taiwan's labeling standard for apparel requires that every pair of socks be individually labeled, regardless of the pack size. Not only is this an additional cost to the end user, but the process of unsealing, labeling, and resealing could also damage the quality of the product. Again, we propose that labeling be required of the importer and/or retailer only according to the pack-size actually being sold.
4. ***Manufacturer Information on Commodities.*** In 2009, various government authorities, retailers, importers, and local industry associations met several times to discuss the necessity of disclosing manufacturer information on the Chinese label for imported commodities. The main argument was that since Taiwan consumers cannot be

expected to contact a U.S. or other overseas manufacturer with an inquiry or complaint, it was not necessary to provide the foreign manufacturer's name, address, and telephone number. Instead, it was deemed that providing the information of the local importer, agent, or distributor was sufficient. Before the end of 2009, the Ministry of Economic Affairs' Department of Commerce stated that this concept would be presented to the Legislative Yuan for amendment of the current law. Since that time, we have not heard any further feedback.

Issue 2: Maintain reasonable regulatory standards for toothpaste products.

1. ***Reassess a proposed amendment to the National Standard.*** The Bureau of Standards, Metrology and Inspection (BSMI) of the Ministry of Economic Affairs is in the process of amending the National Standard of Toothpaste/Toothpowder (code number CNS439), with the intention of adopting ISO11609 (2010 version) provisions. The Committee shares the position of the local industry associations, including the Taiwan Soap and Detergent Association and cosmetics associations, that the following elements in the draft amendment should be reconsidered:

   a). **The requirement that Chinese labeling be placed on the primary container (i.e. tube) in addition to the Taiwan-specific outer package as already required.**

   - This requirement would discriminate against international brands, which provide the best quality products to consumers at a lower cost, as each manufacturer shares a common formula and tube across many markets to gain economies of scale. If the tube labeling requirement is passed, the product assortment available to Taiwan consumers would be dramatically reduced, since the shift to a Taiwan-specific tube will substantially increase production costs due to the lower volumes. International manufactures are therefore likely to introduce fewer product options in this market.
   - Not every local importer will be able to meet the minimum order requirements of the tube suppliers in order to provide a traditional Chinese-character label printed on the tube, thus preventing certain products from being marketed in Taiwan – contrary to the spirit of free trade and the WTO. In addition, a local importer wishing to stick a Chinese label on the tube in Taiwan before the products are displayed on the shelves would need to first destroy the safety seal to open the carton, raising a safety issue as well as creating additional cost that would be passed on to the consumer.
   - A tube labeling requirement would be in conflict with the current Product Labeling Law, which permits necessary labeling to appear on the outer pack. CNS439, as merely an administrative order announced by BSMI, should not have the power to override the Product Labeling Law, the governing law for toothpaste products.

   b). **The absence of any grace period for the industry before the new standard takes effect.**

   BSMI is reportedly planning to announce the new standard in the next few months, to begin inspecting the toothpaste in the market for compliance with the new standard in August, and then announce the inspection results in October, we assume to the media. In adopting this timetable, BSMI has not provided a reasonable lead time to discuss the proposed amendment with the industry, nor has it granted a grace period to facilitate industry's compliance with this new standard. Again, international brands operating over multiple markets will be particularly adversely affected by the lack of sufficient time to make adjustments. A company's reputation among consumers will suffer if certain products need to be temporarily withdrawn from the marketplace while the new Taiwan-unique tubing is being prepared.

   c). **The stipulation that the total fluoride in a single-unit container shall not exceed 300mg.**

   This ISO requirement had been reviewed by other jurisdictions, such as EU, ASEAN countries, and China, while they were developing their own national standards or local regulations. The EU, ASEAN and Chinese authorities all decided not to enforce such a fluoride restriction on toothpaste products. The risk that consumers might swallow the whole tube of toothpaste and thus ingest excess fluoride is obviously extremely low. In addition, major industry companies have already included the warning message "DO NOT SWALLOW" on the pack. Under these conditions, there should be no safety concerns if consumers follow the usage directions.

   Furthermore, most toothpaste companies add 1500ppm of fluoride, which is within the local regulatory ceiling, to deliver the maximum cavity protection. But with the new 300mg restriction, toothpaste avoiding that amount of fluoride would not fit in the 200g pack that is the most popular in the Taiwan market. If this new standard is passed, it would deprive consumers of the ability to buy the most convenient product for their families.

   Based on the above, the Committee recommends the following actions with regard to the draft amendment of CNS439:

   1. Revise the labeling requirement to being "in compliance with the Product Labeling Law," or alternatively allow the labeling on the tube to be in either English or Chinese to create less of an impact on international manufacturers.

   2. Delete the restriction that the amount of fluoride in a one-unit pack may not exceed 300mg. Regulating

the concentration of fluoride at 1500ppm is sufficient to protect consumers.

3. If passage of the new standard is inevitable, a grace period of at least 18 months after the effective date of new standard will allow international companies to comply and deal with the current inventory either in their own warehouses or retailers'. This grace period should be clearly provided in the new standard, using the manufacturing date as the criterion to determine compliance.

2. ***Maintain toothpaste's classification as a general product.*** Toothpaste has been classified in Taiwan for decades as either a general product (if the fluoride level is less than or equal to 1500ppm) or as a drug (a fluoride level greater than 1500ppm). No registration is required for a general toothpaste product. Currently the Taiwan Food and Drug Administration (TFDA) of the Department of Health (DOH) is proposing to reclassify toothpaste as a cosmetic product as part of an amended definition of cosmetic products proposed for Article 3 of the Cosmetic Hygiene Control Act. The Committee urges TFDA to drop this initiative for the following reasons:

a). In the United States, fluoride toothpaste is classified as an over-the-counter or OTC drug (no registration is required, but all drug products need to be listed with the FDA), in the EU it is regarded as a cosmetic (no medical claim; notification is required), in Japan it is OTC (registration required), and in China it is considered a general product (no registration required). Although toothpaste is classified as a general product In Taiwan, it follows the regulatory trend of the above-mentioned countries because if a toothpaste makes a medical claim or contains over 1500ppm of fluoride, it will be classified as drug and registration is required.

b). The current regulatory authority for general toothpaste products is the MOEA. In addition, the DOH has responsibility for setting the efficacy claims that general toothpaste is allowed to make. If the MOEA has difficulty identifying whether a given claim is false or misleading, or implies a therapeutic effect, it can seek assistance from the DOH or the Fair Trade Commission (FTC). Therefore, shifting the regulatory authority over general toothpaste from the MOEA to the DOH would create no extra protection to consumers.

c). Unlike cosmetic products, which are applied externally on the human body at the option of the user to enhance the beauty of one's appearance, toothpaste is a necessary product for everyone's daily use without any safety concern. Considering that current government regulatory mechanisms are sufficient, there is no need to change the authority from the MOEA to the DOH.

d). If TFDA reclassifies toothpaste from a general to a cosmetic product, it would still maintain the current post-market inspection system and industry would still follow the existing self-regulatory provisions in its marketing. There would thus be no difference from the status quo.

e). Additional costs associated with making toothpaste compliant with the new cosmetic regulation will have to be passed on to consumers in the form of higher prices. The cosmetics regulations go beyond the current Product Labeling Law to require a full ingredient listing on the carton and to stipulate the size of the font. The toothpaste companies would then have to change their current packaging and write off inventory. They would also need to reassess their ingredients and possibly alter current formulations.

The Committee recommends retaining the current classification of toothpaste products. If government still sees a need to provide more protection to Taiwan consumers, however, the Committee and the toothpaste industry will be more than willing to work with government to make improvements under the current structure.

Issue 3: Accelerate the review and liberalization of China-import restrictions.

During 2010, due to the adoption of a less conservative stance by the Bureau of Foreign Trade (BOFT), four out of the 36 items that this Committee had requested to be removed from the categories banned from import from China were released from that list. But to truly take on the challenges of globalization stressed by President Ma in his 2010 National Day Address, the authorities will need to deal with the remaining items on the list with greater urgency.

At a recent bi-monthly hearing organized by the BOFT for the authorities and business representatives to discuss China-import ban items, no additional categories were released. In each case, disapproval was based on two weak reasons: 1) Potential significant adverse impact on domestic industries, and 2) Lack of public demand. For decades, the Taiwan government has protected its domestic industries from foreign competition. While certain traditional industries may benefit from such protectionism (and even develop business in China), domestic consumers are the ultimate losers as they pay higher prices for access to a narrower choice of products. As to the alleged adverse impact on local industry, this Committee has repeatedly asked the Industrial Development Bureau (IDB) for help in providing concrete, updated analytical data. Unfortunately, all we have received is outdated and often illogical information. In future, if decisions are made to retain items on the banned list, we would expect that ruling to be accompanied by concrete economic assessments supporting that determination.

As discussed thoroughly in the 2010 *White Paper*, the rationale for imposing artificial import bans against products from a single market is economically unsound. We once again

call on the government to consider our proposal for dealing with this issue:

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	0705.1100.00-5	Cabbage lettuce (head lettuce), fresh or chilled
2	1806.20.00.00-0	Other preparations [of chocolate or other food preparations containing cocoa] 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
3	1806.31.00.00-7	Other chocolate preparations, in blocks, slabs or bars, weighing not exceeding 2 kg, filled
4	1901.20.00.00-4	Mixes and doughs for the preparation of bakers' wares of heading 19.05
5	1902.30.10.20-5	Instant noodles, not containing meat
6	1905.31.00.00-7	Sweet biscuits
7	1905.32.00.00-6	Waffles and wafers
8	1905.90.90.00-6	Other articles of heading 19.05 [bread, pastry, cakes, biscuits, and other bakers' wares].
9	2004.1011.00-7	Potato sticks per immediate packing of 1.5 kg or more, prepared or preserved otherwise than by vinegar or acetic acid, frozen
10	2005.20.20.00-3	Potato chips and other potato sticks, prepared or preserved otherwise than by vinegar or acetic acid, not frozen
11	2103.20.00.00-8	Tomato ketchup and other tomato sauces
12	2208.90.60.00-4	Korn
13	3005.10.10.00-5	Surgical adhesive tape
14	4823.90.00.90-9	Other paper, paperboard, cellulose wadding and webs of cellulose fibers, cut to size or shape; other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibers
15	7009.91.90.00-8	Other glass mirrors, unframed
16	7009.92.00.00-6	Other glass mirrors, framed
17	7013.37.00.00-8	Other drinking glasses, other than of glass-ceramics
18	6302.21.00.00.8	Other bed linen, printed, of cotton
19	6302.22.00.00.7	Other bed linen, printed, of man-made fibers
20	7010.90.00.10.3	Containers of glass, of a capacity exceeding 1 liter
21	5806.32.10.00.6	Ribbon, 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 62.04, 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	6208.91.00.00.8	Women's or girls' singlets and other vest, briefs, panties, negligees, bathrobes, dressing gowns and similar articles, of cotton

We consider importing these items from China to be neither a threat to Taiwan national security nor a cause of any potential damage to the domestic economy, which are the only two reasons specified by the government for instituting a ban in the first place. Protectionism is contrary to the objectives of economic development and enhancing competitiveness. Worse still, it may fail to protect small- to middle-scale enterprises, while encouraging big enterprises to expand into monopolies.

Furthermore, lifting the prohibition 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, which are all lifelines for Taiwan's long-term success.

In the improved climate of cross-Strait economic relations represented by last year's signing of the Economic Cooperation Framework Agreement (ECFA), we are optimistic that major progress on this issue can soon be achieved.

Issue 4: Reform the regulatory framework for cosmetics products.

The domestic cosmetic market is estimated at NT$83 billion, and together with the increasing cosmetic product exports to the international market, the industry is both sizable and growing fast at a double-digit pace. To meet the expectations of today's consumer regarding product safety and quality, AmCham members in the industry welcome the current plans of the TFDA to accelerate its regulatory reforms to harmonize more closely with international practices. We at AmCham support this initiative and commend the openness of the TFDA to solicit input from all.

The current regulatory regime established by DOH calls for the pre-market registration of medicated cosmetics and advertising censorship / pre-broadcast approvals for all cosmetics. This system was based on the one designed for pharmaceutical products that prevent or treat specific diseases. As a result, the government spends considerable resources on paper reviews that are unrelated to ensuring product safety, which is the main concern for purchasers of cosmetic products. 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, product, and quality – the primary interests of the consumer – and then 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 a company's ability to communicate and consumers' interest to receive relevant and necessary information to influence their choice of product. Taiwan's current practice of implementing a negative/reference list of advertisement claims without clarifying definitions or providing guiding principles for acceptable advertising claims results in official reviewers paying excessive attention to semantics. We understand that the TFDA is currently proposing to eliminate the pre-broadcast censorship in the coming regulatory reform, and we sincerely applaud and support such an initiative.

We recommend that the TFDA instead host periodic meetings with industry representatives, dermatologists, and media scholars to develop clear and robust guidelines to help reduce unacceptable claims and more effectively ensure protection of the consumer. TFDA could also consider assigning the tasks of cosmetic advertisement monitoring and regulatory compliance arbitration to an NGO, where guidelines, enforcement, and consumer disputes on advertisements could be handled by a group of appointed experts and professionals. One such successful example is the National Advertisement Department of the Better Business Bureau in the United States, which performs many of these functions and provides a well-run platform for industry self-regulation.

In addition, the subject of trace levels of chemicals continues to be high on our agenda and we urge the TFDA to quickly address and establish guidelines for compliance. There is a safety tolerance for most chemicals, even if they 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 and Japan, and in the European Union it is made explicit in the EU Cosmetic Directive. We recommend that the TFDA establish a monitoring system through a Cosmetic Ingredient Review Board (CIRB), consisting of government and industry representatives and experts, to conduct regular meetings to review the safety levels of cosmetic ingredients. With a clear list of criteria, the TFDA could then state explicitly that the prohibition of ingredients on the negative list does not apply to unavoidable trace amounts.

Finally, the Committee recommends and supports 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 regulatory inefficiencies and provide Taiwan consumers with optimum protection.

Issue 5: Maintain continuous mutual and healthy lines of communication to ease crisis management.

In today's complex global economy, with extreme fluctuations in commodity prices and growing consumer populism, businesses come face-to-face with crisis situations

at a higher frequency than the past. As a result, as in all developed countries, both businesses and consumers in Taiwan have high expectations that the national and local governments will provide effective two-way communication, strong and controlled crisis management, and a working legal framework when dealing with critical issues in the retail industry to safeguard consumers while at the same time driving economic growth.

Last February, without scientific evidence, the Taiwan Association of Obstetrics and Gynecology publicly suggested that bisphenol A released from hot cup lids made of polystyrene (PS) potentially poses a health hazard to consumers drinking hot beverages. The Committee was gratified that the TFDA quickly brought the issue under control by immediately refuting the assertion and stating that all products made of PS fully meet Taiwan safety regulations, thereby preventing consumer panic. This experience illustrates how important it is for the government to adhere to international standards and rectify public misperceptions by providing scientific evidence. To expand the available information base, the Committee suggests continuous and open dialogue between government authorities and the retail industry for the purpose of gathering accurate information to share with the public before the media turns a given situation into an island-wide panic.

Issue 6: Establish a proper mechanism to manage dietary supplements.

To encourage continued investment in Taiwan by multinational enterprises, the Committee suggests that the Taiwan government keep abreast of widely accepted international regulations or refer to the practices in major countries around the world, such as the United States. In terms of product classification, various ingredients that are considered common dietary supplements in the United States – such as ginkgo biloba, milk thistle, and saw palmetto – are classified as drugs in Taiwan, subjecting them to restrictive standards and requirements. As a further example of a discrepancy in standards, the daily dose of the co-enzyme Q10 is set at 200mg/day in the United States, while the limit in Taiwan is a daily intake of only 30mg.

Another issue regards impediments to industry's ability to communicate with consumers. Allowing manufacturers and retailers to make proper claims about the functional benefits of a dietary supplement will enable consumers to make an informed decision when choosing a product. For example, there is ample medical literature confirming that glucosamine helps "maintain joint health" and providing explicit reasons why glucosamine should be used. In the United States, claims for dietary supplements are divided into three types based on different levels of scientific evidence, and we suggest that Taiwan's regulatory authorities refer to this carefully designed system to allow proper functional claims for dietary supplement products.

In the manufacturing controls set for dietary supplements, we also urge Taiwan to follow the practice in the United States of adopting Good Manufacturing Practice (GMP) standards for dietary supplements, rather than applying the current manufacturing standards for general foods, so as to better protect the safety and health of consumers.

In addition, we recommend that the Taiwan government follow the increasingly common global trend of classifying vitamin products as a category unto itself, separate from both traditional foods and drugs, like the "dietary supplement" classification in the United States. Establishing a proper mechanism to manage dietary supplements will ensure the quality of the products and the health and safety of consumers, and consumers can be fully informed when making a decision.

Promoting self-care through the use of dietary supplements will enhance consumers' capability to maintain their health, and also help alleviate the burden on the resources of the National Health Insurance program.

SUSTAINABLE DEVELOPMENT

Taiwan will be facing increasingly complex energy challenges in the future as it seeks to meet its multiple objectives of reducing CO2 emissions while still providing adequate electricity supply to support economic growth and provide its citizens with a comfortable lifestyle.

Taiwan is lacking in energy resources, with nearly all energy depending on imports. Its consumption of electric power has been growing at an average annual rate of 5.2% over the past 20 years (during which period, Taiwan's GDP real growth averaged 5.1% annual growth) to reach 230 terawatt-hours in 2009. Assuming that demand for electricity will grow at only 3.5% annually over the next 20 years, Taiwan will need to add 1,400 megawatts in capacity (equal to one nuclear plant or two fossil fuel-based power plants) every year.

None of the available options in terms of the energy mix is without problems:

- The recent nuclear disaster in Japan will only increase what has already been substantial political opposition in Taiwan to continued reliance on nuclear power.
- While the use of renewable energy has continued to gain pace, it accounted for only 4% of total power generation in 2009, and questions remain as to how fast its contribution can grow.
- The current high dependence on coal-fired plants (77% of power generation is fossil-fuel based) raises serious concerns about the impact on the carbon footprint.
- LNG is a cleaner fuel, but also extremely expensive. If it constitutes too large a proportion of Taiwan's energy supply, added production costs could put domestic industry at a competitive disadvantage.

In the absence of any easy solutions, Taiwan will have no choice but to place greater emphasis on energy conservation. Steps have already been taken in this direction. The

Committee applauds the government's energy conservation policy introduced in 2007, which includes a broad range of measures – from establishing financial incentives and regulatory mechanisms promoting energy saving to improving energy efficiency in the manufacturing and residential sectors. We view it as the right path forward.

On the other hand, we see the need to make these incentives and the regulatory mechanism more transparent and more widely known through frequent communications to both industry and the public at large, and at the same time to empower the relevant agencies with the resources to implement these measures effectively. Below are our specific suggestions:

Issue 1. Recognize pure virgin fiber tissue products in the EPA Green Mark system when certified by globally accepted standards of responsible forest management.

The Committee appreciates the positive reaction from Taiwan's Environmental Protection Administration (EPA) after this issue was raised in the 2010 *Taiwan White Paper*. The EPA responded that it would incorporate responsible forest-management certification into the current Green Mark Certification System for virgin fiber tissue product categories such as facial tissues, napkins, and kitchen towels. The Committee is looking forward to actual implementation of that practice in 2011 as promised in 2010.

In view of the large scope of sustainability, the global trend is to add "Renew" to the traditional 3Rs (Reduce, Reuse, Recycle) to form a new 4R and provide a new perspective on environmental issues. Given the growing demand from emerging countries, the renewability of natural resources has become crucial to both sustainable development and economic growth. In addition, recycling is not the only solution to reducing environmental impact. The whole life cycle of recycled fiber products, in fact, produces a larger carbon footprint than do virgin fibers, especially from the recycling and de-inking processes. For this reason, responsible forest-management systems and "Chain of Custody" certification have been increasingly promoted across the globe. The European Union and New Zealand, for example, have adopted dual-track eco-label systems that acknowledge products made from pure virgin fibers as well as recycled fibers.

In response to the worldwide green revolution, the Taiwan government in 2009 incorporated Forestry Stewardship Council (FSC) and Programme for the Endorsement of Forestry Certification (PEFC) certifications among the requirements for the virgin fiber content of the recycled bath tissue and towels product categories under the current Green Mark program. However, considering that the market share of recycled-fiber tissue products in Taiwan was less than 2% in 2010, and that the annual volume of locally produced recycled pulp cannot satisfy the market demand, there is an urgent need to create a means of recognizing responsibly managed virgin fiber products so as to provide the consumer with practical guidance on how to select environmentally friendly products. The Committee therefore urges the EPA to take a step further this year, and extend the acknowledgment of responsibly managed fibers to other product categories, including pure virgin fiber products like facial tissue, napkins, and kitchen towels. This will further encourage enterprises and consumers to choose green products and contribute to the sustainability of our environment, which is the shared goal of the Taiwan government and our Committee.

Issue 2. Promote sustainable public infrastructure projects.

As part of the efforts to meet the Taiwan government's CO_2 emission reduction targets, the Public Construction Commission (PCC) has established an "Energy Saving & CO_2 Emission Reduction Policy" for public infrastructure projects. In addition, Article 35 of the Government Procurement Law has been amended to encourage infrastructure projects to utilize new materials and new technologies that can provide overall cost savings and enhance environmental protection. Meanwhile, the Construction and Planning Agency of the Ministry of Interior issued a new regulation on December 23, 2009 to authorize third-party organizations to certify new materials or technologies being considered for use in public infrastructure projects. Subsequently, the Taiwan Construction Research Institute (TCRI) responded by establishing the agency function to provide certification to support such applications.

In actual practice, however, project owners and designers are concerned about potential accusations of favoritism in the project design stage to the benefit of certain parties, and that they may be held accountable for the specifications that were set. As a result, very few certified new materials and technologies are being specified. Most public infrastructure projects are still using old and out-dated construction specifications and solutions that are neither energy-efficient nor environmentally friendly.

The Committee urges the government to:

1) Empower TCRI and/or another agency with full responsibility and accountability in certifying new materials and technologies that have been scientifically and statistically proven effective in advanced countries for use in public infrastructure projects.
2) Revise the Government Procurement Law by explicitly exempting project owners and designers from liability as a result of incorporating certified materials and technologies into the specification of new public infrastructure projects.

Issue 3. Revise the Green Building Material label application requirements.

The "Green Building" (GB) certification system of the Construction and Planning Agency of the Ministry of Interior is being well executed, and a "Green Building Material" (GBM) label is being implemented along with GB practice.

Although Taiwan is not a signatory to the Kyoto Protocol

of 2005 to restrict the emission of greenhouse gases, the principles of the Protocol have been adopted as the basis for setting policy in Taiwan. Consequently, the Ministry of Interior's Architecture and Building Research Institute began implementing a GBM label application process on July 31, 2004. Since then, the responsibility has been transferred to an NGO, the Taiwan Architecture and Building Center.

Of the nine categories of GBM labels, three may be of particular concern to multinational companies operating in Taiwan:

1. Category 1 – the basic information sheet with product descriptions regarding the composition, formulation percentage, and production process;
2. Category 5 – a notary report issued by the governmental authority in the product's country of origin, to attest to the absence of any environmental violations within a certain period of time;
3. Category 9 – supporting documents consisting of a) an ingredient description, and b) a material origin certificate (for recycled and ecological GBM items).

The request for disclosure of the composition and formulation is deemed by multinational companies as infringing on proprietary rights, and to our knowledge the request for a notary report by a governmental authority from the country of origin is unheard of internationally. We believe the above-mentioned three categories are designed to set the bar high, but we doubt that these requirements can be reasonably enforced. If not rectified, these shortcomings will obstruct the GBM label application process, depriving Taiwan of access to globally proven materials, not to mention being seen as a new form of non-tariff trade barrier.

Issue 4. Enhance the maintenance of infrastructure and buildings.

Many public infrastructure projects in Taiwan have been in service for a very long period; for example, 22 out of the total of 44 dams are over 40 years old, whereas the normal service life of concrete is specified as between 25 and 50 years. International experience and statistical data have shown that good maintenance is the best solution, and the worst is to rebuild. But in Taiwan the absence of national specifications on concrete/mortar repair materials is adding to the challenge of sustainable maintenance of infrastructure and buildings.

Europe has initiated its EN 1504 specification for mortar repair since January 1, 2009. It has proven to be a good practice, and has been generally adopted in the U.S. market as reference for mortar repair maintenance. As a result, we would like to make the following suggestions to the Taiwan government:

1). Adopt the EN 1504 specification and convert the EN test methods to CNS/ASTM to facilitate implementation of the standard in Taiwan.

2). Combine the program currently underway to "strengthen" public infrastructure constructions (such as bridges) against earthquakes with the additional mission of extending the service life of the construction through use of EN 1504 standard mortar repair materials.

Issue 5. Implement CO_2 emission reduction and energy saving in the cement industry.

Cement production accounts for 5% of global CO_2 emissions. The cement industry also consumes a great deal of energy, which accounts for a big proportion of its total production cost. Energy could be saved by preventing leakage in the kilns, modifying the equipment to recover heat from the preheater and cooler in the cement-making process, and by making effective use of industrial waste materials.

There are internationally proven solutions both to reduce CO_2 emissions and to attain energy efficiency in the cement production process. The application of supplementary cement materials (SCM), such as slag, flay ash, limestone, etc., is one way to achieve both goals.

By using SCM, cement manufacturers can produce the same volume of cement with 20-30% less clinker input, without sacrificing grinding capability in the cement production process or workability/strength in the cement finished products. This also translates into compounded CO_2 emissions reduction due both to the lower clinker production and lesser energy consumption.

Users are able to choose the grade of cement they desire according to the application. In China, the PC grade is the most common. In Taiwan, the most recently updated specification for cement was published on October 21, 2009, a relatively late revision compared with other countries.

But regardless of the SCM composition in different types of cements, Taiwanese cement's 28-day strength development is significantly lower than that of cement made in China. This low-strength specification is perceived as transferring the liability to users – in other words, use at your own risk. As a result, since the implementation of the new cement specification, the ready-mixed-concrete (RMC) producers have been shying away from low-strength mixed cements and continue to buy the traditional PI-PII grade (in which clinker + gypsum is over 95% of the content). Due to the lack of demand for mixed cement, cement producers see no incentive to promote mixed cement grades.

Taiwan is thus missing out on the opportunity to achieve CO_2 emission reduction and energy saving in the cement production process, although some of the same Taiwanese cement producers, in their overseas facilities, especially in China, are utilizing higher SCM contents (20-30%) with much higher strength-development specifications. It is therefore our firm belief that technology is not the barrier; rather it is a matter of economics and regulatory measures.

As a solution to this problem, the Committee urges the government to:

1) Revise Taiwan's current cement specifications after taking global best practices into consideration,

especially regarding strength-development specifications.

2) Open the cement industry to international players to bring in the latest energy-efficient technology.

3). Grant the Green Material label to energy-efficient and low-CO_2 emission cement.

Issue 6: Continue to expedite the construction of public sewerage projects.

Despite Taiwan's impressive economic development in many respects, it has lagged behind many other countries in the proportion of households connected to sewage treatment systems. Despite reaching 100% in Taipei City, the island-wide connectivity rate stood at 54.18% as of March this year, according to the Ministry of Interior's Construction and Planning Agency. While still too low, that number is up significantly from just 39.47% at the end of 2007.

The Committee commends the government for paying increased attention to sewage-system construction in the interest of the environment and improved living standards. Projects included within the i-Taiwan infrastructure program are due to bring the national connectivity rate up to 64.47% by 2014. Although difficulty in attracting private investment has caused the government to abandon its attempts to promote this development through a BOT model, progress has been maintained by pursuing the projects as public construction. It was unfortunate that an effective pricing mechanism could not be devised to encourage the private sector to invest in this activity, but at least this problem was not allowed to cause the program as a whole to stall.

We urge continued efforts to bring Taiwan fully up to developed economy standards in terms of wastewater and sewage treatment.

TAX

Taiwan's economy has been growing steadily over the past 10 years. The government has forecast that GDP will reach US$458 billion in 2011 based on economic growth of 4.51%. Moreover, according to the 2010 *IMD World Competitiveness Yearbook*, Taiwan has made a dramatic rebound in its competitiveness ranking, jumping to 18th from 23rd in 2009 among the 58 economies covered. Such a sound economy and international ratings prove that Taiwan is not only a good place for investment but also that it has been playing a dynamic role in the global economy.

The Taiwan government is also quite determined to create a well-rounded tax environment. It has eliminated tax barriers by reducing the corporate tax rate from 25% to 17%, and introduced R&D tax credits and tax incentives to business entities located in special zones or areas.

But even after several tax reforms, there are still some remaining unresolved tax issues that may hinder Taiwan's attractiveness to foreign investment. The Committee encourages the Ministry of Finance (MOF) to undertake continued efforts on these issues, and we offer our cooperation in working with the Ministry to create a more competitive tax environment. If these outstanding issues could be addressed in the near future, it would be extremely beneficial in enhancing Taiwan's international competitiveness.

Issue 1. Rectify imbalances in the income tax structure.

1. **Corporate Tax – Reduce withholding tax rates on incomes of foreign entities to 17% or lower.** The decrease in the corporate income tax rate to 17%, which took effect from January 1, 2011, helps boost Taiwan's competitiveness by bringing the corporate tax 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 adjustment also enables businesses to reduce their operating costs in Taiwan. But undertaking this reform without simultaneously addressing its impact on other elements of the current income tax system creates certain imbalances that diminish the benefits to Taiwan's competitiveness.

For example, despite the drop in the corporate income tax rate to 17%, the withholding tax rate on most types of income of foreign entities still remains at 20%, which is quite unreasonable. In other countries, the withholding tax rate is always lower than, or at least equal to, the corporate income tax rates. In Singapore, the corporate income tax rate of 17% is the same as Taiwan's, but the withholding tax rate ranges from 10% to 17%, in line with the principle of being equal to or lower than the corporate income tax rate. We therefore urge that the withholding tax rates on the income of foreign entities be reduced to 17% or lower to follow the international practice in corporate taxation.

In fact, in our judgment, the 20% withholding rate stipulated in the "Standards of Withholding Rates for Various Incomes" – because it contradicts the Income Tax Law – should actually have been rendered null and void when the corporate income tax rate was reduced. Item 3, Article 3 of the Income Tax Law stipulates that: "For any profit-seeking enterprise having its head office outside the territory of the Republic of China but having income derived from sources in the Republic of China, profit-seeking enterprise income tax shall be levied on its profit-seeking enterprise income derived within the territory of the Republic of China." Item 5, Article 5 of the same law goes on to define the maximum corporate income tax rate as 17%.

The "Standards for Withholding Rates for Various Incomes," drafted by the Ministry of Finance and approved by the Executive Yuan, is an administrative decree, which takes lower priority in the legal hierarchy than a law enacted by the Legislative Yuan. In the opinion of the Committee, once the 17% maximum corporate income tax rate was enacted into law, the 20% withholding rate as stipulated in the "Standards

of Withholding Rates for Various Incomes" should be deemed no longer valid.

2. **Individual Income Tax.**

As mentioned above, Taiwan's corporate income tax rate was reduced from 25% to 17% in 2010 to bring it in line with other Asia Pacific countries. However, the high individual income tax rate in Taiwan, which reaches 40% for the top bracket, makes Taiwan uncompetitive against other Asia Pacific countries in attracting the talent needed to help stimulate economic growth. Such a steep individual rate compared with the corporate income tax rate is also extremely unusual in other countries in the world.

In addition, it should be noted that not all countries tax their citizens on worldwide income and allow a foreign tax credit. The 40% rate may cause the amount of tax due in Taiwan to be even higher than the tax liability in an expatriate's home country, with the resulting heavy tax burden creating barriers to the recruitment and retention of talent needed to foster Taiwan's economic development.

Issue 2: Provide clear instructions for determining ROC-sourced income and the percentage of contribution.

The Committee welcomed the promulgation on September 3, 2009 by the MOF of the "Guidelines for Determining ROC-sourced Income" as an attempt to clarify how ROC-sourced income should be defined. But unfortunately, the Guidelines were too general to serve that purpose and only led to more disputes between the tax authorities and taxpayers. The following is an example of a major issue our member companies have encountered in the past two years:

Under the Guidelines, when a foreign entity receives income for services rendered completely outside of the ROC for an ROC entity, such income is not deemed ROC-sourced income. Because the fine for failing to withhold income tax can be up to the amount of the withholding tax payable, an ROC buyer usually insists on withholding income tax when making payment unless the foreign seller can prove that the entire income has been confirmed by the tax authorities to be non-ROC sourced income. When asked to provide this kind of confirmation, the tax authorities usually respond in either of the following ways:

(i) Simply advising the applicant to refer to the Guidelines; or

(ii) Indicating that the entire income cannot be deemed non-ROC sourced income because the income payer is an ROC entity and so it is impossible for the services to have been rendered completely outside of the ROC. In this case, the tax authorities will also ask the taxpayer to report the percentage of the income contributed by services rendered or completed within the ROC (the "Contribution Percentage") and provide appropriate documentation, such as a CPA's report, transfer pricing report, or project plan, as evidence to verify the Contribution Percentage.

In response (i), the tax authorities are not providing any helpful answer at all. As for response (ii), the applicant will be unable to prove the Contribution Percentage because the requested documents either are unavailable or cannot meet the tax authorities' satisfaction for the following reasons:

- The Contribution Percentage cannot be explicitly stated in a transfer pricing report, as the purpose of such reports is to evaluate the transaction price, specify the functions undertaken, and allocate the risks assumed between/among affiliates.
- No CPA can or will issue a report certifying the Contribution Percentage for a foreign entity that conducts business outside of the ROC; and
- The tax authorities will maintain that the project plan and service records cannot conclusively prove that none of the services was rendered in the ROC.

The Committee urges the MOF to resolve this issue by (a) further clarifying the circumstances under which the entire income would be deemed to be non-Taiwan sourced income when the income payer is an ROC entity; and (b) devising feasible methods to determine the Contribution Percentage.

Issue 3: Exclude payment for cost allocation from the definition of ROC-sourced income and allow allocated cost as a deductible expense.

In order to save operating costs, achieve economies of scale, or improve efficiency and productivity, companies in different jurisdictions (usually affiliates within the same group) often enter into a cost-sharing agreement (CSA) for various purposes, such as developing a software or technology, or outsourcing certain work to a bookkeeping or billing center. When a foreign company takes the lead in the CSA, it would ordinarily first pay for all the expenses incurred for the CSA and then allocate the expenses among the participating companies. Although that foreign company did not generate any income from the payments made by the other participants, the tax authorities often treat this kind of payment made by an ROC company as ROC-sourced income, in which case the ROC company should withhold income tax upon such payments. Furthermore, despite the fact that the costs allocated to an ROC company are relevant to the ROC company's business, the tax authorities often disallow such allocated costs as deductible expenses. Consequently, the tax authorities' treatment of cost allocations has resulted in double taxation.

According to the "Guidelines for Determining ROC-sourced Income," payments made by an ROC entity for joint research and development of technologies with foreign companies will not be deemed ROC-sourced income if, among other factors, all the intellectual property developed therefrom is jointly owned by the ROC and foreign companies, and each of the participants can reasonably anticipate obtaining a profit. But the Committee would like to point out that a CSA can be concluded for purposes other than R&D, such as joint funding or sharing of costs

and risks, developing or acquiring property, or obtaining services. From an ROC company's perspective, the sharing of costs and risks is also for the purpose of operating the ROC company's business. The Committee therefore urges the MOF to (a) expand the coverage of the Guidelines to include other types of cost-sharing arrangements beyond R&D; and (b) allow the costs allocated to an ROC company and relevant to the ROC company's business to be treated as deductible expenses.

Issue 4: Revise the current policy on taxing foreign enterprises' drop-shipment transactions in Taiwan.

Taiwan's prowess in the high-tech sector has led many foreign companies to contract with Taiwan enterprises for manufacturing, testing, assembly, or other activities to be performed in Taiwan 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 buyers outside Taiwan in what is known as a "drop shipment." When it comes to determining whether the value added during 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.

The MOF has further interpreted "sales completed in Taiwan" to mean that the buyer and the sales terms have been determined and the sales orders received before the products leave Taiwan. However, drop shipment transactions are disadvantaged by such an interpretation due to the particular nature of this business model. In practice, foreign enterprises would rarely place an order for processing by a contract manufacturer before they have secured orders from buyers and reached agreement on the sales terms. Thus, drop-shipment transactions would virtually always come under the MOF's definition of the sale having been completed in Taiwan. But this interpretation is contrary to international practice, in which "completion of sale" generally refers to the moment at which delivery is made – and under the drop-shipment business model, that takes place overseas, not in Taiwan. The issue is no easier to resolve when the foreign companies are located in countries with which Taiwan has tax treaties, since the business activities involved go beyond the pure storage or delivery functions protected by a tax treaty.

In addition, the income received by the foreign enterprises already reflects the value added by the Taiwan manufacturers, and such added value will be taxed when the Taiwan companies file their corporate income tax returns. As a result, double taxation issues will arise if the Taiwan government imposes tax on the income from the goods delivered outside Taiwan.

Lastly, though Taiwan has granted some tax incentives to companies operating in special areas such as the Science-based Industrial Parks, Export Processing Zones, Free Trade Zones, and the International Airport Zone, these incentives exempt income earned from storage and simple processing. They would not apply to drop-shipment activities, which involve a broader range of functions.

The tax authority's current view on the taxation of drop shipments has caused some foreign companies to refrain from choosing Taiwan as a location to ship semi-finished goods for further processing. The result has been to lower Taiwan's competitiveness, hindering its development as a high-tech center. Consequently, the Committee urges the MOF to reconsider its position and instead follow international practice so that Taiwan's technology companies are not placed at a competitive disadvantage.

Issue 5. Treat true-up and true-down adjustments consistently in accordance with Transfer Pricing Rules.

For the growing volume of transactions that take place between related enterprises, multinational companies may need to adjust their transfer pricing among group members based on the results of global transfer pricing reports. It is common international practice (under the OECD model, for example) that upward adjustments in profits result in an increase in taxable income, while downward adjustments in profits may be reflected as deductions from taxable income.

According to current tax practice in Taiwan, such one-time transfer pricing adjustments are allowed if they result in an increase in taxable income. But in the absence of any specific authorizing regulation, the tax authority has declined to accept one-time downward adjustments through deductions from taxable income. In a private ruling (which cannot be taken as public policy), the MOF has stated that one-time transfer-pricing downward adjustments are permissible, provided that certain conditions are met. Among the strict conditions mentioned were requirements that the transaction parties sign an advance pricing agreement specifying the criteria for determining the transfer pricing for those transactions, and also that they obtain preapproval from the tax authority. Finally, after the one-time downward adjustment is actually made, concrete proof must be submitted to show that the adjustment is necessary and justifiable due to unexpected external economic conditions. In other words, even though pre-approval was granted, the tax authority still reserves the right to disallow the deduction resulting from the downward adjustment.

According to the "Regulations Governing the Assessment Rules on Non-arm's-length Transfer Pricing for Profit-Seeking Enterprises' Income Tax," profit-seeking enterprises, when filing their income tax returns, should evaluate whether or not the results of their Controlled Transactions are within arm's length. It should also be the responsibility of the tax authority to review and assess the one-time adjustment in accordance with the Assessment Rules, rather than simply disallowing the deduction without considering its reasonableness or by requiring pre-approval with certain conditions to be met afterwards.

Besides, payments to the foreign affiliates leading to the downward adjustment are business profits of the affiliates that were incurred outside of Taiwan. They should be treated as non-Taiwan-source income in accordance with Item 10 of the "Guidelines for Determination of Taiwan Source Income" and therefore not subject to withholding tax.

We urge the MOF to issue clearer regulations that allow the deduction of year-end, one-time transfer-pricing downward adjustments and refrain from taxing payments made to foreign affiliates for the downward adjustments.

Issue 6. Revise the requirements for documenting goodwill and allocating head office General and Administrative (G&A) expenses.

1. **Respect professional opinion in recognizing goodwill arising from mergers and acquisitions.** In the case of mergers and acquisitions, the amount of the purchase price less the fair market value of identifiable assets and liabilities assumed is treated as goodwill. MOF ruling No. 09504509450 dated March 13, 2006, however, requires that "fair market value" be measured by each asset and liability respectively. Goodwill will not be recognized if assets and liabilities are not appraised item by item. Considering that there is no difference between fair market value and book value for some assets, such as cash, the request to have assets appraised item by item is both impractical and unnecessary. Moreover, the appraisal report should not be the only document that can be used to support the calculation of goodwill. Any documentation that can objectively prove the fair market value of identifiable assets should be considered, including:
   a) CPA audit report and working papers.
   b) Opinions or reports from independent experts justifying the share swap ratio or distribution of cash or other assets to shareholders in accordance with Article 6 of the Mergers and Acquisitions Act.
   c) Any other document that can properly assess the fair market value of the identifiable net assets of the acquired company.

   If the supporting documents provided by the taxpayer have reached a certain level of significance (for example, if the ratio of asset value to net assets is more than 70%), recognition of goodwill should be considered in accordance with the materiality principal.

   A second problem is that the tax authorities may challenge the appraisal report without providing any supporting evidence for the challenge, and may disallow the amortization of goodwill even if the appraised report is itemized by each individual asset and liability. The fact is that there is no instance so far in which goodwill arising from an M&A case has been recognized. This discrepancy between the laws and regulations and actual practice is potentially seriously damaging to Taiwan's international reputation. Rectifying this problem deserves the early attention of the tax authorities.

2. **Allow substitute documentation for head office G&A expense allocations to the Taiwan branch offices of multinational companies.** The branch office of a foreign entity is allowed to claim its head office's G&A expense allocation as a deduction on its taxable income, provided that certain criteria are met, including certification of the head office's financial statement by a qualified CPA.

   But it is frequently the case that the foreign head office of the Taiwan branch is not the ultimate parent company of the Group, and that the foreign head office's financial statements are not required to be audited and certified by a qualified CPA under its local laws and regulations. Instead, its financial information may be included in the ultimate parent company's consolidated financial statements, which are audited and certified by a qualified CPA. Consolidated financial statements normally do not disclose certain detailed financial information such as operating income, management fees and fee allocation, etc. for each individual subsidiary.

   As the purpose of requesting the certified financial statement of the head office is to verify its total revenue and the total G&A expense used for calculation of the allocation, companies that are not required to have their financial statements audited and certified by a qualified CPA will instead engage a qualified CPA to audit and certify only the total revenue and G&A expenses by applying an "Agreed Upon Procedure." A "Report of Independent Accountants on Applying Agreed Upon Procedure" is then issued as a substitute supporting document.

   But in such cases, the Taiwan tax authority invariably disallows the deduction of the G&A allocation, disregarding the "Agreed Upon Procedure" mechanism and the content of the "Report of Independent Accounts on Applying Agreed Upon Procedure," and insisting on the submission of an audited and certified financial statement.

   The motivation behind the request for an audited financial statements is the difference in accounting standards in different countries and the difficulty for the Taiwan tax authority to conduct physical audits of the foreign head offices' total revenue and G&A expenses. But logically, any substitute documentation that can fulfill the same purpose of identifying the revenue and G&A expenses should be acceptable as a supporting document for deduction of G&A allocations.

   We urge the MOF to consider accepting Agreed Upon Procedure or other documents issued by foreign qualified CPAs as valid supporting documents for foreign head office G&A allocations.

Issue 7. Issue the updated list of products and know-how eligible for tax exemption on royalties.

For years, the Taiwan government has sought to upgrade the level of domestic industry by encouraging technology transfer from abroad and granting favorable tax treatment

through tax exemption on royalties paid for the licensing of specific patents, trademarks, and know-how.

Under Item 21, Article 4 of the Income Tax Act (ITA) and Article 7 of the "Assessment Rules Governing the Applications for Income Tax Exemption on Royalty and Technical Service Fees Received by Foreign Enterprises from Manufacturing Industries, Technical Service Industries and Power-Generating Industries," royalties received by foreign licensors from Taiwan licensees can be exempt from income tax if the income is derived from 1) the manufacturing of qualified products, or 2) the use of specified know-how. The qualified products and know-how were listed in Item 1, Article 5 of the "Incentive Regulations for Manufacturing Enterprises and Technical Service Enterprises in the Newly Emerging Important and Strategic Industries," but those regulations expired on March 11, 2011, and until now the MOF has not issued a new list of qualified products and know-how. It is therefore uncertain whether royalties from the products and know-how specified in the Incentive Regulations are still eligible for the income tax exemption.

If such royalty income is no longer tax exempt, the scope of royalty exemption under current regulations will be scaled down substantially. In addition, following the expiration of the "Statute of Upgrading Industry" and enactment of the "Statute for Industrial Innovation," the incentives for cultivating important industries have been significantly reduced. Under such circumstances, foreign enterprises' willingness to transfer their know-how into Taiwan will be greatly diminished, hindering the development of Taiwan's industry and technology. The Tax Committee therefore urges the government to promulgate the list of qualified products and know-how for tax exemption as soon as possible to minimize the adverse impact on the Taiwan economy.

TECHNOLOGY

Believing that the high-tech industry and the research and development efforts devoted to it constitute the bedrock of Taiwan's economic strength and prosperity, the Technology Committee has been dedicated to proposing initiatives to stimulate the development of the local technology sector as well as to facilitate the sourcing of world-class technology. The issues pressed by the Committee this year continue to focus on the aspects that are of greatest concern to the industry: how to encourage research and development, promote renewable energy, remove impediments to the sourcing of needed technology and services from foreign entities, and increase spending on software, services, and intellectual capital.

The Committee was pleased to see that the Ministry of Economic Affairs (MOEA) last year promulgated the "Regulation on Investment Tax Credit for Corporate Expenses for Research and Development," although implementation of the regulation is yet to be seen. To make this incentive meaningful and realistic, the review and approval process should be streamlined, with clear rules and transparency, to ensure fairness and to properly reward investments in innovative technology.

The earthquake and tsunami that devastated Japan on March 11 prompted the countries of the world to reexamine their energy policies. Although Taiwan's Renewable Energy Development Act was promulgated in July 2009, the Committee considers the targets set by the government for the use of renewable energy to be rather conservative. We urge the government to set a more aggressive goal in line with other countries.

The Committee welcomes the government's reform of the corporate tax rate, which has been reduced from 25% to 17%. However, foreign entities supplying goods and services – many of which are high-tech products or services that are essential for technology transfer – are still facing a 20% withholding tax. On the one hand, it is unfair for foreign companies to be subject to a higher tax than local entities, thereby reducing foreign suppliers' incentives to provide their goods or services to this market. The result is less choice and often less access to quality goods and services for local customers. On the other hand, if the goods or services cannot be supplied by local companies, foreign suppliers can usually bargain to shift the tax burden to the local companies sourcing the products or services. Either way, the local industry is in a less advantageous and competitive position than its counterparts located in countries with a lower withholding tax or none at all.

Below are the Committee's concrete proposals for this year.

Issue 1: Continue to improve the effectiveness of the application, review, and approval process for the R&D Investment Tax Credit program.

In the Technology position paper in AmCham's 2010 *Taiwan White Paper*, we recommended that applications for R&D Investment Tax Credits (RDITC) first be reviewed and/or endorsed by a competent regulatory agency, such as MOEA's Industrial Development Bureau (IDB). We are gratified that the IDB has now taken on this role and has issued application guidelines. 2011 will be the first year to test this new process. The Committee welcomes this effort and encourages the authorities to make continuous improvements in the application, review, and approval processes along the following lines:

1. Establish even clearer and more concrete guidelines and criteria to define the scope of "high-end innovation activities" and the eligibility to RDITC in order to minimize human bias. Once the rules of the game are clarified, both companies and the government will be able to manage their resources more accurately.
2. Ensure that the scope of "high-end innovation activities" is in line with the government's medium to longer-term industrial/technology development policies and strategies. Early-stage R&D activities should be especially

encouraged.

3. Put a secured Intellectual Property protection process in place to protect the IP of the submitted R&D documents during the review process.
4. Continue to streamline the application and review process to eliminate conflicting procedures (as between Article 4 and Article 7) and to allow earlier notification of the evaluation results. Fairness in the selection of review committee members is also crucial.

Issue 2: Reduce the withholding tax for foreign entities supplying products or services to local entities.

This Committee welcomes the government's reform of the corporate tax, which has been reduced from 25% to 17%. However, foreign entities supplying products and services are still facing a 20% withholding tax, which puts them in an unfair competitive position and discourages them from providing products and services to Taiwan – including many high-tech products or services essential to the local technology sector. When the foreign suppliers do provide the goods and services, they can usually bargain to shift the tax burden to the domestic customers if the products or services are unavailable from domestic sources. Either way, local industry will find itself in a less advantageous and competitive position than companies located in countries without withholding tax or with a lower withholding tax rate.

We strongly suggest the government to reduce the withholding tax to retain Taiwan's competitive edge as a global innovation hub with a favorable business and investment environment. The government has offered no justification for imposing a higher tax liability on foreign entities providing valuable tangible and intangible assets to local entities. Moreover, although income received by foreign entities from an ROC entity for services rendered completely outside of the ROC should not be subject to any tax at all pursuant to the "Guidelines for Determining ROC-sourced Income" promulgated by the Ministry of Finance on September 3, 2009, in practice local entities sourcing software or services are inclined to withhold the tax anyway. In the absence of a clear ruling from the tax authority, they are concerned that failure to withhold the tax would result in a substantial penalty.

We understand that the Tax Committee is raising the same issue in its position paper this year. Due to the importance of this issue to the high-tech industry in Taiwan, this Committee wishes to join the Tax Committee in urging the government to take immediate action to rectify the current imbalance in the tax structure.

Issue 3: Increase spending on software and ICT services.

To strengthen Taiwan's innovativeness and competitiveness, we urge the government to set a goal of doubling the current national spending (both public and private-sector) on software and ICT services within the next three years.

Currently, Taiwan's focus remains on ICT hardware. Exports of such hardware last year reached NT$3,600 billion (about US$120 billion), while the value of software and services – at NT$300 billion (US$10 billion) – accounted for less than 8% of total ICT industry revenue.

According to the IDC 2009 global ICT spending survey, software and services account for up to 61.3% of global ICT spending, but for Taiwan the figure is a much lower 37.7%. Further, a 2008 World Information Technology and Services Alliance (WITSA) report shows Taiwan investing only 1.46% of GDP on ICT spending, compared with 4.18% in the United States, 3.52% in the United Kingdom, 2.85% in Singapore, 2.69% in Germany, 2.40% in Japan, and 1.79% in Korea. Unless this trend is reversed, Taiwan's economic development will suffer over the long run.

A strong government commitment to increasing ICT spending on software and services should aim at doubling the current budget over next three years and bringing that spending to a level equal to 3% of GDP.

Issue 4: Improve government procurement terms and conditions for software.

The Committee urges the government to build a fair business environment by improving government procurement terms and conditions as follows:

- Stipulate that the vendor retains full Intellectual Property Rights ownership while permitting IPR usage by government-agency customers. As the IPR represents the vendor's core value, reusing IP allows the vendor to provide more cost-competitive solutions to the government agencies, which serves their best interests.
- Clearly define the scope and the period of information confidentiality in the government bid. The confidentiality period should be less than five years from the date of disclosure unless otherwise provided for in the National Security Information Protection Act.
- Limit the vendor's liability by confining it to actual direct damages and capping it within the total contract value (TCV). Asking the vendor to assume unlimited liability is unfair and beyond the capacity of most companies to accept. Vendors should be selected on their ability to carry out the project successfully, not on the amount of risk and unpredictability they are willing to undertake.
- Extend the right of compliance verification to the software vendor during the period in which programs are licensed to the customer and thereafter. In the software licensing business, some licensing costs are one-time, charged at the time of installation, and some are based on actual usage. As users, government agencies need to comply with the business licensing rules to calculate the usage, and the contract should stipulate that the vendor has the right to verify the government agency's usage data related to the

calculation of the charges. Vendors should also be given the right to verify the government agency's compliance with the terms of the agreement relating to the government agency's use of the programs at all sites where they are installed or used.

- Introduce phased payment based on the project cycle rather than asking the vendor to wait until project completion for payment. Government IT service projects may last for more than two years, and government agencies have defined the payment as due upon project completion. It is unreasonable to ask the vendor to be accountable for the project quality while also bearing the full financial until the project is completed. Government agencies should instead be making phased payments at specified points in the project life cycle.

Issue 5: 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, MOEA, and the Ministry of Transportation and Communications.

Considering Taiwan's technical and market advantages in this field, the government should set more aggressive goals in the development of renewable energy. Recent policies adopted in Europe, Japan, the United States, and China represent good reference for the development of relevant long-term strategies. For example, the German government set a target for renewable energy to reach 12.5% of the nation's total energy profile by 2010, 20% by 2020, and 50% by 2050. In China, a policy was introduced in 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 China's strategic goal for renewable energy to constitute 10% of its total energy needs in 2010 and 12-16% in 2020.

In contrast, Taiwan's current goal for renewable energy development is quite conservative – 8% of its total energy needs in 2025. The government plans to subsidize renewable energy installations of 6,500,000-10,000,000 kw over the 20 years following the introduction of the Statute for Renewable Energy Development in 2009. Yet so far the installation rate has remained relatively low.

In addition, Taiwan will face a considerable cost burden if it fails to raise the use of renewable energy and lower carbon dioxide emissions to meet international standards. The government has set a goal of reducing the emissions to the level of 2000 by 2025. However, studies by Professor Chen Fa-Lin of National Taiwan University's Applied Mechanics Institute point out that Taiwan's carbon emissions in 2000 were about 9.7 tons per person, a number that is more than double the international standard set for 2025. That means Taiwan would annually have to pay at least NT$354 billion (US$12 billion) in credits for its carbon emissions from that year.

The Committee recognizes that the government offers incentive programs for the development of renewable energies, but we urge the government to put more effort into providing a fair, open, and clear procedure for industry to participate in the incentive programs, and to undertake a broader public communications initiative to promote relevant applications.

TELECOMMUNICATIONS & MEDIA

Like most advanced economies, Taiwan faces the urgent need to prepare for the next generation of digital convergence, both to maintain its economic competitiveness and to continuously improve the quality of life for its people. Considering that other countries of the world where their parent organizations are active have already embarked on this important task, the member companies of AmCham's Telecom and Media Committee are more than willing to share the experience gained through those global operations to assist the Taiwan government in the preparation work ahead. In this spirit, we look forward to engaging in increased dialogue and consultation with the Taiwan authorities.

Since its establishment in 2006, the National Communications Commission (NCC) has been the government agency responding to most of the issues raised in our annual position paper. While we understand that the NCC is the regulatory agency directly in charge of this sector, the Committee also believes it is vital that the work carried out by the NCC be properly aligned with the larger strategic goals formulated for Taiwan's overall development by the Executive Yuan (EY), the nation's highest-level administrative body.

By continuously expanding their business scope in Taiwan and creating more high-value job opportunities for the Taiwanese people, AmCham member companies contribute to the Taiwan government's goal of building the domestic economy. In light of that common objective, we hope that our suggestions below will be reviewed by appropriate officials at the Executive Yuan-level in the interest of stimulating increased business confidence and expanded investment opportunities for Taiwan.

Issue 1: Relax cross-Strait investment restrictions for the telecom industry in light of WTO commitments.

For Taiwan to effectively leverage the dynamic worldwide development in the telecommunications sector, it is crucial that it be able to take optimum advantage of potential growth opportunities across the Asia-Pacific region. Without the removal of current limitations on inbound cross-Strait investment (especially for capital investment from China) and on outbound cross-Strait investment by Taiwan companies across the region, operators in Taiwan will be

unable to achieve sufficient scale to be robust competitors. This factor has gained importance in 2011, as China has already overtaken Japan to become the world's second-largest economy.

When it acceded to the WTO, Taiwan committed to permit combined direct and indirect foreign investment to account for up to 60% of the shareholding in basic telecommunication service (Type I) businesses and to fully open investment in value-added telecom service (Type II) businesses. But Type I and Special Type-II telecom businesses are still prohibited from accepting cross-Strait investment. Additional restrictions on investor qualifications and the imposition of a shareholding cap obstruct Taiwan players from entering the mainland market promptly, hampering their ability to promote their business on a regional basis. The result is not only to deviate from Taiwan's WTO commitments, but also to cause Taiwan to lose opportunities for strengthened regional economic integration. In view of the heavy flow of Taiwan capital into China, it would be in Taiwan's interest to include the telecom industry in the next round of cross-Strait Economic Cooperation Framework Agreement (ECFA) negotiations for the reciprocal opening of investment, thus facilitating a two-way flow of capital, technology, manpower, and market communication, while maximizing value for Taiwan industries.

Given Taiwan's well-developed Information Communications Technology (ICT) supply chain, boosting telecom-sector investment with China in both directions would help strengthen not only the telecom business itself but also such upstream and downstream industries in Taiwan as IC design, handset manufacturing, software development, value-added supply chains, and mobile content creation. Moreover, the relaxation of cross-Strait telecom-industry investment could accelerate the development of further emerging services and stimulate global market opportunities.

We realize that in considering the relaxation of cross-Strait investment restrictions, the Taiwan government may have some concerns regarding national security, personal-information protection, and other non-economic issues. But the "Personal Information Protection Act" promulgated on May 26, 2010 has been called one of the most stringent pieces of personal-information protection legislation in the world. In addition, the NCC recently introduced ISO/IEC 27001 information/network security into all telecommunication operators' daily operations to strengthen Taiwan's network safety. Hence, we believe that enough safeguards are in place to address any security or protection concerns.

Furthermore, additional measures can always be added if necessary, as they have been when the TFT-LCD panel and other sectors were opened to cross-Strait investment without impact on Taiwan's sovereignty or security. In line with the government's policy of "Rooted in Taiwan, Connecting the World," we urge it to take a more positive attitude toward promoting investment in all types of telecommunications across the region, including China, thereby helping Taiwan to fully exploit the vast growth potential of the digital era.

Issue 2: Resolve spectrum issues to make Taiwan competitive in mobile internet services.

Considering today's high mobile and internet penetration, plus the fact that nearly all new mobile devices are able to connect to the internet, consumers are on the verge of massive adoption of mobile internet technology. According to industry projections, mobile internet penetration in global urban environments will near 100% by 2015, when 4.8 billion smartphones will be in use around the world and the challenge will be to assure connectivity for all them.

Taiwan is and will continue to be the catalyst of the mobile internet revolution. As the smartphones and personal computers that Taiwan produces are changing the world, Taiwan should now move another step forward by making mobile broadband truly ubiquitous domestically. Adopting the following measures would enable Taiwan to take full advantage of this exceptional opportunity:

A. Implement a "Spectrum Release Roadmap."

The demand for and consumption of mobile broadband services have been growing at an unprecedented pace. Given the critical importance of spectrum allocation in meeting this rising demand to facilitate the introduction and evolution of advanced wireless technology and services, the Taiwan government should develop, publish, and annually update a "Spectrum Release Roadmap" to include the following key elements:

1) ***Announce a clear timetable for the availability and tender of spectrum.*** The timetable's publication would provide certainty for all stakeholders regarding the availability of spectrum, laying a stronger foundation for business planning and investment decisions, and giving interested parties adequate time and information to pursue market opportunities. In the short term, the timetable should include plans for the release of 700 MHz and 2.5 GHz spectrum.
2) ***Adopt a forward-looking, proactive approach to spectrum management.*** The government should identify underutilized spectrum and consider whether changes in assignment or allocation are appropriate given technological and market developments. Any changes under consideration should be scheduled and publicized in the Spectrum Release Roadmap.
3) ***Reference examples drawn from the region.*** Hong Kong's Office of the Telecommunications Authority and the Australian Communications and Media Authority annually publish spectrum release plans that detail timeframes for planned spectrum availability. The government should model its roadmap on these successful examples, which have enabled interested parties to make business plans based on a clear understanding of spectrum resources.

B. Harmonize spectrum usage on a regional or global basis.

Harmonizing spectrum usage on a regional or global

basis would allow Taiwanese consumers and industry to benefit from economies of scale in reducing equipment cost, resulting in a wider range of available and affordable user devices. Particularly with respect to mobile services, harmonized wireless spectrum usage also permits international roaming capability, allowing Taiwanese mobile users to roam on overseas networks and opening Taiwan's networks to serve overseas visitors.

Harmonization of the 2.5 GHz band with global trends and industry best practices should be strongly considered. Many countries have already adopted such harmonization, and in many cases commercial services have already been launched based on the European recommended band plan, which is also one of the International Telecommunication Union's recommended band plans (Option C1 of ITU-R Recommendation M.1036-3).

In the case of the 700 MHz band, harmonization efforts are already underway within the Asia-Pacific Telecommunity Wireless Group (AWG), which has developed a band plan expected to be adopted across the region. A recent study by the Boston Consulting Group showed how failure to harmonize band plans in the 700 MHz band could have a serious negative economic impact, including increased handset costs. Taiwan's allocation of this precious spectrum in accordance with the AWG's agreed-upon band plan, on the other hand, would have a positive influence on Taiwan's GDP growth, tax income, new business creation, and employment rates. Furthermore, this band is the preferred spectrum to provide universal access to support both commercial and non-commercial applications.

C. Adopt a technology-neutral legal and regulatory framework.

We strongly urge the government to adopt a technology-neutral legal and regulatory framework for wireless telecommunications. By permitting operators the flexibility to choose and determine the mix of technologies that best suit their business and service plans, the government would enable the Taiwanese telecommunications sector to more nimbly respond to changes in technology and market conditions and to make the most efficient use of scarce spectrum resources.

There are many examples of technology-neutral licensing frameworks in various countries around the world. Examples include the European Union directive to allow GSM licensees in the 900 MHz and 1800 MHz bands to migrate to HSPA and LTE technologies, and the ability for WiMAX licensees in 2.3 and 2.5 GHz to migrate to LTE, as well as the technology-neutral licenses issued by Australia, Canada, Hong Kong, New Zealand, Singapore, and the United States. Further, many of the licenses issued in Latin America intended for 3G and later services are technology-neutral, as is India's unified licensing regime, which governed that country's recent 3G and BWA auctions.

In addition, a technology-neutral framework would likely lessen the administrative burden on the government by requiring only enforcement efforts to ensure compliance within broader parameters, such as non-interference.

D. Assure adequate accountability and transparency.

1) ***Improve consultation with industry.*** The government should facilitate regular dialogue between the regulator and stakeholders by providing more frequent opportunities for consultation with industry. By so doing, government officials would strengthen their understanding of the relevant issues and improve the system of information gathering and feedback. Industry involvement also increases the likelihood of industry support for new policy initiatives. We encourage the government to consider both formal and informal means by which the regulator and industry can exchange information, priorities, and perspectives.

2) ***Enhance transparency regarding the development of regulatory policies and the decision-making process.*** The Taiwanese telecommunications sector would benefit greatly from improved transparency in the policymaking and decision-making processes. As noted in the infoDev/ITU ICT Regulation Toolkit, transparency increases the confidence of service providers, investors, and other stakeholders, thereby reducing investment risk and increasing the attractiveness of investment in national ICT markets. We believe that all regulatory rules and policies, underlying principles adopted for making regulatory decisions and agreements, as well as the consultative processes themselves, should all be a matter of public record. This is not currently the case. By improving transparency, the government would further enhance its credibility and decrease the likelihood that any parties will conclude that decisions were biased, arbitrary, or discriminatory.

3) ***Provide greater clarity of spectrum oversight responsibilities.*** We urge the government to clearly delineate the responsibilities of the NCC, the Ministry of Transportation and Communications (MOTC), the Executive Yuan, and any other relevant bodies with respect to the development of spectrum policy and spectrum management. There is currently some overlap or ambiguity as to the roles of the MOTC and the NCC, which leads to uncertainty among non-governmental stakeholders, complicates communication efforts, and reduces efficiency and productivity.

Issue 3: Establish a new approval system to help speed the introduction of new technologies and services to the Taiwan market.

The lengthy process needed for the NCC to approve and

certify new telecom technology is causing Taiwan to fall further and further behind in the availability of new and innovative services. For example, although Femtocell was deployed overseas in 2008, it took the government more than two years to complete amending the relevant laws and regulations that were finally promulgated in December 2010.

In the meantime, progress in the international market has been rapid. Mobile data traffic has increased dramatically around the world over the past two years due to such innovations as new web applications, social networking, the development of smart phones and tablet computers, and network evolutions. Furthermore, some countries' public-safety agencies have introduced emergency broadcast systems – such as the Warning, Alert and Response Network (WARN) in the United States – that can instantly transmit emergency alerts by cell phone.

Many service providers around the globe have also adopted open platform strategies to enable new application development by third-party developers. In addition, they have utilized multi-screen services to compensate for declining voice revenue margins; used multi-band and multi-mode radio access, intelligent traffic management, and network policy control to achieve quality assurance of user bandwidth; and employed digital convergence technologies to optimize network utilization and support priority call services. Such innovative programs and strategies have helped them to achieve higher peak rates, lower latency and better spectrum efficiency, more value creation, broader service coverage, greater energy efficiency with a reduced carbon footprint, and heightened public safety.

This January, the U.S. Federal Communications Commission (FCC) announced that mobile communication traffic in the United States is expected to increase by 35 times over the next five years. Since adding new spectrum will not be adequate to meet traffic demand, the FCC report said: "We need to encourage more innovative and efficient uses of spectrum. We will continue to encourage dynamic spectrum sharing and secondary markets for spectrum, as well as development and deployment of Femtocell, smart antenna technology, and devices that can access unlicensed spectrum like Wi-Fi to off-load traffic from cellular networks."

In several major markets in Europe and America, mobile service providers have deployed such small cell structures or heterogeneous network solutions for their wireless access networks, including Femtocell-specific standards 3GPP, 3GPP2 and WiMAX. Such deployment has also advanced from urban residential customers to enterprises, public facilities, and rural areas. According to a survey published this March by the Global Mobile Suppliers Association (GSA), Long Term Evolution (LTE) is seeing the most rapid growth in investment, with 196 LTE networks located in 75 countries, 140 LTE network commitments in 56 countries, and almost 100 LTE-enabled user devices announced by 35 suppliers. To meet this spectacular demand and improve users' experience, such industry groups as the Wholesale Applications Community (WAC) and Global TD-LTE Initiative (GTI) have been formed to help cultivate the whole telecom service eco-system and expand the value chain to other industries.

On a related point, the Committee appreciates the Executive Yuan's announcement of its digital convergence development program. Among the stated key objectives are 50% cable digital (DTV) penetration and 100Mbps broadband service to 6 million households by 2015.

To genuinely enhance Taiwan's competitiveness, however, will require the government to work pro-actively with the service providers to ensure that end customers in future are able to enjoy new services with improved service quality as the operators invest to deploy them. The focus should be on facilitating the launch of new services, rather than selecting or validating product technology. For both existing and new networks, reducing restrictions and controls over the introduction of new technologies, solutions, and services will enable operators to optimize the terms of their certification and accelerate the modernization of the networks.

Establishment of a streamlined new approval system, capable of quickly reflecting market demands and expanding market services, would encourage innovation. It would enable new technologies and services to be introduced with minimum delays, especially when such policies have already been widely adopted in other developed countries.

Issue 4: Tighten IPR protection for the needs of the convergent era.

In an era of digital convergence, IPR protection is even more critical given the ease with which content can be distributed over digital networks. Consequently, it behooves the Taiwan government to step up efforts in this area so as to fully exploit the economic benefits of digital infrastructural investments.

One key area to address is the need for forward-looking policies to deal with IPR infringement over the internet. One of the greatest challenges comes from what has become known as Over-The-Top (OTT) services or digital video streamed over the internet, which is becoming increasingly prevalent. More often than not, OTT service providers are benefitting from the unlawful distribution of unauthorized content, and this trend will only grow as broadband superhighways become more accessible to consumers. It is therefore incumbent on Taiwan to adopt more active measures to protect the IPR of the domestic content industry, as well as the interests of operators who have invested heavily in building the broadband infrastructures that these OTT services leach on.

Typically, OTT operators provide services through overseas transaction servers and receive payment via credit-cards or PayPal. Such overseas providers do not need to make any direct investments in Taiwan, nor do they create new employment opportunities or invest in network infrastructure here. This causes unfair competition for

Taiwan's local industry given that these OTT providers are free from any tax or regulatory burdens. For example, the current Broadcast and Cable Laws require content providers and operators to engage in a certain amount of local production and infrastructure investment, while no such requirements can be applied to OTT providers/operators. The resulting unfair competition will deeply impact Taiwan's economy by leaking revenue from the local content industry over the long term, dampening companies' willingness to invest and to develop new products and services.

This issue is further exacerbated by the fact that OTT providers frequently distribute unlawful content. And it is not only the Hollywood studios that suffer from illegal OTT operations; Taiwanese content such as the highly popular movie *Cape No. 7* and TV dramas can also be watched via video streamed from overseas, enabling consumers to view the content for free or at a very low cost, while the producers receive no remuneration from the OTT providers. Further, the content circumvents all regulatory controls and can bring a negative impact to Taiwan society by disseminating pornography and promoting cyber-gambling. It is therefore critical for government to step in and regulate this type of service, as well as to educate and discourage the public from accessing such illegal or pirated content.

Another important IPR issue in Taiwan is cable piracy, which saps the vitality of the domestic content industry and denies rightful payment to international programmers for their content. Although cable piracy is not unique to Taiwan, many countries have already recognized the extent of the problem and have put strong legal frameworks in place to criminalize signal theft so as to provide cable operators and content providers with sufficient legal protection.

IPR violations cause a substantial monetary loss to Taiwan's cable industry and impede the development of the video content industry as a whole. To ensure an economically healthy and sound digital convergence era, Taiwan – as a responsible member of the WTO, and particularly its Trade-related Aspects of Intellectual Property Rights (TRIPS) – should step up its IPR protection to ensure a level playing field for all its domestically based players.

TRANSPORTATION

The Transportation Committee believes that a well-designed transportation system with a global perspective will be a key asset in the continued growth of Taiwan's economy. The multinational companies engaged in the transportation and logistics sector have been witnessing rapid improvements in neighboring markets. So that Taiwan will not be left behind, we urge the government to identify areas of potential weakness, devise feasible strategies to cope with them, and ensure swift implementation of solutions.

This year's position paper includes submissions from three of the Committee's industrial sectors: Express Cargo, Automotive, and Shipping.

EXPRESS CARGO

Issue 1. Cultivate a sound regulatory environment of customs clearance with sophisticated risk management for development of the express cargo industry.

The effectiveness of the customs clearance process is always the major determinant of the competitiveness of the express cargo sector in a given market. Recognizing that fact, governments have increasingly committed themselves to creating an environment of faster and safer customs clearance.

The existing express companies in Taiwan vary considerably in size and scope of service, but all come under the same "Regulations Governing Customs Clearance Procedures for Express Consignments." The one-size-fits-all model does not work in practice. It is counter to the objective of assuring speedy and safe customs clearance, and reduces Taiwan's competitiveness within the region. As an alternative, we suggest revising the Regulations to incorporate sophisticated risk-management principles, thus enabling customs clearance to work to the advantage of the express courier industry in Taiwan and the businesses it serves.

The existing Regulations include numerous requirements that are not found in more efficient systems in other markets. Examples are:

- The need to collect authorization letters from the express shipment's consignee for the import of low-unit-price goods.
- The need to file export pre-entry declarations.
- The imposition of weight limitations on express cargo.
- The requirement that export shipments must be received at the airport warehouse before customs clearance.
- The imposition of surcharges for express clearance handling.

In addition, the chronic shortage of staff by the Customs authorities slows down the clearance process.

If the Regulations were instead to make use of sophisticated risk-management principles to base the requirements on the level of risk represented by each company, the efficiency of the system would be increased enormously. If it is impossible to amend the existing Regulations to introduce this concept, we suggest that a new "Regulations Governing Customs Clearance Procedures for Express Consignments by Integrated Carriers" be adopted to enable larger, more experienced express cargo companies with lower levels of risk to benefit from more flexible requirements.

AUTOMOTIVE

Although the world economy has gradually improved since the 2008 financial crisis, continuing challenges include the weakness of several European economies, rising crude

oil and other commodity prices, and the earthquake-tsunami and nuclear power plant disaster in Japan in March this year, which has disrupted supply chains and focused new worldwide attention on how best to devise clean and safe energy policies. In addition, the upcoming implementation in Taiwan of the "luxury tax" may impact the property market and cause short-term negative impact on the Taiwan economy.

Prudent government policies will be needed to continue to promote economic growth and stability.

Following the signing of the cross-Strait Economic Cooperation Framework Agreement (ECFA) and announcement of its Early Harvest list, the industry hopes to see more automotive components as well as the first complete vehicles included in the next round of tariff-reduction negotiations. We also urge the government to enter into a free trade agreement with ASEAN to help the Taiwan automotive industry develop regional competitiveness by eliminating tariff and other trade barriers and expanding the export of vehicles and components. At the same time, it is important for Taiwan to refrain from adopting unique domestic regulatory requirements and technical barriers, and instead to harmonize domestic and international technology standards and regulations so as to streamline the certification process, reducing the cost and lead time faced by industry. While welcoming Taiwan's automotive industry policy of seeking to decrease greenhouse gas emissions and actively encouraging the development of carbon-reduction technology, we encourage the government to adopt incentives for emissions reductions based on performance and efficiency, and not limited to any particular technology.

In response to the unprecedented "Climate Change" challenge, we again call on the government to expand its incentives for reduced CO_2 emissions and fuel consumption standards beyond the existing excise tax exemption for electric and hybrid vehicles. Given Taiwan's high dependence on fossil-fuel power generation, plus the fact that batteries for electric and hybrid vehicles must be recharged through the existing electricity grid, the use of electric vehicles is likely to have a much lower impact on CO_2 emissions than many people realize. Consideration should be given to extending the current incentives to other alternative energy sources.

Issue 2. Accelerate the introduction of new clean, environmentally friendly, and safe vehicles into the market.

Taiwan's auto market has at least temporarily revived from the downturn that led to total sales of only 220,000 vehicles in 2008. Last year's sales were a healthier 330,000 units. But with industry-wide production capacity at 700,000 units, the capacity utilization rate is still only about 50%. For Taiwan's auto industry supply chain to achieve economies of scale and gain international competitiveness, it will be necessary to boost the economy to increase domestic demand and to expand exports. We urge the government to set a clear policy to promote the long-term development of Taiwan's auto industry while also taking the implementation of CO_2 reduction targets into account. In addition to the environmental benefits, such a policy would provide the government with additional tax revenue by expanding the auto market.

Specifically, for the domestic market we recommend focusing on expanding incentives for clean vehicles:

- At present, electric vehicles and gasoline-electric powered hybrid cars are only transitional technologies. We suggest that appropriate incentives be offered to any low-emission and high fuel-efficiency vehicles regardless of the technology employed, especially if they can match electric vehicles in CO_2 grams/kilometer emissions (in line with European V emissions standards).
- The existing vehicle excise tax and energy tax system should be replaced by a European-style green consumption tax concept in order to provide real incentives for the implementation of low-pollution and low-CO_2 emission vehicles. Besides accelerating the phase-out of medium and high pollution vehicles currently on the road, the government should also use the revenue derived from green consumption taxes to reward the producers and users of high fuel-efficiency/ low carbon-dioxide emission vehicles.
- The government is promoting a pilot project to develop electric vehicles and wishes to see Taiwan's EV component/system manufacturers join the supply chains of international automakers, but it is making insufficient effort to attract the involvement of those international companies. Taiwan could be an ideal, controlled environment and infrastructure for international automakers to test advanced green-energy vehicles. Designing competitive and fair incentives could stimulate a great deal of interest among the foreign manufacturers and bring win-win business opportunities to Taiwan industries.

Regarding the international market:

- Accelerate the signing of free trade agreements within the region and cross-Strait ECFA negotiations on the automotive sector, so as to reduce tariff and other trade barriers to the expansion of vehicle exports.

Issue 3. 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. On the other hand, Taiwan still has some standards that are not so aligned, which 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 taken only 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

The shipping industry has recovered from a record industry-wide loss, brought about by the last financial crisis. Globally, most shipping companies and other associated service providers to the industry registered strong economic recovery in 2010. However, rising fuel prices, the Japanese nuclear crisis, and the weaker-than-expected recoveries in the United States and Euro-zone countries have combined to create new challenges for the shipping industry in 2011. Given those challenges, the Committee urges the Taiwan government to do more to initiate programs and provide economic stimulus packages to ensure that the shipping and logistics sectors remain cost-competitive and attractive, compared with similar operations in Singapore, Hong Kong, and China. For this purpose, we have the following suggestions and recommendations:

Issue 4: Continue relief efforts for the shipping sector and reduce management fees.

The Committee strongly urges a resumption of the port/terminal land-lease rebate scheme, last implemented in 2009, while also conducting a comprehensive review of the port management fees currently being levied on Terminal operators. A positive approach to these schemes will help ease operators' cost burden during this difficult period.

Issue 5: Review the adequacy of the volume of long-haul trucking service equipment and drivers.

The Committee urges the Ministry of Transportation and Communications (MOTC) to conduct a study of the state of the container trucking and haulage services in Taiwan, as well as their potential impact on future of the shipping and logistics sectors. The "pull" factors from several new infrastructure projects and the growing desire to develop Taiwan's tourism industry have resulted in the conversion of many trucking assets to other uses, and more critically has brought about the exodus of many container haulage drivers. These developments have significantly affected the ability of shipping and logistics companies to ensure cost-competitiveness and service quality in their crucial overland North-South haulage services, which feed ports along the northern, western, and southern coasts, including recently expanded harbors such as Kaohsiung and Taipei Port.

Issue 6: Provide incentives to spur growth in the shipping sector.

We reiterate earlier suggestions on the need for the Taiwan government to take more active, concrete, and concerted steps across agencies to introduce policies and incentives to better position Taiwan to compete in the global shipping and transportation industry. Despite Taiwan's location at the crossroads of key East-West trade lanes, there is still a general lack of incentive programs to reward operators or carriers to drive more volume through Taiwan's ports. We urge the MOTC and the various harbor bureaus to initiate frequent dialogue with the shipping and logistics companies, staying in step with the changing dynamics in the industry so as to shape effective policies to enhance the growth and competitiveness of the Taiwan shipping sector.

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 in 2009 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 the country's 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 the 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 opportunities to meet with Director General Janice Lai of the Tourism Bureau

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 and 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 theme used in recent years largely featured 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, 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.

We note that starting this year, a new tourism slogan of "Taiwan – The Heart of Asia" was introduced, and we believe this decision is a good step forward. But the slogan needs to be more widely promoted, both domestically as well as internationally. Increasing Taiwan residents' awareness of this new tourism slogan and its aims is a vital part of making tourism promotion a nationwide effort.

Additionally, we suggest that the Tourism Bureau conduct presentations to all the various stakeholders in the travel and tourism industries to raise their understanding of the new tourism slogan and how to better support it in their respective ways. Such presentations would also be excellent opportunities for the Tourism Bureau to share important updates with members of the industry, including reports on what has already been done, what new initiatives are forthcoming, and any new tourism-enhancing strategies that may soon be implemented. Such communications sessions between government officials and representatives of the relevant industries would also be valuable from the viewpoint of sharing best practices and setting industry standards.

B. 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.

C. 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, high-profile events, and even "special interest tourism."

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.

In addition, Taiwan could be an ideal location to promote medical tourism – being able to serve not only those who share the Mandarin language (from China, Singapore, etc.) but for those from anywhere in the world interested in coming here for advanced healthcare options and services.

D. 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

2010-2011 International Flora Expo, we believe that more activities of equal or even bigger scale can be conducted here.

Our Committee feels that, for whatever new activities are planned, the country should be promoting them on a much more active level than it does now so that such events can truly offer international exposure and awareness for Taiwan. Hosting a Ladies Professional Golf Association (LPGA) Event here in Taiwan (taking advantage of the talent and prowess of Taiwan's Yani Tseng) would be a great example of bringing in an international, high-caliber event. Such events could be scheduled throughout the year and could include a range of sports like international cycling competitions and even cross into the fine arts – showcasing our famous Cloud Gate dance troupe for instance.

E. **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 launching 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 airports 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.

We also wish to point out that the current policies and entry procedures for business travelers coming in from China are overly complicated. Cross-Strait business collaboration has never been as robust as it is today, and it is therefore essential that executives be able to meet easily for face-to-face communication. The current procedures, if not streamlined, could dampen Chinese business travelers' interest to visit Taiwan and similarly reduce their willingness to invest locally.

Lastly, we urge increased cooperation and coordination among various government bodies to create a more "tourist-friendly" environment, thus attracting more individual travelers and back-packers to select Taiwan as a leisure destination. Examples of such "tourist-friendly" features would include a larger pool of foreign-language tour guides and printed materials for the reference of foreign visitors, clearer highway signs for those who wish to drive around the island, more convenient public transportation with outer-ring cities (allowing tourists to explore other areas more frequently), elder-friendly features for possible "senior citizen packages," and improved road safety for sports and adventure-based programs.

Issue 2: Promote 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 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 abroad 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 it as a subordinate unit under what will become the Ministry of Transportation and Construction. Although the Bureau will be elevated to the rank of an "administration" and its functions broadened to include policy-making as well as implementation, we continue to believe that 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 tourism, 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

農化委員會首先希望感謝行政院農委會動植物防疫檢疫局調整作物分群標準。新制2009年3月31日生效後，種植多種作物的雜作農民對農藥選擇已有更大彈性與空間。作物分群新制的最高殘留量（MRL）標準，也使農民能在產品安全無虞的前提下，以更靈活的方式生產農作物。委員會樂見防檢局與農業藥物毒物試驗所持續改進農化產品產銷品質與安全標準。

然而，農委會雖已修正食品產製的部份管理規範，但2010年白皮書提出的兩大議題未獲重視，仍使委員會感到失望。

1. 新產品登記制度；
2. 偽劣農藥的嚴格查緝。

委員會相信，農民需要新技術與創新農藥，以改善生產力、提高收入。清楚、有效的登記制度，方能降低成本與時間，鼓勵廠商引進創新產品

偽劣農藥的問題由來已久。近幾年雖然不能說是毫無進展，但彰化與雲林等蔬果主要產區，非法販賣偽劣農藥的情況仍然猖獗，委員會迄今仍未查覺更為有效的執法行動。

議題一：農藥登記制度應更清楚有效

委員會樂見政府改採作物分群概念的農藥登記新制，也感謝防檢局邀請委員會加入新制規劃小組。舊的登記制度下，引進新技術既費時又花錢。作物分群概念除能鼓勵跨國廠商引進創新、具成本效益、且更安全的有效成份（AI），也能使農民更容易用到創新產品。然而，委員會雖然肯定作物分群概念，但整體而言，農藥登記制度仍然令人失望，因為委員會的許多建議最後並未納入。

新制的主要問題有三：

1. 登記程序模糊不清：農藥試驗計畫書的準則太過繁雜，也未提供標準範例。此外，廠商必須提交的三份殘留與藥效試驗報告中，雖然有兩份可以海外結果報告代替，但因報告編撰準則仍未制定，廠商難以判斷海外報告是否能獲農藥諮議委員會認可。
2. 登記程序所需成本太高：廠商如果在台灣進行全部三項殘留與藥效試驗，每一種有效成份的預估費用達新台幣220萬元至250萬元，是舊制31萬元至35萬元的七倍。按台灣市場規模推估，合理的費用應為50萬元至60萬元。
3. 最高殘留量：對於最高殘留量的規定，新制作物分群的標準，與衛生署對農產品的MRL標準並不一致。

委員會希望主管機關重新檢討登記制度，以簡化、釐清、加速行政程序，並合理降低廠商的成本負擔。

議題二：嚴查偽劣農藥販售管道

彰化與雲林等主要蔬果產區的偽劣農藥已成為公衛隱憂。經銷非法農藥的黑心商販滿心只想賺錢，根本不在乎農產品的品質與安全。非法產品如此猖獗，真正遭到逮捕與起訴的案例只能算是九牛一毛。更何況，犯行者往往只被處以最低罰則。

數量龐大的偽劣農藥與販賣管道已經嚴重威脅食品安全。這些非法產品未經查驗，極可能傷害消費者與農民的身體健康。此外，偽劣農藥也使原生產商及守法業者面臨不公平競爭，降低跨國業者引進新產品的意願，形同限縮農民近用新技術的權益。

委員會瞭解農委員會查緝偽劣農藥的決心，但市場現況顯示實際行動仍嫌不足。委員會希望農委會拿出辦法，遏止非法農藥的販售行為。具體建議包括：

1. 強化查緝，包括對中台灣可疑零售商的定期查察；
2. 強化與地方政府的合作，吊銷販售偽劣農藥者的營業許可；
3. 強化教育宣導，增加中部農民對非法農藥的警覺。

農委會一直致力提升台灣的食品安全，千萬不能因為輕忽危及健康的偽劣農藥，而導致功虧一簣。

委員會相信，上述建議如能獲得採納，將可有效遏止偽劣農藥、改善食品產製，並鼓勵廠商引進新產品，造福眾多農民。

資產管理委員會

台灣是一個對洗錢防制高度重視，並嚴格執行相相關的金融法令規範的國家。雖然台灣因某些政治／外交因素並非「防制洗錢金融行動小組」（FATF）的會員國，惟台灣先前依然被盧森堡認定為與FATF成員國擁有等同地位之國家，並與FATF成員國遵循一致之洗錢防制法規範。

然而自從2009年起，因盧森堡洗錢防制法相關規範之變動，台灣不再被視為與「防制洗錢金融行動小組」成員國擁有等同地位之國家。在台灣募集銷售之盧森堡註冊基金因此面臨更嚴格之洗錢防制法要求，諸如更複雜之基金新申購與開戶流程。相關情節已嚴重影響盧森堡註冊基金在台之銷售。

台灣金融監督管理委員會（金管會）此刻與盧森堡「金融監理委員會」（CSSF）磋商簽署第二階段之備忘錄，本委員會相信，特別就基金銷售部分，洗錢防制法問題應於該備忘錄中妥適處理，俾使台灣重新回復成為與「防制洗錢金融行動小組」成員國擁有等同地位之國家。台灣目前係「艾格蒙聯盟」（Egmont Group）之成員，聯盟係依據「防制洗錢金融行動小組」建議、為金融資訊交換而設立之組織。台灣亦為「防制洗錢金融行動小組」區域組織「亞太防制洗錢組織（The Asia/Pacific Group on Money Laundering）之一員。再者，多年以來台灣具備嚴格之洗錢防治法令，且各金融產業亦已依據法令訂定相關執行辦法。法務部係台灣洗錢防制法之主管機關，負責執行洗錢防制法，任何可疑案件均需呈報法務部進行進一步之調查。綜上所述，本委員會相信台灣完全具備成為與「防制洗錢金融行動小組」成員國擁有相同地位之國家之資格。

議題一：促進與盧森堡CSSF簽署備忘錄

金管會與盧森堡金融監管委員會（Commission de Surveillance du Secteur Financier, CSSF）於2010年簽署了第一階段的備忘錄，以建立兩國交換一般金融監理資訊的基礎。本委員會促請金管會持續與CSSF協調以加快接受兩方投資基金的相互承認(即第二階段備忘錄)，以放寬盧森堡註冊境外基金在台灣所面臨之下列法規障礙：

A.境外基金之資格

1. 免除或豁免一年之績效記錄要求
現行法規下，境外基金需經金管會專案核准或基金註冊地經台灣承認並公告者，始得免受境外基金必須成立滿一年才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，業者無從向金管會提出此類豁免的申請，使註冊於台灣承認並公告之管轄為唯一取得豁免之方式。簽署第二階段之備忘錄將使盧森堡成為金管會承認之管轄，盧森堡基金因而有資格享受豁免。
2. 衍生性商品之限制
我們建議在第二階段備忘錄中明定兩方接受並承認對方的金融監理制度，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，盧森堡基金可因此豁免於持有衍生性商品未沖銷部位總值40%之投資限制，因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。

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，後證券期貨局（證期局）再次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。在簽署第二階段備忘錄下，CSSF與金管會間之資源分享將有助於克服證期局目前資源不足之困難，使證期局更能參與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。

簽署第二階段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。

目前盧森堡註冊登記基金約佔國內境外基金銷售量之70%，完成簽訂第二階段備忘錄，對於促進產業發展，將大有助益。

議題二：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。我們在此誠摯期待金管會及證期局採行下列建議：

1. 准許將投信運用基金資產複委任予第三人／或接受基金投資業務之複委任
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，亦不得接受第三人之複委任。然而金管會於2009年十二月二十一日函釋，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。我們希望金管會能將法規全部鬆綁，也就是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，同時亦可接受第三人之複委任為基金投資業務，以增加國內投信基金之全球投資機會，擴展國內投信之業務發展。
2. 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。本委員會請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，我們也希望金管會能刪除投信基金經理人必須專任的規定。
3. 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。我們誠摯期待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。

議題三：進一步放寬中國之投資限制

近日，台灣主管機關放寬國內投信基金可直接投資在中國證券市場上市之股票（即中國A/B股）限制，將原先10 %的上限提高到30 %。雖然本委員會很高興這個正面發展，但值得關切的是，境外基金仍受限於10 %的中國投資上限規定。我們理解證期局近日針對境外基金市場降溫的意圖，但對於主管機關在國內投信基金與境外基金的中國投資限制上的管理差異仍存有疑慮。因為目前在台灣只有少數公司符合中國主管機關對於外國合格機構投資人（也就是QFII）的資格及配額，這意味著對中國的投資需求供不應求的情形下，投資者只好繼續前往香港和新加坡來從事此類型的投資。

議題四：允許開放基金種類與範圍，不只限於目前的證券類型

在過去幾年，由於市場變化快速，投資分散到不同類別的產品亦成為國際趨勢。其投資標的也不限於傳統的股票或債券，而是更進一步擴大到大宗物資、期貨產品、 軟硬原物料，以及貨幣投資等類型。我們期待金管會能體認此一投資趨勢與市場需求，開放基金的限制，以符合投資人需求且達到分散風險之目的。基金投資一直是已知最透明且規範清楚之投資工具，透過專業的基金經理人可以幫助投資人做適切的投資分配及風險分散。如果投資人能透過基金管道滿足這些投資需求，比投資人直接投資相關之期貨、原物料或外幣投資要安全且風險降低的多。

台灣目前法令規定基金必須限於證券型式，故僅有股票或債券或股價平衡型。這樣的限制其實與國際上基金的發展狀況脫節，是以我們期待金管會能針對相關法令立刻予以修改。此外，我們也要在此強調，由於上述非傳統類型之境外基金均由境外團隊操盤，是以應不需要求國內之總代理必須擁有國內期貨執照為條件。

除了前面提到的開放環境與更多產品可使台灣成為吸引國際專業人士的市場，我們也再次強調擴大基金類型與範疇之優點：

(1) 透過基金投資期貨、原物料與貨幣，投資人將可大幅降低投資風險；
(2) 在基金產品定義方面，將可與國際接軌而不致有大幅差異；
(3) 可在地充分提供所需要的基金產品，而不致迫使投資人必須到境外開戶方能進行投資，同時亦可達到台灣希望成為亞太金融中心的長程目標。

美國商會資產管理委員會支持金管會迎向新趨勢與正視新需求所做的努力，並感謝金管會在需要做出改變時，展現突破現狀的意願。

銀行委員會

本委員會相信，依據台灣與中國簽署的《兩岸經濟合作架構協議》（Economic Cooperation Framework Agreement, ECFA）為基礎所制定的後續相關法規及規範，可以促進兩岸經貿合作，發展更多元化的金融服務交流，進而大幅促進台灣金融服務業的發展，並且有助於台灣整體經濟發展。本委員會同時也感謝中國方面放寬人民幣外匯業務的跨境管制，並鼓勵台灣的金融監督管理委員會（下稱「金管會」）善用此機會，更進一步推動人民幣相關外匯業務的發展。

本委員會認同且感謝金管會在過去一年來採取措施解決白皮書所提之議題。我們尤其感謝金管會大力幫忙遊說立法院排除外商銀行於「反自有資本稀釋課稅制度」之外。但就尚未解決之議題來說，本委員會認為仍有進步之空間。

舉例而言，雖然本委員會注意到境外結構型商品售予專業投資人相關規定有鬆綁，但針對境外結構型商品相關法規之合理化，以及支持財富管理與信託業務發展方面，本委員會盼望金管會能建立跨業別一致性之審查程序。

最後，有鑒於台灣已安然度過全球金融風暴，本委員會感謝金管會對於台灣銀行業的付出，但也希望金管會善用台灣銀行業既有優勢，加快台灣銀行業發展的速度，並藉此將台灣轉變為亞太金融中心。本委員會殷切期盼透過與金管會密切的合作，縮短台灣與其他亞洲國家的競爭力差距，以利台灣銀行業之發展。

本委員會謹於今年白皮書提出下列要點，供政府機關參考：

議題一：檢視《境外結構型商品管理規則》及其相關規定與商品審查程序

鑒於《境外結構型商品管理規則》及其相關規定已頒布且實施超過一年半，本委員會十分感激金管會已修改境外結構型商品售予專業投資人之相關規定。但是，儘管大多數的金融機構在全球金融風暴後特別加強對風險揭露與銷售流程的控管，並增加其資本適足率，主管機關對於境外結構型商品售予非專業投資人之繁瑣審查程序並無太大改變。此外，現行規定不但會讓投資人無法依其投資喜好來配置資產，更可能阻礙台灣金融市場之發展。因此，本委員會建議主管機關依據以下所述修改相關法規：

1. 移除對投資人保護並無實質提高但增加額外且不必要之營運成本的相關規定：
   a. 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。
   b. 移除當信用評等被調降時，必須取消商品發行之規定。此一決定應由投資人自己來定奪。
   c. 移除要求提供境外結構型商品發行機構及商品註冊地對投資人權益之保護相當於中華民國之法律意見書之規定，並移除於中華民國境內亦應為相當之交易條件之規定。
2. 放寬手續費上限：鑒於目前繁瑣的商品審查與銷售程序，以及收取低廉手續費（尤其針對短期境外結構型商品）的情形，整體而言，在台灣發行與銷售境外結構型商品是不符合經濟效益的。而且，在此種商品短缺的情況下，投資人轉而投資高成本卻非相對降低投資風險的債券型基金來取代外幣定存，以提高投資多樣化與提升報酬率。
3. 達到產品審核程序標準化：
   a. 各公會與審核委員會所要求的審核標準、程序與文件應有其一致性與標準化，以藉此減少發行機構花在商品審核的冗長時間與相關資源的浪費，如此亦可有效地降低各公會與審核委員會修改文件以及審核的次數、時間。
   b. 審查之標準應著重於投資人風險或利益之保護，對於細微之文字錯誤或跟投資人保護無關之文件小瑕疵，應可允許修正而不致成為駁回理由之一。對於在財務模型中的技術性細節資料的要求，應只限於對客戶權益有直接或實質影響的資料為主。
   c. 目前在市面上已有超過二十種針對非專業投資人發行的境外結構型商品，但都有相同的產品架構 — 保本保息且連結標的物皆為交易所頒布之股票指數，而且該指數之市場波動對於此類結構型商品的償付影響不大。有鑒於此類商品的結構簡單且風險很低，本委員會因此建議，針對相同發行機構發行的同類型商品，審核委員會應加速審核。
4. 簡化報告/公告說明之流程：
   a. 在提升整體市場營運效率的考量下，本委員會建議將發行人/總代理人須每日及每月向受託或銷售機構取得購買及贖回相關資訊後再上傳予集保公司之規定，改由受託或銷售機構直接上傳予集保公司彙整。
   b. 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集保公司之規定。

議題二：外商銀行子行及其在台分行與母行/海外聯行的資金拆借管理

主管機關近來針對外商銀行子行及其在台分行過去四十年來迄今與母行/海外聯行的資金拆借表達關切。本會建議，主管機關在擬定相關管理原則時，宜先釐清此類拆借係為同業拆款，實非銀行授信；且應全面參酌亞洲國家立法之考量因素以制定妥適之管理原則。

1. **外商銀行在台子行與海外母行/聯行之資金拆借應屬同業拆款，非為授信，應得排除於《銀行法》單一授信限額之規定。**
   - 制定限額時，不宜援引《銀行法》之單一授信限額。外銀子行與總行之外幣拆借，本質為資金調度工具，應屬同業拆款，與授信有別。央行回覆歐洲商會2010年建議書時亦表示，拆借幣別為外幣者，無論係在台子行與其總行之在台分行或非在台分行之拆借，目前似乎即為無擔保拆借，尚不受《銀行法》第32條規定限制。
   - 《銀行法施行細則》第4條規定，「本法第32條及第33條所稱之企業，不包括銀行經財政部核准單獨或合資投資百分之五十以上之國外金融機構」。依相同法理，外銀依金管會核准投資國內子行達百分之五十以上者，應排除於《銀行法》所稱「企業」之規範，即無十足擔保及單一授信限額之適用。
     香港、新加坡亦立法明示將子行與總行/海外聯行拆借排除於單一授信限額，亦未要求十足擔保。
2. **全面參酌亞洲國家管理的考量因素，進而制定妥適之管理原則。**

目前大多數的亞太區國家如：日本、印度、中國、印尼及馬來西亞，並沒有針對子行資金拆放海外聯行設定限額。香港及新加坡則依監理協議採銀行個別管理，且僅對外銀從事消金之子行設立限額。其所設限額皆為淨值之倍數，對從事企金業務之外銀分行則不設限。

澳洲雖採單一產業限額，但也僅對外銀消金之子行設限，從事企金業務者之外銀分行則不設限。但澳洲為內需型國家，與香港、新加坡及台灣同為外幣資金主要提供者之情況不同，且澳洲亦非台灣金融業之主要競爭市場，故其設定限額之相關考量對台灣較不具參考性。

在亞洲市場為台灣主要競爭對手之香港及新加坡的相關管理應較值得借鏡。其主管機關在制定資金拆借管理時，考量因素大致如下：

- 外銀子行在其淨值範圍內對總行所為之拆借實質為有擔保品之拆借。總行發生信用或財務事件時，子行可將拆借母行之金額自應返還淨值中扣除，故外銀子行在淨值範圍內對總行所為之拆借應不予限制。
- 外銀之外幣存款多數源自於跨國企業之營運資金。該等企業同時在外銀取得貸款及交易額度，與銀行間存在雙向之存放關係。倘若外銀發生危機需清償債務，外銀對該存款可行使抵銷權。基於此，亞洲各國均不對從事企金業務之外銀設限。故於考量拆借限額時，應得加計同時具存放關係企業客戶於外銀子行之實際存款數額。
- 一般金融機構間之同業拆借係以拆借對象整體風險評估而以無擔保拆借為原則。故在淨值之外，提供一定之無擔保拆借額度。香港及新加坡之拆借限額超過淨值一倍應即基於此。

部分外商銀行於過去兩年陸續完成子行化，於子行化時從母國匯入大量的資金充實其資本。因此資本結構更為健全，償付能力亦已提高，對存款人之保障相較於其他外銀分行更為落實。然若主管機關所設之資金拆借限額甚且不及淨值，等同於對外銀子行之資本運用及經營加諸更多限制，此舉將影響外資進一步投資台灣的意願，未來外商銀行恐將不願挹注更多資本進行子行化，而寧可設立或維持所需資本額較低且限制較少之分行在台營運，反而不利於對存款人之保障。

再者，若所設之限額過於嚴格，將對台灣跨國企業以在台外銀為其管理全球資金之資金調度模式造成影響。此外，香港及新加坡皆未對從事企業業務之外銀設限，將迫使台灣跨國企業調整現有之資金調度模式而轉以鄰近他國之外銀，利用遍佈全球之網路為其全球資金調度據點。這將對長期以來積極協助台灣企業成長並拓展國際市場之國內銀行業造成衝擊，也影響跨國企業資金根留台灣之長期規劃。

台灣是國際市場資金輸出國，目前台灣整體銀行市場的外幣剩餘資金已超過1,100億美元。資金輸出國多需藉外銀全球網路向國際市場提供資金，如限制過大而導致資金滯留國內，將影響外幣金融市場之供需及價格原有之平衡。外銀在去化剩餘資金的壓力下，勢必引發市場價格競爭。在價格失衡下，銀行業業已微薄之利息淨收益將進一步遭到壓縮。

議題三：開放辦理人民幣相關業務

隨著ECFA簽訂後，兩岸之間的經貿往來，在兩岸互惠合作的架構下，勢將較以往更加密切。據統計，2010年，兩岸間雙邊貿易金額已達1130億美元，而台灣企業於大陸之投資金額約達148億美元，兩岸間匯款金額達4410億美元。中國大陸已然成為台灣最重要之經貿夥伴及最大之出口市場之一。基於降低匯率風險及增加貿易便利性等需求，兩岸企業對人民幣相關業務之金融服務(例如跨境人民幣結算業務、匯兌、存放款等業務)需求更為迫切。

大陸當局加快人民幣國際化之步伐不遺餘力，除計劃將跨境貿易人民幣結算試點地區跨及到全中國，中國人民銀行並陸續與各國央行簽署換匯協定，顯示大陸當局欲使人民幣做為國際貿易主要結算貨幣的努力已有成績。據統計，自擴大跨境貿易人民幣結算試點以來，人民幣結算量顯著上升，2010年人民幣結算業務金額已超過五千億人民幣，為2009年度之49倍。據估計，未來五年內中國大陸與其他新興市場間近半的貿易將以人民幣為支付貨幣。人民幣作為跨境貿易結算主要支付貨幣已成全面性之趨勢，政府宜正視並採取因應措施，思考開放台灣企業於我國境內進行人民幣跨境結算的可能途徑。

主要國際金融市場中，除香港已積極自我定位為全球離岸人民幣金融中心，其他世界主要金融市場如倫敦、新加坡亦積極爭取離岸人民幣金融中心相關業務。台灣金融機構若無法儘速跨足人民幣業務，將迫使台灣企業及人民經由第三地及大陸之金融機構進行人民幣跨境結算等人民幣相關業務，台灣資金將有外流至其他金融市場之虞。

目前透過台灣金融機構從事兩岸貿易的台灣廠商，都是使用美元計價結算。隨著美元價格波動，台商面對匯兌損失的風險有增無減。目前台商雖可透過香港及大陸境內之金融機構進行人民幣跨境結算，但此與台商以台灣金融機構OBU作為資金調度據點由海外轉回台灣操作之傳統作法不符。

OBU設置宗旨是加強我國金融機構在亞太地區的競爭力，以遂行政府發展區域金融中心之政策目標。自兩岸開放以來，OBU也始終扮演著兩岸貿易往來及台商資金調度的橋樑。在人民幣相關業務需求殷切的經貿環境下，台灣OBU若無法儘速跨足人民幣業務，兩岸金融服務業之重心恐將進一步向香港或中國傾斜，OBU有遭空洞化之虞。為協助台商以台灣為據點從事資金調度，並利於台商規避匯率風險，增加貿易便利性，避免台商轉往第三地金融機構作為跨境貿易結算之資金調度據點，積極評估開放台灣金融機構OBU辦理人民幣跨境貿易結算業務，有其必要。

開放大陸人民來台旅遊助長了人民幣流入台灣以及對於貨幣清算及相關服務的需求。此外，對於人民幣匯率升值的預期亦導致台灣大眾持有人民幣。除非在香港或大陸地區開立帳戶，台灣大眾僅能持有人民幣現鈔。如能開放人民幣業務，可將私人持有之人民幣部位導入金融體系。

本會建議政府階段性開放台灣金融機構從事人民幣業務。短期內先由跨境貿易結算開始，由國際金融業務分行(OBU)先試先行，開放台灣企業於我國OBU從事人民幣跨境貿易結算。上述業務以不涉及新台幣匯兌為前提，並於兩岸建立雙邊貨幣清算機制前，得由OBU於中國、香港或第三地開立人民幣同業存款帳戶之方式為之。上述安排將可對境內貨幣市場及金融安全之影響降至最低。長期而言，政府可逐漸擴大台灣金融機構得全面從事貿易以外之人民幣相關匯兌、存放款業務及其他投資、理財、外匯及衍生性金融商品業務。如此，台灣金融業將可經由人民幣直接結算之平台，全面開辦人民幣相關業務，俾得維持台灣金融機構之競爭力。我們瞭解相關法規目前仍在研擬階段，我們也期待金融機構人民幣業務的新管理規定能夠早日公布。

議題四：大型跨國銀行境外資訊中心遷台之衝擊及建議

邇來金管會針對大型跨國銀行在台子行的境外資訊中心建置進行資訊收集及評估，並要求業者進行建置成本估算，似乎有希望子行在台灣另行建置資訊中心的傾向。

雖然我們了解主管機關對境外資訊中心運作有資訊安全及營運不中斷等考量，然而境外資訊中心遷台的政策方向若確立，基於各種因素要求子行在台灣另行建置資訊中心，對大型跨國銀行營運與資訊風險管理勢必產生不利衝擊（包括提高營運成本、增加資安風險），並且對台灣消費者亦無實質助益。本會在此對監控機制的建立、維繫提出幾項建議：

- 悖離雲端運算及資訊資源集中之趨勢，也違背節能減碳政策：要求境外資訊中心遷回台灣實為重覆設置資訊中心，造成資源浪費，與行政院節能減碳的努力相悖。雲端運算及資訊資源集中是全球資訊科技潮流，也是台灣政府積極推動之新興產業之一，其目標是集中資訊資源達成運用最佳化，讓軟、硬體投資達到最佳效益。有鑑於此，資訊中心設置地點應更集中化、區域化，而非在所有市場各自建置。
- 外資經營限制增加、成本大幅提高、法令不確定性將降低投資意願：依照投審會資料，近年來金融保險業係屬外人投資中金額最大的產業類別，重要性不言可喻。若要求大型跨國銀行在台子行將境外資訊中心遷回台灣，外資可能認為台灣對金融業加諸更多經營限制，阻礙市場開放。否定大型跨國銀行已實施數十年的經營模式，並大幅提高其經營成本與營運不確定性，勢必降低外資未來投資意願，對台灣作為一個友善經營環境的形象可能產生負面影響。
- 重置投資排擠有效投資、扼殺就業機會：在台設置資訊中心耗資甚鉅，資金排擠效應下，將嚴重影響外資的有效投資及扼殺產生更多工作機會的投資。建制一座完善符合標準的資訊中心，約需耗資台幣數十億元，每年營運費用也在十億元以上。這些投資若用在增加業務、服務人員，擴充並更新服務網絡，強化現有系統及開創新業務或服務，則至少可以提供一年千個以上的工作機會。相對地，資訊中心是高度自動化的工作場所，能提供的工作機會非常有限。
- 增加資訊安全風險；不利於各國金融監理機關之監理合作：目前大型跨國銀行均依營運、風險管理及資訊作業安全之需要，依據包括我國在內之各國法律與監理規範，建構完善機制，對資訊安全與風險做集中、整體性之管理，以有效降低資訊安全風險。且各國金融監理機關在歷經金融海嘯之後，亦透過監理合作強化監理跨國銀行各項風險，其中包括資訊安全風險。若要求大型跨國銀行另設置在台資訊處理中心，不僅增加需受監管之資訊中心數量，亦區隔我國資訊風險控管機制於現行集中管理架構之外，徒增資訊安全風險。這與當前各國透過國際監理合作加強監理跨國銀行各項風險的趨勢背道而馳。

權衡以上之風險及成本、暨資訊安全及營運不中斷之政策考量，以及因應國際趨勢，本會認為，最有效之監管方式應是要求大型跨國銀行在台子行持續加強資訊風險管理，配合我國金融監理機關定期查核，並支持我國與各國進行監理合作，以有效監理跨國資訊安全風險，而非要求大型跨國銀行在台子行在台灣另行建置獨立之資訊中心。

多數亞太區及G20的國家對資訊中心的管理以及資訊相關法規的制定，與目前我國金管會對國內各金融單位的規定大致相仿。這些國家也多允許銀行基於經營策略之考量自由選擇資訊中心的設置點。就我們所了解，目前亞太區的國家僅有中國和南韓政府，對其金融單位在資訊傳送、資訊作業及資料儲存地點有所限制。

然而，南韓與美國政府於2007年6月30日所訂定之自由貿易協定(KORUS FTA)提到：「當資訊傳送係為金融服務提供者金融資訊之處理以供日常業務所必需，會員應允許其他會員國以電子方式或其他方式，傳送金融資訊進出其國家。南韓應於此協定生效後兩年內施行此原則。」隨著南韓與美國自由貿易協定的施行，南韓勢必於不久的將來將上述原則納入其法令。

世界貿易組織（WTO）《金融服務承諾瞭解書》第8條亦列出相似原則：「當資訊傳送、金融資訊處理及設備移轉係為金融服務提供者處理日常業務所必需，則會員不應採取措施，阻止資訊移轉、金融資訊之處理（包括以電子方式傳送資料）或阻止設備移轉；惟設備移轉須遵守與國際協定相符之輸入規則。」故遵照WTO基於自由貿易精神所提倡之平等互惠原則，所有國家，特別是包括台灣的WTO會員國（無論是使用或儲存客戶金融資料）皆不應對國際資訊傳送或資訊中心的設置地點有所限制。

大型跨國銀行在過去四十餘年係以境外資訊中心提供各國金融服務及相關資料處理。境外資訊中心在維持營運效率的同時亦遵循台灣的法令及主管機關的規範、採用國際安全標準提供資訊安全並建立一套應變計劃作為備援，故不論在營運效率及合法性、資料安全的保障及營運備援及延續性均已有高標準的落實執行。

本商會認為，大型跨國銀行在台子行可更進一步強化對境外資訊中心的管理與監督，建議作法包括：

- 銀行須建立完善的稽核及監理機制，由董事會訂立相關政策與計劃，定期聽取專責人員對境外資訊中心之查核報告以確保政策與計劃之落實，必要時董事會亦可責成稽核處執行專案檢查；
- 銀行應確實遵守資訊安全相關法令規範，包括《銀行法》、《個人資料保護法》有關客戶資料保密規定和委外規範等，並妥善監督境外資訊作業中心以確保本國個人資料的隱密性及安全性；
- 銀行須建置良好的系統架構及完整的備援計劃作為意外災害發生時的備援；
- 銀行須配合主管機關對境外資訊中心就客戶資料保密，相關風險控管及備援機制實施監管與實地查核。

除上所述，我們相信在台大型跨國銀行亦會依其專業及經驗，引進符合國際標準之作業管理及監管流程，並提出具體可行之執行細節提供主管機關參考，以達成強化對境外資訊中心的管理與監督之目標。

議題五：重新審視《外國銀行分行及代表人辦事處設立及管理辦法》

我們認同金管會希望確保外商銀行在台灣分行維持充裕的新台幣流動性。然而，《外國銀行分行及代表人辦事處設立及管理辦法》規定，外商銀行分行對同一法人、同一關係人或同一關係企業之新台幣授信限額為新台幣70億元（或以《銀行法》第三十三條之三之規定計算之限額為準。而除非該分行在台灣本地擁有極高淨值，據此計算所得之限額比前述70億元更低）。惟大型公共、民間計畫之貸款或擔保需求往往遠超過新台幣70億元，以上規定限制了外國銀行分行對其提供足夠之貸款或擔保，如此恐怕將對台灣國內企業有所影響。我們建議，政府應調高或取消此同一對象授信限額，因為本辦法已對外商銀行在台分行之新台幣授信總額做了限制，亦即辦理新台幣放款項目合計金額不得超過該分行淨值之20倍或30倍，放款以外之授信限額則定在該分行淨值之15或20倍，倍數之限制視此分行被定義為零售銀行或批發性銀行。

此外，本辦法對零售銀行之定義為：辦理收受自然人新台幣150萬元以下存款業務，其總歸戶數合計超過500戶，且收受自然人新台幣150萬元以下存款餘額合計數超過收受新台幣存款總餘額1%者。我們認為，新台幣150萬元之存款餘額無法反映這類帳戶是否為一般零售個人帳戶，因為許多高淨值人士及/或專業個人投資人，除新台幣存款外，亦擁有其他新台幣計價之信託帳戶資產或高額之外幣存款。

我們建議修訂零售銀行之定義為：收受自然人客戶之投資資產（包括但不限於新台幣存款）未達新台幣150萬元，其總歸戶數合計超過500戶之銀行分行，且應將靜止戶排除其外。另外，「收受自然人新台幣150萬元以下存款餘額合計數超過收受新台幣存款總餘額1%」的比例限定門檻建議調高至2%，如此將更能反映此類銀行業務之「零售」性質。

資本市場委員會

本委員會感佩主管機關為推動台灣資本市場的國際形象以及維繫國內市場秩序所作之持續努力，尤其感謝金管會長期聆聽本委員會的種種關切及議題。

自從去年發表的白皮書以來，我們很欣喜的注意到委員會在過去提及的一項重要議題已獲解決，那就是允許擴大券商以台灣為基礎的研究報告，包括台灣企業的海外分公司。由於全球資本市場的高度相互關聯性，這是一個令人鼓舞的發展。台灣資本市場逐漸朝向已開發經濟體地位前進，若自外於市場常規、或提高對業界參與者的門檻，將損及台灣的國際聲譽。的確，台灣是該專注提高資本市場的效率，擴大產品種類，增加市場的深度和廣度，以吸引更多的全球投資。有鑑於此，本委員會要呼應美國商會其他與金融服務相關之委員會所提出的議題，強調市場運作的精簡與避免繁瑣的監管有其必要性，因為這些作法都大幅提高了可在台做生意的成本。

一如以往，本委員會隨時願意提供建言，協助台灣政府發展有效率且具競爭力的資本市場。秉此精神，本委員會提出下列建言：

議題一：強化台灣資本市場之效率、深度與廣度

1. **台灣證券交易市場的整合**

   在全球的金融市場上，台灣證券市場規模並不算大，但卻又分由台灣證券交易所與櫃買中心管理證券與債券的市場、期貨交易所管理掛牌衍生性商品的市場，以及集保結算所辦理集中保管與交割。

   金融產業的競爭已經從區域性轉成全球性的整併，隨之而來對一個有效率市場的基礎結構要求也越顯重要且急迫。這一個現象可以從國際上最近交易所間的合併案清楚看到，例如新加坡交易所與澳洲交易所(雖然澳洲主管機關反對)、倫敦交易所與多倫多蒙特婁交易所，及泛歐交易所與德國交易所的合併案。

   如果上述四個單位能像香港聯交所一樣地整合起來，相信台灣證券市場的效率可以提升且降低成本。我們了解此一整合涉及現行法令的修改，但仍深切期望主管機關能認真研究，將此項改革列為優先項目。

2. **允許人員跨業登記及跨金融產業業務外包／內包**

   建構台灣成為亞太營運中心乃政府及金融產業之重要目標。而建構符合國際商業慣例之交易環境，更是達成該目標所不可或缺之重要條件。前述符合國際商業慣例之交易環境尤應著眼於提升營運效率、有效成本控制、交易流程及跨國與不同金融產業間之整體風險控制等目標。

   惟針對國際證券及金融機構之專業人才於企業及金融產業間自由流動所訂立之嚴格法令限制，已妨礙台灣欲發展為亞太營運中心之目標。實則，從公司治理之觀點，人員跨業登記早已為國際金融業者廣泛運用及接受。此外，銀行產業之嚴格的業務外包／內包規定，亦無法有效解決前述專業人才自由流動之議題。此等營運上之限制，將影響以全功能的銀行組織結構或「一次購足」的企業模式之全球性金融服務公司，在台灣市場擴展事業之意願，進而影響台灣成為區域性金融中心之目標。

   為實現經營綜效及效率，我們呼籲主管機關重視並放寬金融專業人才跨業登記之可能性。金融專業人才之特定資格如符合個別金融產業之法令要求時，該資格亦同時適用於其他相關之金融產業，則可辦理跨業登記。例如一個任職於全球性金融服務公司的專業風險或財務主管，除可登記於銀行外，亦應可登記於集團內的證券商。此種登記上之整合，不僅有助於集團綜效目標之達成，並可使跨業經營之金融服務集團採取更完整且全面之方式，進行集團內總體風險控管之整合，而非以各業別獨立之單向風險管理方式為之。

3. **重新檢視境外結構型商品的管理規定**

   本委員會強烈建議主管機關能針對從2009年7月實施之《境外結構型商品管理規則》作通盤的檢討。因法規之限制，證券商仍無法向客戶提供境外結構型商品。 我們建議幾個實際的方式來改善此現象。首先，本委員會強烈敦促修訂相關法規來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。其次，我們提議放寬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-或以上之規定。因為此一高標準的信評規定，已排除了許多信用評等維持在A或A+的發行人或保證機構。最後，商會請求金管會對非從事客戶委託實際工作的「辦理受託買賣業務人員」提供較大的業務範圍彈性，使其能同時從事境外結構型商品總代理的工作。以上這些變革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。

議題二：持續加強投資人教育，避免誤用或錯誤解讀證券商研究報告

1. **瞭解外資證券商的控管實務並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，又對證券商作相關之查詢並要求證券商提出說明。如此接連不斷的詢問實已對證券商造成行政作業上的負擔。

   事實上，投資研究報告一向僅供客戶參考，客戶之下單決策純屬自行判斷之結果。根據我們的瞭解，外資證券商依循公司內部準則之規定，並不會主動發布投資研究報告給媒體；而任何與媒體之互動及新聞稿發佈，也須依其內部程序，取得核可後方可進行。本委員會建議主管機關應瞭解外資證券商的控管實務，並把重點放在持續經由公開座談會或文宣來加強投資人教育及宣導投資決策不應根據報章雜誌上之訊息，方為解決之道。此外，現行證券商依規定須於證券商業同業公會網站發佈解釋或聲明之機制也應一併摒除。

2. **放寬大陸地區投資人對台灣市場之投資限制**

   近年來亞洲區域整合之趨勢以及兩岸頻繁之商業合作，兩岸經貿關係已進入全新的時代。儘管兩岸貿易自由化程度有可觀的進展，惟大陸於台灣資本市場之投資活動仍受嚴格管制。隨兩岸經濟合作架構協議(ECFA)及兩岸金融監理合作瞭解備忘錄(MOU)之簽訂，減少資本市場投資限制之目標已日趨重要。實則，一個開放且自由之資本市場將對台灣之經濟發展帶來正面助益。

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，但制度的變革將能為機構投資人帶來更大的誘因參與本地市場，進而為台灣創造更多益處。

- 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。
- 為吸引外國專業機構投資人下單給台灣而非其他替代市場，建議取消或提高台灣期貨交易所掛牌商品的部位限制。目前部位調增的申請費時且費工，形成人為的進入障礙，進而弱化台灣期貨交易所的競爭力。
- 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：持續強化有價證券借貸市場

台灣一直被視為亞洲最重要的借券市場之一。我們感謝證交所、賦稅署與金管會致力改革借券機制，但台灣借券市場的特質仍需微幅調整，使其符合所有市場參與者需求。我們相信借券系統若能與國際慣例接軌，將吸引更多國際投資人。本委員會了解系統需配合台灣證券市場特性設計，較難大幅修改，因此我們提出以下建議，希望能有利於短期內解決部分議借交易之交割與撥券的問題。

1. **改善提前還券之流程：當借券人因市場因素之限制無法因應出借人要求提前還券時，開放借券人使用借券系統確保還券。**
   在多數國家的借券市場若借券人收到提前還券之要求，借券人有義務在該市場交割期限內返還，否則借券人需承擔因此造成之相關責任與費用。目前台灣法規允許出借人要求提前還券，並於同日(T日)賣出，經賣出券商申報後在T+2日延遲交割。然而此機制並未考慮借券人可能因市場限制(例如外資持股上限及漲停板)無法從市場上買到或借到券還給出借人，導致出借人於T+2日無法交割，而受到違約處分。此時雖然現行法規允許出借人之賣方券商可透過「交割借券系統」借券完成交割，但因此衍生出來由出借人借券之規定，實與國際慣例不合。我們建議當標的證券因受到當日漲停限制、或超過外資持股上限時，允許由借券人(買方)券商提供相關佐證資料至「交割借券系統」借券，完成還券之義務。
2. **允許由出借人及借券人之保管銀行向證交所申報標的證券之直接撥付，改善市場效率。**
   目前證交所法規允許在議借方式下出借人與借券人依其議借合約所定之借券條件進行交易。然而執行面仍規定出借人與借券人需經證券商將交易細節向證交所申報，經證交所確認相符後，通知集保公司透過券商撥券，與一般交易流程無異。事實上議借交易已經雙方「合意完成」，並不需再經券商輸入至證交所匹對。我們建議上述作業可依循「證交所有價證券借貸辦法」之精神，允許由雙方保管銀行將借券交易細節向證交所申報，再由集保將標的證券直接自出借人在保銀之帳戶撥出／入至借券人在保銀之帳戶，不需透過券商。此流程將大幅改善議借交易之作業效率。

化學製造商委員會

化學製造商委員會再次將大環境面臨之諸多挑戰，包括明確制定溫室氣體排放標準、確保產業發展所需的原料供應充足，以及協助台灣石化產品進入中國大陸市場的便利管道等列入首要議題。

將台灣建立為一個重要的外來投資(FDI) 中心，促進來台企業與大陸貿易的能力，是台灣政府的策略意圖。2010年6月與中國簽署經濟合作架構協議（ECFA）並持續深化兩岸經貿關係的同時，該策略目標如何推展特別重要。就化工產業而言，航運及物流問題亟待改善。

以下為本委員會為求貨暢其流及活絡貿易，政府需要關注的議題：

議題一：改善溫室氣體排放之各項規範

為達成二氧化碳減量及提高能源耗率之目標，政府已建立溫室氣體排放效率之標準及二氧化碳排放之量測機制，但仍有待建立明確的台灣化學工業溫室氣體之排放標準。

化工產業充分了解溫室氣體減量之必要性，且此過程必需透過適度的規範、量測並接受監督。然而法規標準的合理性、公平性及嚴格的執行至為重要。設定極高的標準卻不能嚴格執行將毫無意義。化工產業期許能夠清楚的瞭解法規的標準所在、日後執行時可能面對的狀況及所需加強方向。

我們相信此規範必需包含碳交易之設計，如此方能務實的在政府全面性達成溫室氣體減量的同時亦為產業界帶來運用彈性。政府可比照世界上許多國家所做，協助設立碳交易平台，使企業能有效率的運用可行的碳額度。台灣與外資合資之某石化公司在10年前已設定其溫室氣體排放標準及量測方式，並彙報母公司且在歐洲登錄並做碳中和。在過去10年中該公司的溫室氣體排放強度已藉由各項能源改善計劃而降低30%。

化工業期待政府推出一套對再生能源如風力、太陽能有更多鼓勵措施的完整政策，其中應包括投資金額的稅務抵減，或對達成替代能源特定目標的公司給予減稅的優惠。全世界中有諸多國家已有此類優惠可為台灣所借鏡。目前台灣各項優惠政策仍定義未明或完全闕如。

議題二：確保石化產業未來生存發展所需之原料供應無虞

今年4月22日馬英九總統宣布國光石化科技股公司(以下簡稱國石科)興建案因對彰化環境衝擊太大，已超過當地生態及環境能夠承受的程度，故不適合在彰化設置離島石化工業區。總統表示，將重新檢討台灣整體產業結構與政策走向，推動石化業轉型升級，朝向高值化發展。

彰化投資案已是國石科選址時第二個遭到拒絕的地點，看來要在台灣尋找更合適的建廠地點可能性不大，因此經濟部將詳細研究把國石科移往鄰近的國家建廠，後再將基本原料運回台灣加工之可行性。

於此同時，政府必須以國石科案失敗的經驗為鑒，以避免將來問題重覆發生。多年來冗長的環評程序、不明確的環保規範、專家對環評的無限上綱等，都對投資者帶來極大的困擾。本委員會呼籲主管機關，制定明確環保標準，對國內外業者應一視同仁，並確保一個敏捷明快的決策過程。

在產業投資案中，國石科並不是唯一的懸案。民營的台塑公司在雲林麥寮的第五期擴建計畫亦同樣面臨環保爭議的阻礙；屬國營企業的台灣中油公司在高雄煉油廠中的第五油裂解工廠(以下簡稱五輕)也面臨挑戰。1990年中油為建造新乙烯廠一五輕，政府承諾後勁居民，五輕將在2015年遷廠。這座供應台灣南部地區超過45%乙烯的工廠，一旦關廠或遷移，若沒有替代方案勢必影響高雄仁武及大社工業區許多的石化下游工廠的生存，屆時會造成南台灣石化業總產值的減半。

台灣的石化工業一直以來對台灣經濟發展有不可抹滅的貢獻，特別是造就大高雄地區的繁榮。五輕一旦關廠對台灣石化供應鏈將帶來巨大的衝擊，它不僅造成新台幣4,256億(美金135億)產值的減少，更預計流失16萬個工作機會，對台灣經濟穩定及成長將有不利的影響。

為解決乙烯供料問題，台灣中油公司正進行三輕工廠(1978年建造23萬噸乙烯工廠)之更新，成為年產乙烯72萬噸的新乙烯工廠，預定2013年投產。

然而對於高雄煉油廠遷廠後五輕能否保留的問題，台灣中油公司曾做過民意調查，雖然多數當地居民希望五輕能留在原廠址繼續生產，但仍有少數民眾堅決反對，中油和當地居民之談判未有進展並造成雙方的緊張情緒。五輕是否遷移的議題，我們建議可交由鄰近地區民眾以正式投票之方式來決定。由於此議題後果對國家經濟的影響深遠，本委員會籲請中央政府出面處理，而非把這燙手山芋丟給地方政府及中油公司。

議題三：與中國當局協商，促使石化產品藉由更多散裝輪裝載出口至中國

海峽兩岸間石化產品貿易近來日益活絡，然而有助於使出口更為便利的散裝船運輸卻因中國法規的限制而受阻，本委員會尋求台灣主管兩岸協商單位之協助，期盼能解決問題。

中國交通部於2006年口頭宣布兩岸間非定期航班之散裝輪於裝貨前需取得運輸經營許可(Shipping Operation Permit)，是以自該年起，僅有註冊在中國大陸、香港或台灣之散裝船隻具備取得運輸經營許可的資格，一次為期一年。而非註冊於此三地，像許多台灣註冊於巴拿馬、馬歇爾群島及其他地方的權宜輪只能申請短期之運輸經營許可，範圍僅限單次裝運及單一卸貨港。若卸貨港變更須重提申請，但重提申請的程序相當複雜且耗時，時常嚴重影響運輸時程。另外，中國並未對來自南韓、日本及其他國家的船隻實施此一限制，此舉實嚴重將台灣廠商競爭力推向不利位置。

此限制嚴重影響台灣石化產業之出口。限制船隻註冊國的選擇不但壓縮整體運輸能力，另外也增加運輸成本。因此，台灣出口的效率及競爭力在此區塊嚴重降低。

雖然大多數石化產品並未包括在ECFA早收清單之內，但石化產業仍希望未來兩岸貿易能進一步開放。為了整體產業能充分把握此一優勢機會，解決上述運輸問題相當必要。

議題四：同意現場供應空氣分離廠遠端操控中心系統之運作

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、提升產業長期競爭力。

為推動進展，我們希望政府持續評估並支持遠端控制中心的成立。遠端控制中心可適用於小型工廠，例如氮氣生產及空氣分離廠，這些小型簡易工廠的控制系統都已設計可以跨區域由遠端來操控。遠端操控中心架有操作監控警示系統及製程最佳化調控科技，並且由一群資深操作同仁及專業領域工程師們每週七天、每天二十四小時全天候的監控與操作。

遠端操控中心的好處是它可以讓製造商們擁有一個專業團隊，該團隊在工廠操作的效率、持續精進、安全及其他重要的操作要件，皆擁有豐厚的經驗值。因有了集中化的操作中心，生產資料及專門技術更易於取得，得以即時分析並提前展開因應動作，這些好處是被限制在小型工廠內操作的人員所無法做到的。除此之外，遠端操控中心可以讓製造商可以重新進行人力配置，把人力調度到其他重要的技能部門，比如更複雜的操作工廠、或品質提升單位等等。

現場供應空氣分離廠實施遠端操控之操作管理方式已被認可並於國際間實質運作多年，如美國、歐洲甚至中國大陸之氣體公司皆已

設置遠端操控中心，集中操控區域內之空氣分離廠。雖然歐洲、美國、日本等先進國家的工業氣體協會皆已認同這類管理機制，然而台灣卻仍未能認可。

過去一年來，美國商會樂見台灣政府開始探討遠端操作系統的概念及進行學術研究，並與業界開展進一步溝通。我們感謝政府相關部門之積極回應，也希望能與政府共同合作建立相關標準與規範，以便採用這類操作管理機制。我們同時建議政府可以在未來幾個月內核准遠端操控系統的試運轉，使製造商得以熟悉體驗該領域國際級的先進科技。

議題五：降低汽車製造及修補工業之環境足跡

在汽車製造及修補工業方面，委員會要求政府提倡以水性修補漆來取代有機修補漆。使用環保的水性修補漆能最有效的減少溶劑的使用及排放，可降低工作環境中對人體的危害，並能提高產能及節能。

越來越多的先進國家已全面或透過法規方式來使用水性修補漆，此舉已為全球趨勢。歐盟在2007年開始實行使用水性修補漆；2010年，加拿大更以法規來控管汽車製造及修補工業的工作環境中揮發性有機化合物(VOC)之排放。而在美國，許多州政府預計在2015前向加拿大跟進，實施類似之規定。

而在亞洲地區，韓國及香港將於2012前實施VOC相關法令。儘管台灣政府對於汽車製造及修補工業目前仍未制定VOC具體規範，然而，國內自2007年起已有不少進口汽車製造商自動地改用水性修補漆，其優點乃在生產製造過程中，大幅降低了VOC排放量。委員會期望政府能夠更積極推動以提高環保水性修補漆的使用率。

教育及訓練委員會

美國商會去年底針對會員進行了一次「商業景氣調查」，調查結果凸顯了企業對產業發展所需人力資源議題的擔憂。針對關鍵產業的發展前景，台灣的技術與管理人才是否能提供足夠市場需要的數量，以保有競爭力？就國際觀、創意以及主動性而言，台灣勞動力的品質，又能否符合長遠發展的期待？

這些問題的解決之道，很大程度必須仰賴台灣教育體制的表現。學校課程必須經常機動性地調整，以確保足夠的人才在如電子商務與雲端運算等新的領域受到訓練。台灣學生應該要有更多機會，參加可以培養創新與前瞻自主性的國際課程。

儘管教育部願意溝通討論，但比起幾個主要的亞洲國家，如香港、新加坡、南韓和中國等，教育部因應國際趨勢的腳步遠遠後落。結果導致台灣民眾被剝奪了其他亞洲國家人民所享有的自我成長與進步的機會。

議題一：持續鬆綁國外大學及學歷的法規

過去幾年來，政府努力推動法規鬆綁，移除了外國學校在台設校的部分障礙。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，仍比台灣先進並具吸引力。在這些國家，國外大學可到當地設立分校或代表處，並且開放由國外教授執教的課程，而學員所取得的文憑學位也都是完全被當地政府及國際認可。

台灣現行法規仍規定，國外大學僅能申請來台設立完整的實體分校，但不能設立辦事處或衛星校區。然而，台灣的大學卻可以輕易地在台灣及美國或其他國家建立辦事處或衛星分校區，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領域的大學，台灣並不具吸引力（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、約翰霍普金斯大學在中國設立南京研究中心、紐約大學在上海設立的分校、杜克大學設在新加坡的醫學中心，以及在江蘇昆山設立的分校）。容許高品質、信譽佳的美國高等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。

台灣政府長期將招收開發中國家的外國學生來台就學，視為國際化的重要指標，因此給予國內大學補貼。教育部不願意引進美國的優質教育機構來台設立分校或開設課程，使國內學生並沒有太多的選擇。結果許多本地學生情願到中國大陸就學，而台灣同時也招收不到已開發國家的頂尖學子來台就讀。

因此，我們呼籲台灣政府秉持自由化和國際化的精神，允許並鼓勵正當合法的優質外國大學在台灣提供良好課程或設立分校，避免受到過度的法令限制。本委員會敦促教育部：

- 允許並鼓勵良好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，認可其所取得的學分以及學位。
- 允許並鼓勵教育部認可的優質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標準及規範一致，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，允許並且鼓勵美國和其他國外優質大學在台灣提供學位和非學位的課程，以外國學位課程的品質作為認可標準，而非以其授課地點及修業期限作為限制。

人力資源委員會

本委員會欲藉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，亦使台灣就業市場之相關規定益臻完備。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。在以下提出之各項議題中，本會特別希望就近年相繼修正通過之新勞動三法－《工會法》、《團體協約法》以及《勞資爭議處理法》，及研議中之《勞動基準法》修正草案可能產生之影響表達關切。本會並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。

議題一：《工會法》、《團體協約法》及《勞資爭議處理法》之適用，應使其明確，並兼顧勞工與雇主之權益

新修正通過之勞動三法於2011年5月1日正式施行，施行細則並將於近日頒布。該三法明白促進工會之設立、保護工會行使爭議行為，並提升工會對團體協約之談判實力，對國內之勞僱關係勢將產生重大衝擊。本委員會有幸能有機會與主管機關行政院勞工委員會（勞委會）進行對談，對可能產生之影響表達關切，並提供建議，希望能有助於該等法律之施行及完備。

團體協約法

1. 新修正《團體協約法》第六條規定：「勞資雙方應本誠實信用原則，進行團體協約之協商；對於他方所提團體協約之協商，無正當理由者，不得拒絕。勞資之一方於有協商資格之他方提出協商時，有下列情形之一，為無正當理由：一、對於他方提出合理適當之協商內容、時間、地點及進行方式，拒絕進行協商。」
   實務上要求協商團體協約者，多為工會。而雇主於工會提出協商時間、地點時，因業務繁忙或時間有限，未必可以立即配合，此常被工會指為刁難或拖緩協商程序，此時如何認定工會提出之協商時間、地點等屬「合理適當」？又如何避免使雇主立即進入新修正之裁決程序？相關標準皆未臻明確。本委員會建議勞委會就此點，應儘速頒佈相關函釋釐清。
2. 前開新修正《團體協約法》第六條第二項第三款規定：「勞資之一方於有協商資格之他方提出協商時，有下列情形之一，為無正當理由：…三、拒絕提供進行協商所必要之資料。」
   所謂「進行協商所必要之資料」範圍為何，完全沒有定義。故理論上工會得提出任何特定協商要求（如要求比照高階經理人收入調整一般員工薪資），要求任何必要資料（如要求特定高階經理人收入明細），此將對企業之業務經營造成重大妨礙及衝擊。
   本委員會建議採取如下方式，兼顧企業之合理經營：
   (1) 以修法或函釋之方式，明定勞方可請求資料之範圍，如若該等資料為企業經營之核心機密，或涉及個人隱私者，企業無須提供。
   (2) 提供資料前，由公正第三人介入審閱該等資料，判斷是否屬機密資訊，再決定是否可公開予當事人。
   (3) 命審閱該等資料之人有保守秘密之義務。如洩露機密，企業並得請求賠償（新修正《團體協約法》第7條有要求收受資料者保守秘密，但並無賠償條款）。
3. 新修正《團體協約法》第十三條規定：「團體協約得約定，受該團體協約拘束之雇主，非有正當理由，不得對所屬非該團體協約關係人之勞工，就該團體協約所約定之勞動條件，進行調整。」

本條所謂「正當理由」為何，並無定義，將造成適用上之困難。且若團體協約內容對「非該團體協約關係人之勞工」有利，禁止雇主調整「該團體協約所約定之勞動條件」，亦非合理。建議刪除該條文。

工會法

1. 新修正《工會法》第六條規定：「一、企業工會：結合同一廠場、同一事業單位、依公司法所定具有控制與從屬關係之企業，或依金融控股公司法所定金融控股公司與子公司內之勞工，所組織之工會。」
該條所稱之勞工，未明定是否係直接受僱者，故派遣員工可否加入其所提供勞務之企業工會，或有疑義，建議勞委會速頒函釋釐清。
2. 新修正《工會法》第三十五條規定：「雇主或代表雇主行使管理權之人，不得有下列行為：一、對於勞工組織工會、加入工會、參加工會活動或擔任工會職務，而拒絕僱用、解僱、降調、減薪或為其他不利之待遇。二、對於勞工或求職者以不加入工會或擔任工會職務為僱用條件。三、對於勞工提出團體協商之要求或參與團體協商相關事務，而拒絕僱用、解僱、降調、減薪或為其他不利之待遇。四、對於勞工參與或支持爭議行為，而解僱、降調、減薪或為其他不利之待遇。五、不當影響、妨礙或限制工會之成立、組織或活動。雇主或代表雇主行使管理權之人，為前項規定所為之解僱、降調或減薪者，無效。」
本規定乃在禁止雇主或代表行使管理權之人有不當禁止工會之行為。然實務上常出現一旦雇主對工會會員或支持工會活動之員工為解雇、降調等不當待遇，即被員工或主管機關認定屬違反本條規定，雇主常窮於舉證二者不具因果關係。本委員會建議勞委會應速頒函釋說明違反前開法條之違反標準，並明定須由勞工負前開事實之舉證責任。
3. 職工福利委員會組織準則第四條第一項規定：「職工福利委員會除由事業單位指定一人為當然委員外，其餘委員依下列規定辦理：一、已組織工會者，委員之產生方式由事業單位及工會分別訂定。但工會推選之委員不得少於委員總人數三分之二。二、未組織工會者，委員之產生方式由事業單位及職工福利委員會定之。但新設職工福利委員會者，委員之產生方式由事業單位定之，勞方代表部分由全體職工選舉之。」此外，事業單位勞工退休準備金監督委員會組織準則第四條亦規定：「監督委員會勞工代表由公會推選，未成立公會者由勞工直接選舉之，並得推選候補委員。」上述二委員會成員均由工會會員任之。惟若企業原先無工會，而由全體員工或事業單位選舉委員，嗣後於委員任期中員工成立工會，則委員應否改選？未臻明確。

本委員會建議應區分情形而為不同處置。若委員會成員已依法報經主管機關核備，則屬依法產生之委員，縱使工會於任期中成立，亦應待該等委員任期屆滿後再行改選。反之，若委員會成立或改選均未向主管機關申請核備，則非屬依法產生之委員會，若工會於委員任期中成立者，工會自有權力要求重新選舉委員會成員。建議勞委會就此速頒函釋釐清。

勞資爭議處理法

1. 新修正《勞資爭議處理法》第五十四條第一項規定：「工會非經會員以直接、無記名投票且經全體過半數同意，不得宣告罷工及設置糾察線。」
此條修正之重點，在於刪除原工會法第26條規定罷工等須經「會員大會」決議之規定。惟不召開會員大會，容易對投票結果及是否已符合罷工條件產生爭議；對於是否可採取「通訊投票」，亦易茲疑義。建議勞委會速頒函釋，說明在不召開會員大會之情況下，應如何投票、監票，如有疑義，應如何釐清，並說明主管機關得適時介入監票或確認已合法決議，於程序是否符合規定未釐清前，不得進行爭議行為，否則須負賠償之責。

議題二：重新考量《勞動基準法》修正草案，兼顧勞動保障與企業衝擊。

《勞動基準法》修正草案由勞委會於2010年1月11日公布。本委員會有幸於公布後曾與主管機關進行對談，並於去年之白皮書中提出相關建議。部份建議幸蒙主管機關採納。就未被採納部分，本會會員認為仍有其重要性。本委員會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。

勞動派遣

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。《勞動基準法》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《勞動基準法》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二十。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。
5. 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。否則正派派遣業者將無法與游走法律邊緣或違法之派遣業者競爭。
6. 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。
7. 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。

勞動契約之終止

1. 有關現行《勞動基準法》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。

提前離職之資遣費

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。本委員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。

本委員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《勞動基準法》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。實務上對於該條第四款「競業禁止之約定須對勞工因不從事競業行為所受損害合理補償」中，「合理補償」之標準亦多有爭議。此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《勞動基準法》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。本委員會建議修訂《勞動基準法》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，本委員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. 現行《勞動基準法》對於延長工時及加班費之部份限制極嚴，惟事實上，部份高階或專業員工可享有彈性工時，並具足夠力量可與其僱主談判，不須仰賴《勞動基準法》之保護。因此，勞基法應該保留空間，使僱主與高階專業員工決定後者之工時與休假。本委員會建議修法使員工具較高職位與月薪超過特定門檻者（如新台幣200,000元），得豁免於現行《勞動基準法》對於延長工時及加班費之規定。

計算平均工資

1. 《勞動基準法》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。

議題三：員工若有過勞死情事，對雇主之裁罰

1. 針對勞工疑似因長期超時工作導致過勞而致死之案例，各界反應《勞動基準法》應增列條款，對上述人課以刑罰，以杜絕類似案件再度發生。勞委會針對此一議題並審慎研議中。本委員會認為，過勞死之定義不明，是否可歸責於雇主或加班亦難一概而論，率以刑罰治之，恐有過當。建議主管機關著重於強化現行法規之執行，如有進一步防止過勞死之必要，應考慮其他較合適之制裁措施。

議題四：進一步開放中國大陸商務旅客進入台灣從事商業活動

本委員會注意到，過去一年，因有申請來台從事商業目的之中國大陸專業人士從事與訪問目的不相符行為之極少數案例，台灣政府在相關案件審核標準上似乎有更加嚴格的趨勢。本委員會謹提供以下建議，盼協助精簡程序並增加彈性，以消除不必要的人為障礙：

1. *設立海峽交流基金會駐中國大陸的辦公室*
   雖然此議題的實現並不完全操控在台灣政府手中，本委員會仍持續鼓勵兩岸兩會在現有的協商機制下，盡力促成互設辦事處。目前實務上中國大陸的申請人因業務目的，希望訪問台灣時，在台的邀請單位（以下簡稱「邀請人」）需要以其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，郵寄給移民署審核。由於台灣在中國大陸沒有任何代表處，文件郵寄給台灣主管機關的程序延長了處理時間，往往造成部份中國大陸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。
   如果此議題的相關協議能順利達成，在中國大陸的台灣辦事處將可促進中國大陸訪客來台申請程序上的便利，為申請人節省大量作業時間，並進一步強化兩岸商務交流的基礎。
2. *建立放寬多次入境簽證的核發資格之機制*
   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，或可申請逐次加簽的入境許可證。雖然逐次入境加簽的程序不複雜，但仍相當費時，因為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。本委員會建議放寬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。而來台從事相關履約活動，如商務研習、驗貨、售後服務和技術指導等之中國大陸人士，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來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。有鑑於兩岸之間交流業務量不斷增加，本委員會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*
   雖然政府去年再次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完全取消這項限制。目前規定為：當邀請人設立未滿一年且年度營業額未達新台幣一千萬元者，其每年可以邀請的大陸商務人士不得超過五十人次；當邀請人年度營業額為新台幣一千萬元以上，未達新台幣一億元者，其每年邀請人數不得超過二百人次；當邀請人年度營業額達新台幣一億元以上者，其每年可以邀請的人數不得超過四百人次。有鑑於兩岸商業交流日益頻繁、政府關係逐漸改善，加上台灣政府近年來大力促進會展產業及相關業務的發展，上述限制似乎已經過時且多餘。完全刪除這些限制將有利於相關業務的擴張和發展。
5. *建立來台大陸人士停留期限警示機制*
   申請大陸商務人士來台訪問，目前仍需要在台灣有一適格的邀請單位代為提出申請並擔任保證人。但因為極少數來訪人士個人的疏忽或不熟悉相關規定，逾越停留期限，致使在台邀請單位亦連帶受罰，被主管機關處以一定期間內停止受理大陸人士來台案件的申請。對於兩岸業務繁忙的公司企業而言，在其業務的推展及交流上將造成極大的衝擊與阻礙。本委員會建議主管機關，應儘速建立大陸商務人士入境後之警示機制（Alert System），以簡訊或電郵的方式，適當的提醒其停留期限即將到期。以免因少數個案，衍生邀請單位業務推展的困擾。

議題五：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，除了從事科技相關產業及服務於跨國企業滿一年以上經指派來台者外，所有外籍專業技術人士（具大學學士學歷者）欲來台工作，必須擁有兩年以上相關工作經驗的限制。本委員會認為，鼓勵外國專業技術人才來台灣工作，是台灣產業持續提升，及為本地人才提供更國際化工作環境之有效方法。

此外，當鄰近國家都競相提供優厚的移民簽證條件及生活環境以吸引全世界最優秀、最聰明的人才時，台灣政府一貫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。況且，事實證明許多跨國企業創辦人，如美商微軟的比爾．蓋茲、蘋果電腦的史帝夫．賈伯斯及臉書的馬克．祖克柏等人，均無大學學士畢業文憑。以此推論，他們豈都不具備來台工作的資格？本委員會因此再次呼籲台灣政府盡快修法，刪除上述限制。

基礎建設委員會

公共基礎建設計畫－包括發電廠、水力供應設施、交通網路建設及國土規劃，向來被視為一個國家經濟實力的基礎。細數台灣的

重大基礎建設，例如機場、高速公路、發電廠、高鐵及捷運系統設施，都對台灣過去的經濟發展發揮重大貢獻。隨著台灣朝下一階段的經濟發展邁進，政府有必要再度就基礎建設的重大投資許下承諾，以利於打造台灣成為世界級的經濟體。

今年日本海嘯及大地震所引發的悲劇，再度讓三個議題浮上檯面：基礎建設對國家安全的影響、重新檢視水電供應設施的可靠性、安全性和備用度、以及從國土發展的角度全盤規劃重大經濟設施的必要性。面對這些重大議題，政府不能再用打游擊般的零散方式等閒視之，而必須將它們視為國家發展的長期重要挑戰，從總體發展的高度檢視、並賦予最高的優先順序。簡而言之，台灣需要一個真正的「總體計畫」－包括在承平時期如何使台灣經濟長期發展的計畫，以及在災難危機時期如何快速有效應變的計畫。

過去幾個月來，台灣政府十分積極地進行全球招商，例如，經建會已多次就十大招商主軸及投資計畫，帶領各部會代表赴海外舉行招商大會。仔細檢視這些招商主軸後可發現，除了桃園航空城計畫及都市更新外，多數招商主軸皆與基礎建設無直接相關，但完備的基礎建設能對吸引外資產生間接卻實質的效用，因為在當前激烈的區域競爭下，世界級的基礎建設無疑是外商考慮對台灣加碼投資時的決定性要素之一。

本商會在去年度白皮書提出，台灣政府的近程減碳目標過於激進，實務上不可能達成。我們籲請政府應採取較為務實的遠程目標才不致嚴重危害台灣的經濟發展。經濟部在其近期發佈的《能源發展綱要》草案中首度承認，要達到這些激進目標，每年勢必付出近千億元的巨額支出（包括購買碳權，增建燃氣電廠）。這一點我們在本年度白皮書已有詳盡的說明。

2010年白皮書曾預測，當下的政治情勢會進一步推遲新建燃煤電廠。果然過去一年，四部燃煤機組（彰工二部機、蘇澳二部機）毫無進展。為了因應未來電力成長，台電別無選擇，只能增加通霄四部燃氣機組因應。但燃氣電廠不但成本昂貴，對能源供應安全亦增疑慮。至於上述四部燃煤機組的命運則仍無法預料。

本商會冀望政府，確切面對現實，並採行更為合理的能源政策.

議題一：引進國外廠商參與公共建設，以建立世界一流的基礎設施

去年本委員會曾針對消除國際間參與台灣政府採購市場的障礙提出建議，我們明白，問題無法一夜之間獲得解決，但結果迄今仍未見改善。公共工程委員會採取了改善的努力，卻因缺乏政府相關部門具體的支持和協調，國外廠商參與公共工程的項目上並沒有大幅增加。本委員會促請台灣政府採取以下步驟來落實此一訴求。

1. **加強基礎建設的規劃**
   基礎建設項目必須始於一個完整的規劃流程，這是所有包括工程、建設及營運等後續行動能否成功的關鍵因素。台灣向來仰賴本地人士來執行相關規劃，儘管國內人才的素質很高，但在最重要的規劃階段，引進國際團隊的參與，提供更多的專業知識，能發揮互補的效益，讓台灣大大受益。所有讓一個國家引以為傲的世界級工程，必定在規劃階段之始，即有驚人的創意、經驗與專業。而所謂的「蚊子館」，往往就是不夠深思熟慮的規劃工作導致的失敗結果。
2. **以世界級的最佳案例來制定項目的標竿管理**
   作為一種監測和加強項目績效的工具，標竿管理被廣泛應用於全球不同產業和組織。基礎建設發展的許多方面，各種「最佳做法」也被廣泛地記錄下來。例如，機場的定期調查，測試和全球排名等。台灣即將興辦的桃園航空城，要實現最佳世界排名的目標，就應該以目前最佳排名的機場作為標竿，採納並學習其最佳做法，以確保有利的成果。所有其他主要的基礎建設系統，如水資源、防洪和能源等等，也可以用同樣的基準，來追求卓越。在此議題上，許多國際公司擁有廣泛的經驗，能夠協助台灣政府達成目標。
3. **建立友好環境，吸引國際企業參與公共基礎建設項目。**
   多年來，本委員會提出許多建議，以求能充分地開放市場。雖然政府已初步達成了一些重大進展，例如在2008年台灣加入世貿組織政府採購協定（GPA），但如何成功建立一個友好環境，以吸引國際公司來參與台灣基礎建設的市場仍有待努力。我們在此特別建議政府以獎勵為基礎，避免以投標價格為唯一的考量，多實施設計和施工結合的統包工程項目，增加政府採購協定所涵蓋項目的數量，消除對官股民營機構的偏袒，配合修改政府採購法相關條款以及以公私夥伴模式（PPP）為促參法在參與基礎建設項目上的相關修法。台灣政府採購法和促參法，制定於世貿組織政府採購協定（GPA）之前，其中若干條款及條件未必符合當前的國際慣例與潮流。雖然每個國家都有自己的文化和政治背景，但我們仍建議台灣政府針對此議題，進一步研究和比較其他政府採購協定會員國的相關法律。除非台灣環境在本質上有重大變革，否則將很難吸引外國公司進入台灣市場。

議題二：政府的軟體與服務採購項目，應建立公平合理的商業環境

依今日經濟發展情況，軟體與相關資訊專業服務，在各國公共基礎建設之重要性與日俱增。台灣對外商而言，是一個極具吸引力的市場，但由於多項與國際標準作法脫節之不合理的採購條件，造成令人挫折的商業環境。我們期望明年政府組織改造後，部分將隸屬於財政部之公共工程委員會業務，能即時採納本委員會之建言，就軟體與相關資訊專業服務，積極建立一個公開、 公平、公正之政府採購環境。

議題三：重新考量《能源發展綱要》

為配合能源管理條例，經濟部能源局已籌擬《能源發展綱要》草案。一旦定案，未來台灣所有能源開發都必須遵循此綱領，其法律效力不可等閒視之。草案涵蓋面極為廣闊，值得高度關注。然而，儘管部分內容相當可取，本委員會對於某些觀點持嚴肅保留態度。

草案重要目的之一，就是探討目前核能發電機組延役的可能影響。草案建議把原訂於2020年前除役的機組予以延役；若屆期關閉這些機組的話，填補電力缺口將極為困難。因為新建基載火力電廠曠日費時、非短期間可完成；何況當前瀰漫節能減碳、反對燃煤電廠的氣氛；即使倉促推動燃氣電廠，也會增加排碳。然而，這份綱領在日本福島核災之前草擬完成，目前台灣民意是否支持六座核能機組延役，仍在未定之天。

草案其中一項建議為進行碳權交易，對此本會以為應慎重考量。碳權交易將導致2020年時每年會增加台幣400億元(美金14億元)的支出，這還是基於核電機組延役的條件下。另一項建議是增加液化天然氣用量，從目前每年880萬噸增加到2020年每年1400萬，換言之，將大約增加400億度燃氣發電。此額外成本，與燃煤發電相較，到2020年時將增加發電成本約600億元(超過美金20億元)。

所有這些龐大的支出只為了達到台灣政府自我設定的減碳目標，意即2020年碳排放減到2005年水準，以及2025年排放回到2000年水準。社會大眾並不清楚，為了達成此一減碳目標，每年需要支出台幣千億元以上的天價。本會認為這個議題必須慎重重新估量，才不致重創台灣國際競爭力。

議題四：檢討環評否決權

台灣環評過程充滿不確定性，已使外國公司在台投資卻步。事實顯示，主導重大開發案的部會，對於該開發案是否能落實並沒有實權；唯一的決定權，在於環評會議。

台灣重大開發案件需要提交環境影響評估報告供環保署委員會審核，這點與世界其他國家一樣。然而在其他許多國家，環保署僅限於審查及提供意見，不像台灣環保署有最終決定的權力。

台灣環保署因對開發案件有否決權，常要求開發單位做更多研究或提供更多資訊，決策往往拖延經年。許多重大開發案件交付環評後，經常是歷數年懸而不決。其中最令人矚目的當屬國光石化案(馬總統最後介入否決)、蘇花高(被否決，改採替代方案)、台北市大巨蛋，以及台電燃煤電廠開發案等。

負責開發案的部會對於案件的重要性知之最深。譬如說，交通部做高速公路或其他交通建設的可行性研究時，必然要把環境影響作為各種考量因素之一。同理，石化及電力開發案，除環境考量之外，經濟部還肩負工業發展及提供全民不虞虧乏的電力之責。但在台灣，一樁重要開發案卻可因環評程序而面臨被否決或延宕的命運。

將否決權賦予環保署，對其亦不公平。因環保署除在專業之環境考量外，也被迫要考量否決重要開發案的政治後果。

如果負責開發案件的部會沒有做最後決定的權力，又怎能要求它負起政策成敗的責任？本會建議修改目前環評法，在明年環保署將改制成環境暨資源部之際，重新將其定位為擔任幕僚輔助的角色，從環保觀點提供意見給各部會， 最終決定權則回歸各部會。

議題五：持續改善政府採購合約之契約範本

雖然公共工程委員會已於某些契約範本中，追加一項排除「所失利益」之選擇性條款。惟本委員會本著條款之周延性，建議各式契約範本應排除更多之間接損害賠償，且應以直接實際損害為限。此外，最高損害賠償之上限，如訂在無限賠償責任或合約金額之兩倍仍然過高；依國際性慣例，應以合約金額為限。上述損害賠償上限與排除間接損害之規定，亦應一體適用於公共工程委員會之政府工程採購、勞務以及財物採購等各式合約範本中。

保險委員會

保險委員會認為：資訊透明、財務能力、客戶自主，以及謹慎一致的法令政策等監理原則必須予以強化，以改善臺灣保險市場的功能，並使臺灣成為更有吸引力的市場。

保險委員會肯定2010年間實施之下列措施：

・新訂定長期壽險保單再保險之責任準備金釋出規範，此項措施

將可擴大並提升台灣市場保險商品之範圍及品質。

- 設置保戶申訴處理機構是一項值得肯定的發展。保險委員會全力支持此項議案，並期待該機構配置人員可以兼顧消費者及業者之利益。

儘管保險業問題持續增加，但本委員會了解所有問題無法一次解決。因此，本委員會只針對三項我們認為最重要的問題提出建言，期待在行政院、立法院、金融監督管理委員會（金管會）保險局、中央銀行、經濟建設委員會、勞工委員會（勞委會）、消費者保護委員會以及其他政府機關的配合下，這些問題可以在2011年獲得有效改善。

議題一：加強保險業財務能力之資訊透明度及其監理

本委員會對於臺灣保險業資本適足率計算方式頻繁變動感到憂慮。儘管修改的目的是為了協助業者度過全球金融危機，卻已經讓消費者對於保險業財務能力原有的認知發生混淆，並降低保險公司財務能力資訊的透明度。本委員會認為，消費者必須取得一致性的標準做為公平評估保險公司之工具，才能讓市場的紀律有效運作。本委員會了解，採行一套還沒有完全確定、而且未必可以解決臺灣市場問題之財務會計準則的困難性。因此，本委員會建議壽險公會可以考慮對會員推動下列自律規範措施：

1. 允許保險公司揭露其準備金與資本適足率及其所採用假設基礎，使市場得以評估其風險承擔情形。其流程包括：
   - 依照為會計及清償能力目的所採之市場一致性基礎，對保險公司之資產及負債做清楚之評價。
   - 清楚區分保險契約與投資契約 (配合有一致性的稅制)。
2. 針對發放股息紅利的保險公司，為確保其長期資本及準備金適足率，應慎重考慮採用上述流程。
   保險是受法律支持、享有優惠稅負之特殊產業，目的是要鼓勵民眾對於自身之財務安全負更大的責任，以降低社會整體之負擔。因此，保險公司對於維持適當之準備金、資產以及負債管理，以確保其有能力對被保險人履行義務，負有很大的責任。截至2010年底為止，儘管資本適足率計算方式已經一再調整，28家壽險公司中，仍然有6家未達最低資本適足率標準，已經對於保險業整體的健全發展造成疑慮。
   因此，除了上述可以由壽險公會採取之措施外，本委員會同時建議保險局：
   - 對於資本適足率未達最低標準之公司，加速其增資時程，或進行解散。
   - 要求資本適足率未達最低標準之公司在未完成增資前，應加強揭露關於低資本適足率所代表風險之資訊，以減少未來之責任。

議題二：修正保險法第146條之4，允許保險公司執行符合立法目的之資產負債配置

本委員會完全同意法律對於用以支持新台幣計價債務之外幣資產投資應加以限制之立法意旨。然而，儘管金管會近期已經修正《保險業辦理國外投資管理辦法》，增訂第15-1條規定，為國外投資限制提供更多彈性，但於2007年間開放之傳統外幣保單，其外幣資產投資仍然受「國外投資總額不得超過45%」之限制。

該上限之規定，是阻礙小型以及新進入市場業者銷售以外幣計價非投資型保單之主要原因。因為，小型以及新進入市場業者若銷售以外幣計價非投資型保單，將被迫以新台幣計價資產支持外幣計價非投資型保單，而承擔原本法律想要避免之資產負債錯置之不當情形。因此，本委員會建議修正《保險法》第146條之4，規定「保險業簽發外幣計價非投資型保單，為平衡該保單之資產與負債並確保保單經營效率，而從事相同幣別國外投資者，得經主管機關核准後不適用國外投資限額之規定」。適當的風險管理必須透過正確的資產負債管理才能達成，國外投資限額並無參考之必要。

議題三：將勞工自願提繳退休金排除強制提繳有關規定之適用

本委員會請求勞委會考慮對於壽險業提供台灣勞工適合的年金商品的重大障礙，就勞工自願提撥的部份，予以排除。這些障礙包括：(1) 投保公司必須符合僱用200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。

排除上述障礙可以讓台灣相當多數的人民，透過符合個人長期財務需求規劃之退休金產品，以有效且可以負擔的方式，自願開始進行退休規劃。開放就勞工就自願提繳的部分得免受上述法令的限制，無須修改勞退條例規定，因為勞退條例第35條收益率不得低於銀行二年定期存款利率之規定僅適用於同條例第6條第1項規定之強制提繳退休金，而不包括第14條第3項規定之自願提繳退休金。因此，本委員會促請勞委會立即以行政命令採行本項建議。

之後，我們盼望勞委會能進一步修正勞退條例，將目前適用勞工強制提繳退休金之三項相同障礙，予以刪除。

智慧財產權與授權委員會

本委員會讚揚保護智慧財產權警察大隊(保智大隊)及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。

在台灣假藥的可及性一直是需要關注的議題。前任衛生署長楊志良去年曾指出，假藥的氾濫已經成為比非法毒品流通更嚴重的全球性問題。我們支持楊前署長任內對假藥製作、販賣、與推銷電台等展開打擊行動，並樂見相關公共教育宣導工作的進行。本委員會同時也對衛生署、司法部、內政部、財政部、海巡署、國家通訊傳播委員會、新聞局與消保會等各單位對於反假藥的努力與配合，表示肯定。

我們支持美國商會「製藥委員會」針對藥品之專利連鎖權與資料專屬權保護行動的呼籲。這些措施不僅能強化台灣對智慧財產權的保護，同時還可激勵製藥產業在台投資與研發。

此外，非法教科書影印的問題仍舊存在。本委員會支持政府採取了一些措施，如2010年智慧財產局主辦的巡迴教育宣導、教育部為了遏止非法教科書影印與透過學術網路非法下載而訂制的校園保護智慧財產權三年行動方案、智慧財產局對校園內影印店有關非法影印所延伸之法律問題的宣導，以及其他教育部與智慧財產局的相關課程，希望提高台灣各階層學生對智慧財產權的認識。

美國商會之會員公司仍持續面對商品外觀辨識保護的問題。此議題已在過去的白皮書中提出，我們認同台灣政府對此議題因缺乏有效執法機制而嘗試的補救努力。

商會白皮書數年來亦多次指出大規模仿冒品與來自中國的農藥化學物品的情況，此議題攸關健康與安全，呼籲主管機關更積極的關注。

議題一：對仿冒品及走私品的進口採取更有效之管制

委員會督促台灣政府應將加強海關、財稅部門及海巡署對仿冒品及違禁品進口的控管，作為來年落實智慧財產權的第一要務。中國是台灣的仿冒品及走私品的主要來源。隨著兩岸旅遊、交通及貿易穩定的發展，有必要加強對來自中國仿冒品及違禁品的取締工作，並將犯行者訴諸司法。委員會建議台灣政府：

1. 針對取締仿冒品或走私品，在海關建立一套更有系統、更為快速且透明的行動機制，該系統應使得查緝行動可於幾周內完成，而非像目前拖延數月。海關與其他台灣執法機構應建立良好的合作與協調之管道，包含揭露海關取締之相關資訊予其他如智慧財產局、司法院、法務部、內政部及財政部(菸酒主管機關)等政府單位。其中一種有效的揭露方法即為建立一定期更新的資料庫，列出被判刑或罰款之仿冒品及走私品的進口人，由海關及其他政府機構共享此資訊。
2. 建立海關與權利人間良好的合作關係，例如當查緝之案件演變為刑事追訴時，提供權利人該進口人與出口人之資訊。
   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。

議題二：促進智慧財產權法院的運作

2008年7月設立的智慧財產權法院是台灣在智慧財產權領域的一大突破，雖然該法院持續扮演著重要角色，但在三年的運作後，對於某些進展之需求已顯然易見。本委員會呼籲下列缺點應受到重視：

1. 資源的缺乏
   智慧財產權法院需要配置更多的法官及更多素質更佳的技術審查官，以有效地實現其被賦予之任務。
2. 事實調查的品質低落
   此並非智慧財產權法院獨有的問題，而是台灣司法系統的普遍現象。雖然台灣法律對於偽證及提供法院不實文書的處置與德國、瑞士、法國及其他大陸法系的規定非常相近，但處理大量虛偽不實且干擾法官的資訊則為體系上之問題。跨國企業持續發現，在涉及有台灣當事人的國際訴訟事件中，台灣公司通常會向美國或歐洲法官提供那些他們在台灣相同議題的訴訟中，假裝「遺失」或「不存在」的資訊。基本上，台灣法院並不發揮法院享有之職權以強制取得資訊，此點使得台灣方面一直無法達成在WTO TRIPS(與貿易有關的智慧財產權協定)下規定的「有效行動」之要求。
3. 損害賠償不足
   唯有要求當事人提供真實且正確的文件及作證的事實調查獲得改善，台灣訴訟案件中損害賠償之計算始可能有顯著的進步。目前法院普遍不回顧過去侵權行為的紀錄，而僅是單純接受有關資訊為何無法被提供的藉口，此作法了限制了用以查明原告所受損害所需的證據。損害應足夠補償權利人所受損失乃遵循WTO TRIPS的關鍵要素之一，而台灣目前在此方面的表現遠遠落後。

議題三：修正草案需要加強現行的智慧財產權法規

1. 專利法

台灣仍需修正其強制授權條款，以避免導致台灣與歐盟須利用WTO爭議解決機制之類似情形發生。現行專利法的用語含糊不清，留給政府未來進一步嘗試不當干預技術定價的可能性。目前未見推出任何施行細則草案供大眾檢視，以消除疑慮。台灣既為世界頂尖技術國家之一，解決此議題以提供科技公司們一個智慧財產權保護成熟的經營環境是十分重要的。

2.商標法

最新的商標法修正草案有許多正面的修訂，然而提議刪除商標法第63條商標侵害之最低損害賠償下限之改變，將有不利之影響。現行法律提供計算損害賠償之方式，即可就查獲侵害商標權商品之零售單價500倍至1,500倍之金額計算，但修正草案將會刪除此下限規定。若此下限被移除，當法官能輕易裁定損害僅為產品價格的一或兩倍時，則將顯著弱化該法律。此外，現行商標法第62條關於著名商標之侵害的規定，就商標被稀釋所受之實際損害難以證明時，應增訂其法定損害額之計算方式。最低金額應被特定－例如：新台幣一百萬元－針對那些攀附著名商標而用於命名其公司、大樓或促銷活動的廠商。

議題四：加強數位媒體環境下之著作權保護執行工作

1. 應制定「三振條款」的執行細則

台灣在2009年4月通過著作權法修正，增訂網路服務提供者（ISP）責任條款，並於2009年5月13日開始生效施行。在ISP責任條款中規範了著作權利人對侵權使用人「通知及取下」之程序，並提供ISP一個可免責的「安全港」，以及ISP對重複侵權者應採取漸進式回應之原則。此漸進式回應即所謂的「三振」條款，ISP應終止侵權達三次的使用人全部或部分的服務。

非法P2P侵權持續肆虐台灣音樂產業，「三振條款」是打擊非法P2P侵權最有效的武器。但智慧財產局以於法無據為由，並未在2009年11月所發布的著作權法施行細則中規定「三振條款」的執行細則。

因缺乏執行細則，幾乎所有的ISP都認為，前述新修正著作權法漸進式回應條文並未規定將著作權利人的侵權通知轉知P2P侵權使用人是ISP的法律上義務。

到目前為止，幾乎台灣唱片出版事業基金會（RIT）對侵權P2P使用人所寄發之侵權通知，ISP均未轉通知侵權使用人，故無法發揮嚇阻效果，因此也減弱新修正ISP責任條款的效力。本委員會呼籲立法院應再修正ISP責任條款，明確賦予智慧財產局制定「三振條款」施行細則的法源依據。

2. 通過網路邊境管制措施立法，阻斷進入侵權情節重大的網站

RIT近年來的調查發現設在國外的網站如大陸的「百度」及許多論壇網站提供數以千計未經授權音樂供人下載或線上聆聽。這些非法網站已造成台灣音樂產業重大損害，但基於以下理由，對這些非法網站卻無計可施：

- 台灣對這些外國網站的侵權活動無司法管轄權；
- 著作權利人無法確認利用這些國外網站進行侵權活動的行為人；
- ISP提供網路連線服務是唯一知道侵權行為人以及有能力阻斷進入這些侵權網站之人，但依台灣現行法律，僅提供連線服務的ISP並不需要對其使用人在國外侵權網站之侵權行為負責。此外，由於電信法及個人資料保護法的限制，ISP非有正當理由且經正當程序，不能揭露其使用人之個人資料。因此，即便ISP有意願幫助權利人阻止其使用人進入國外侵權網站，也無法提供任何協助。

要嚇阻上述侵權行為最有效的方法是阻斷一般大眾接觸進入這些侵權網站。今年2月，西班牙國會通過一項法案，規定權利人可透過一個快捷的程序請求移除網站內侵權內容以及阻斷進入侵權網站。我們呼籲台灣立法院應制定類似法律。

3. 採取有效嚇阻網路盜版侵權的法律行動

根據RIT的統計資料，在2009年52件網路侵權案件中，52件全部的被告都被檢察官宣告緩起訴，比例高達百分之百；2010年的12件網路侵權案件中，也有高達11件案件的被告被宣告緩起訴。被宣告緩起訴的被告僅被要求支付小額的公益捐款，但如此高比例的緩起訴案件已讓打擊網路盜版活動的努力大打折扣。本委員會籲請檢察官應更審慎決定具體個案是否給予緩起訴之處分。

4. 評估著作權集體管理團體條例最近新修正條文

台灣規範著作權集體管理團體的法律著作權集體管理團體條例在2010年2月做了重大修正。但新修正條文妨害授權市場的正常運作並減損著作權利人及使用人的權益。

著作權集管團體在特定商業使用市場扮演了一個重要角色，協助唱片產業授權商業場所使用人使用音樂。著作權集管團體所提供之服務方便使用人取得大量著作之授權使用及支付使用報酬。著作權集管團體的業務活動應與任何其他商業組織業務活動等同看待，對於授權業務活動及決定應避免干預。

a. 應容許著作權集管團體委託代理人協助授權。找尋可以授權的潛在使用人是著作權利人在授權上所面臨最主要的挑戰之一。由於公開演出音樂的商業場所遍布各地，而且鮮少會主動向著作權集管團體尋求授權，這個問題在公開演出的授權收費業務特別嚴重。著作權集管團體代表著作權利人，教育使用人使用授權的觀念並給予所需授權，卻面臨難以接觸所有公開播放音樂商業場所的重大困難。

全世界的著作權集管團體會經常評估自己於所在市場開發商業使用人的能力，並發展出更有效率的方式執行授權業務。許多國家管理錄音著作的著作權集管團體會委託代理人找尋商業使用人並收取權利金。但必須強調的是，這些代理人雖是代表著作權集管團體，但授權及收費所生責任仍由著作權集管團體承擔。

曾有代表錄音著作的著作權集管團體委託代理人協助在台灣各地的授權收費業務，直到智慧財產局2008年9月明令禁止才停止。代表唱片產業的著作權集管團體委託代理人的國家有奧地利、比利時、加拿大、智利、哥倫比亞、克羅埃西亞、多明尼加、厄瓜多、德國、印度、義大利、馬來西亞、荷蘭、巴拿馬、波蘭、羅馬尼亞、俄羅斯、西班牙及土耳其等。此外，澳洲、香港、愛爾蘭及新加坡等國家地區的著作權集體管理團體雖並未委託代理人，但並無任何法令禁止規定。很明顯地，台灣的方式相當不同於其他世界上的主要國家。

無法委託代理人對著作權利人的授權活動有直接而負面的影響，導致為數甚多的企業在未經授權的情況下營業，並讓著作權利人無法獲取應得的使用報酬。並無任何正當理由禁止集管團體委任代理人協助授權及收費業務，而且，台灣的這項政策從未被充分說明。任何有關於授權實務的疑慮都可藉由建立一個公開演出授權之行業行為準則並將這些疑慮納入行為準則中做有效的規範。此種經協商同意所設定的行為準則將可確保授權制度不被濫用並保障使用人的權益。

b. 不應強制不同類別著作權集管團體共同進行收費。經驗顯示，當著作權利人能自由發掘最有效的著作管理方式時，授權市場的運作是最有效率的。為了確保台灣授權市場運作最有效率，應容許著作權利人可自行決定是否加入著作權集管團體將著作權利委託管理，甚至是否與其他著作權利人共同進行收費。事實上，強邀所有著作權利人共同收取公開演出使用報酬將可能導致使用報酬收取及分配上的衝突，如此將妨礙授權市場的正常運作並對使用人獲得使用授權有不利影響。

雖新修正著作權集體管理團體條例第30條第2至5項規定須待2012年2月才生效施行，但近來有關落實新法所企求「單一窗口收費」概念的第30條第1項規定之執行已出現許多實際上的困難。智慧財產局告知三家音樂著作集管團體應就電腦伴唱機公開演出音樂著作之特定使用型態協商出一個共同費率。雖智慧財產局表示做出此項決定是因這類使用人從未支付使用報酬給這三家集管團體，但實際上，部分使用人已對其中部分集管團體支付使用報酬，但不知道還須支付使用報酬給其他集管團體使用報酬，因此，智慧財產局的理由並無說服力。

實際上，由於每個著作權集管團體所管理著作被使用次數差異甚大，欲令此三家音樂著作權集管團體達成一個共同費率的共識已經非常困難，而要令這三家集管團體就「單一窗口」達成共識也相當困難。因為規模小的集管團體可能欠缺執行三家團體授權收費業務的能力，但如果只因規模較大就被推為「單一窗口」，對於這個規模較大的集管團體並不公平。縱使將會支付這個被推為「單一窗口」的集管團體一定管理費用，但應該也不足以作為擔負如此龐大業務負擔的誘因。

基於以上「單一窗口」執行上的問題，台灣著作權主管機關及立法部門應在相關條文生效實施前進行修正。多數國家都是交由著作權集管團體自行決定如何推展授權業務。經驗顯示，同類著作權利人偏好將權利交由一個著作權集管團體管理。但將權利交由哪一個著作權集管團體管理，甚或設立一個新的集管團體，應給予著作權利人決定之自由。

5. 數位匯流時代的智慧財產權保護：

積極有效的智財權保護，是鼓勵有線電視業者進行數位化投資，以及內容產業製作高品質節目的重要因素，並可促使數位服務的成長與消費者購買意願。為了使台灣在亞洲競爭國家中，於高品質內容製作、先進網路的投資與創新等各領域的具有競爭力，台灣必須面對跨境服務(OTT services)業者所帶來的

挑戰，並建立有效的法律架構以解決有線電視私接問題。

在數位匯流時代中，由於數位內容可輕易透過網路加以散佈，境外業者所提供的網際網路串流視訊的跨境服務日趨普遍，其所衍生的智財權保護問題也益加嚴重。由於境外服務業者藉由提供未經授權的非法內容，導致本土內容產業的利潤損失，從而降低製作新產品與服務的投資意願。

跨境服務業者在台灣沒有任何直接投資，不需繳納稅金，也遑論創造就業機會。他們不必遵循在台灣的競爭對手所必須遵循的法令規範，因此可以堂而皇之向台灣市場提供不健康的內容服務，例如色情與線上賭博。

我們在此呼籲台灣政府儘速通過相關法律，禁止業者透過任何管道散佈未經合法授權的內容，同時結合公眾教育，勸阻消費者使用這些非法內容。

另一項智財權保護的重要議題是私接有線電視。有線電視的私接導致台灣有線電視產業蒙受巨額損失，並阻礙有線電視的數位化發展。依據新聞局廣電處於2007年九月的統計，有線電視私接戶比例高達台灣總家戶數15%，換算約有114萬私接戶，每年導致有線電視業者2億3千萬美元損失。巨額的損失導致有線電視經營者對網路升級的投資裹足不前，同時降低內容供應商製作新的數位內容之意願。

近年來，台灣在智財權的保護議題上備受肯定，美國貿易代表署基於對台灣持續加強智財權保護的肯定，將台灣自特別301觀察名單中移除。為保持此種有利情況，台灣應持續加強智財權的保護以面對新的挑戰。一個重要的考驗即是台灣是否能制定有效的法律規範，以保護視訊內容的智財權不被未授權的有線電視私接所侵害。

議題五：加強海關對仿冒品的程序

在台灣，海關負責查驗含有光碟媒體與其他物件的貨運並決定其是否涉及著作權的侵害。當海關確認該等物件確實含有侵權物品時，案件即移交到航空警察局進行調查(因為侵害著作權的物品多以快遞方式寄達)，然後再轉送地檢署。然而，最近幾年，由海關查驗而舉發的侵權案件大幅減少，舉例來說，商業軟體聯盟的會員報告指出，2010年海關舉發的查驗案件為前一年的三分之一。

根據委員會的瞭解，減少的主要理由是因為航空警察局完成調查再移送海關舉發的案件到地檢署的進度極為緩慢。有些案子，該程序甚至要花上兩年。

我們呼籲航空警察局與海關密切合作以加速移送的進度。此外，既然保智大隊受過良好的訓練且對於光碟案件的調查甚有效率，警政署可以指派保智大隊與海關就該等案件攜手合作。

議題六：提供地檢署的檢察官與地方法院的法官智慧財產權的訓練

典型的著作權侵害案件，當提起刑事訴訟時，在第一審層級的調查和審判程序通常要花上至少八個月，甚至長達一至兩年。程序如此冗長的原因可能為：(1)檢察官與法官繁重的工作量；(2)法官頻繁調動；及(3)檢察官與法官對軟體產業與網路盜版的不熟悉。此領域的訓練課程與研討會將有助於充實檢察官及法官對這些議題的瞭解，希望如此可以加速審判的速度。

法務部以前每年至少為檢察官舉辦一次軟體、電影、音樂與其他著作權侵害的智財權課程，但此訓練課程於2008年及2010年皆未舉辦。我們希望法務部每年定期舉辦該等課程，同時建議司法院也為法官舉辦類似的培訓以增加其處理軟體及網路案件的能力。目前法官對網路科技的不熟悉可能導致訴訟程序的遲延，或甚至無正當理由而強烈要求權利人與被告和解網路盜版案件。

議題七：公家機關應採取措施確保合法軟體的採購與使用

政府機關與承包商針對有形資產通常有其採購政策，但軟體的採購與應用就缺乏足夠的關注，結果導致台灣公家機關使用未經授權的商業軟體，成為普遍的問題。我們建議政府應採取下列行動：

1. 更新行政院主計處頒佈的採購辦法。該辦法已經施行14年，且未對稽核程序有一明確的定義。特別是，該辦法需指定授權執行的主管機關並授權至少每年對機關使用的有價值的軟體進行軟體資產稽核。
2. 增加購買合法軟體與科技服務的預算，使政府得就智慧財產權的保護樹立典範。
3. 持續與權利人團體合作以提供政府及教育機構相關人員對軟體著作權議題的訓練，包含辨別正版與盜版軟體的方式。對負責採購軟體的政府以及學校人員之訓練，將有助於避免其於採購與政府招標的過程中，被不實的業者所矇騙。

醫療器材委員會

今年稍早《全民健康保險法》修正案（又稱「二代健保」）的通過，使台灣全民健保體系有更穩固的財務基礎，立法院與屬於行政部門的衛生署、中央健康保險局都有功勞。本委員會也感謝有關單位在醫療器材差額負擔納入健保這方面所做的努力。差額負擔制度的設計能讓病患有機會選擇最佳治療方式，對全民健保的財務也不會造成過多壓力。

同時，我們希望提供幾點建議，包括：1. 改善管理醫療器材的相關法規程序，使台灣法規環境能與國際接軌。2. 二代健保立法之後，應持續強化給付制度。3.開放引進跨國企業在中國生產且獲得美國或歐盟認證獲准銷售的醫療器材。

我們感謝主管機關對於本委員會提出的意見表示關注，希望未來能透過各種會議與政府單位持續溝通，深入討論這些議題。

議題一：調和國內醫療器材法規與國際法規接軌

台灣是全世界少數幾個以同一法規管理醫療器材與藥品的國家。日本雖然也採行這種制度，但是近年來已經開始往新的方向調整。因為醫療器材與藥品在製造、行銷方式、使用安全顧慮等方面有諸多差異，把醫療器材視為與藥品一樣，納入相同法規管理，已嚴重影響醫療器材廠商的生存發展。

要直接訂立新法專門規範醫療器材也許難度頗高，因此本委員會建議政府應考慮制定《藥事法》醫療器材專章。以下是我們對於衛生署食品藥物管理局未來修訂調整相關規範的建議：

1. 建議食品藥物管理局研擬接受負有法律責任及產品上市後監控責任的製造廠（legal manufacturer）為產品許可證登記及符合醫療器材優良製造規範登記的製造廠。
2. 因跨國分工製造衍生之製造廠所在國與標籤上所載之產地國(COO)不同的情況，建議食品藥物管理局與關稅總局儘速研擬合理之管理措施。
3. 建議食品藥物管理局參考國際法規執行情況，例如美國與歐盟是否已核准該種產品，以針對查驗登記事項的變更建立一致的程序與判定標準。

我們建議食品藥物管理局針對以上事項能明定修訂時程與內容，並與業者進行溝通及討論。

議題二：修改健保給付制度，提升台灣醫療服務競爭力

健保的財務短缺已威脅全民健保制度永續性，影響台灣民眾享有高品質但價格低廉的全面性保險服務。健保財源有限，影響了新科技與新醫療器材的引進。醫療器材的差額負擔制度－由病患負擔健保不完全給付的部分，不僅提供病患更多治療選擇，也可以更有效率的使用健保資源，免於使全民健保成為引入新醫療器材的障礙。

本委員會對於衛生署及健保局相關官員努力使二代健保通過《全民健康保險法》第四十五條，訂定有關醫材差額負擔之條文，再次表達感謝。這個健保改革的重要里程碑，將有助於透過合理的給付制度促進新醫療科技的引進，並維持台灣的醫療服務競爭力。此外，本委員會對健保其他重要議題提出下列建議。

1. **差額負擔制度應保留自由市場競爭機制**

   差額負擔是透過病患部分自費的方式，讓新醫療器材納入健保給付的中途站，透過資訊公開，民眾以自付超出健保給付費用的方式，選擇更多更適切之產品。差額負擔制度是台灣醫療技術與國外接軌的重要配套，而非形成另一種技術障礙。本委員會建議差額負擔應有反應醫療器材個別產品差異性與價值之機制，並交由醫療院所依其管理成本與產品差異訂定價格。透過自由市場競爭與資訊公開，讓病患自費差額逐年下降。這不僅能鼓勵廠商積極將新科技醫材引進台灣市場，也尊重民眾對產品與治療方式的選擇權。
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**

   DRGs診斷關聯群（Diagnosis Related Groups）是一種「包裹式給付」，而新醫療技術或新醫材的使用具有學習曲線較長的特性。本委員會針對Tw-DRGs給付制度提出以下建議：

   (1) 在合理反應DRG成本的前提下，取消個別醫材健保核價

   DRGs制度將診斷為同一類疾病、採取類似治療的疾病分在同一組，再依病人的年齡、性別、有無合併症或併發症、出院狀況等再細分組，給付給醫院相同的費用。DRGs制度實施的目的，在促使醫院發展臨床路徑，讓病人得到更好、更有療效的照護品質。

   然而，綜觀世界已實施DRGs支付制度之國家，如澳洲、比利時、加拿大、捷克、法國、德國、愛爾蘭、紐西蘭、挪威、葡萄牙、新加坡、西班牙、瑞典、美國等，在DRGs包裹式給付的支付制度下，並無個別醫材的健保核價。本委員會建議，在合理反應DRGs成本前提之下，應取消個別醫材健保核價。

(2) 保障TW-DRGs給付點值一點一元

台灣在總額預算制度下執行Tw-DRGs給付，醫院若因為成本預算的考量，排除新醫療器材的引入，將嚴重影響醫療品質。總額預算點值浮動且回溯計算會對醫院財務狀況造成無法預期的影響。為了使醫院能在兼顧醫療品質及治療成本的情形下，真正落實DRGs制度，加強財務穩定性，本委員會建議Tw-DRGs支付制度下，應保障TW-DRGs固定給付點值一點一元。

3. 取消醫材價量調查

價量調查是健保局藉以排除醫療器材健保價與醫院實際交易價格之間價差的工具，然而過去特材點值浮動的計價方式卻引發價差不斷擴大、價量調查結果缺乏透明可靠的稽核機制、功能分組計價未考量個別產品製造成本與品質的差異等許多問題。在TW-DRGs制度下，疊床架屋的給付制度不僅限制了臨床治療的最佳選擇，價量調查制度形同只鼓勵價格與成本控制，忽略了醫療品質與產品價值。

今年一月立法院三讀通過並經總統令公布之《全民健康保險法》修正案，修正了過去偏重成本與價格的思維，鼓勵提升品質的機制。然而，目前並無醫療器材價量調查之法源依據，本委員會建議全面取消醫療器材價量調查。

4. 決策過程應擴大參與確保資訊公開

衛生署與健保局應將醫材業界視為台灣醫療體系的重要合作伙伴，建立醫材業界制度化參與醫療與健保政策討論和訂定之機制。在新的健保支付制度環境下，不同健保給付政策間環環相扣，影響最終呈現的醫療品質。醫療器材產業代表不僅應定期參與藥物給付會議與給付辦法之制定，也應參與健保會及醫療給付會議，使健保政策在業界全力支持下，規劃更加完善。

對於醫療器材之健保給付，有關單位應建立透明的審查標準與程序，公開醫材專家小組與會名單與會議實錄，並於會議兩週前公告醫材專家小組審查會議議程，邀請與該次會議案件相關的醫療器材廠商代表參與審查會議。

健保局與業界透過更有效的溝通平台，共同努力促進高品質醫療器材與高科技技術引進台灣，並提升台灣的醫療水準與商業環境，以符合二代健保擴大參與和資訊揭露的精神。

議題三：解除跨國企業於中國大陸製造之醫療器材進口禁令

本委員會建議，經濟部國際貿易局應採取更開放的態度，減少對大陸產製品進口的限制，加速實現貿易自由化，提昇貿易便利性。越來越多國際醫療器材公司將生產地設於中國，這是順應全球市場供需情形的發展趨勢。跨國公司在中國製造產品時，會採用與原產國同等級的品質管控標準。這些品質與原產國產品一致的中國製產品，也已獲認可，能在美國、歐盟或其他主要市場銷售。但是在許多情況下，台灣仍禁止其進口。

兩岸經貿往來日趨密切，去年簽訂的《兩岸經濟合作架構協議》也顯示兩岸經貿互動關係更加穩固，本委員會期盼政府對於中國製產品的進口規定能更開放。我們也明白，醫療器材的開放必須考量對大眾健康、醫護品質的影響。因此，我們促請政府先開放進口跨國公司在中國製造的醫療產品，特別是已經以高標準獲得美國、歐盟等地核准認可的產品。

國貿局曾多次建議本委員會的成員自行與國內公會私下協商，以獲取公會的認可。但是我們認為，國貿局應建立更透明的審查流程，由國貿局為處理此一議題的單一窗口，並負起責任，發揮政策領導者的功能，而不只是依賴國內製造廠商業公會的決定。

從中國進口本委員會所建議的品項，將不會對台灣的國家安全構成威脅，也不會對國內相關產業造成傷害。我們敦促國貿局儘速重新評估產業現況，開放下列醫療設備產品的進口。

CCC Code	中文貨名
未開放號列	
3005.10.10.00-5	外科用膠帶
9018.90.30.00-7	靜脈點滴注射器
9018.1200.00.8	超音波掃瞄器具
有條件開放號列	
3005.10.90.90-9	其他粘敷料和其他具有粘層之物品
9018.90.80.00-6	其他第9018節所屬之貨品
9018.90.90.90-5	其他第９０１８節所屬貨品之零件及附件-骨科用手術器械及用具

其他

脊骨神經醫學

議題一：提供脊骨神經醫學在台灣合法基礎

過去連續幾年，商會會員在美國受過訓練並擁有執照的脊骨神經醫師們，在白皮書中不斷地針對這項議題發聲。我們數度提出具有說服力的說明，指出提供給脊骨神經醫學合法地位不僅公平合理，同時也有利台灣民眾的健康照護，籲請台灣政府尊重這國際公認專業的合法性。然而，令人失望的是台灣政府一直沒有朝著此目標邁進，更糟的是，縱使我們長期以極多篇幅不斷解釋，從衛生署得到的回應仍顯示，主管機關持續貶低該專業，並且一直對於脊骨神經醫學有著重大的誤解。

去年，衛生署針對我方白皮書內容提出兩點回應：

1. 關於引進凱羅技術（chiropractice），衛生署基本上持開放態度，惟目前並無直接以國外證照在國內執業之規定。基於本國各類醫事人員專業制度之建立，均依循「教、考、用」政策，透過完整之醫事人員專業教育及國家證照考試產生。是以，具體作法，建議先由國內大專院校或醫學院，開設凱羅技術相關課程，經由科學驗證療效及相關實證研究後，漸進納入正規教育體系，待技術逐步成熟後，再據以列入醫事人員正規學制及立法，即其證照應依循各類醫事人員專業制度之建立方式，經由正規醫學養成教育培養，並通過本國國家證照考試產生為宜。
2. 至於凱羅術若為執行衛生署於2010 年4 月15 日以衛署醫字第0990207052 號令發布「民俗調理之管理規定事項」之範疇，從事身體調理服務，不宣稱疾病療效及招徠醫療業務之情形下，且無違反其他醫事法令之規定者，得免列入重點查處範圍。

針對衛生署的回應，我們有以下幾點必須重申：

- 衛生署表示對於脊骨神經醫學(Chiropractic)持開放的態度，事實上一直以來都不是這麼一回事。舉例來說，過去世界衛生組織附屬的組織－世界脊骨神經醫師聯盟(World Federation of Chiropractic)代表曾數次欲與衛生署拜會協商，衛生署卻都以迴避方式回應，不願安排任何會談。

  脊骨神經醫學是一門獨特、與眾不同的療癒系統，不應被貶低為僅是「技術」。合格的脊骨神經醫師(DCs)完成四年的大學先修教育之後，還必須接受五年半的脊醫教育。這已經遠比台灣醫師培訓時間更長，因此在台灣的脊骨神經醫師們，在美國早已接受「完整之醫學人員專業教育」。
- 「惟目前並無直接以國外證照在國內執業之規定」：幾年前曾有多位立法委員欲以立法程序引進脊骨神經醫學專業，並允許領有國外執照者於台灣合法執業。香港同樣缺乏該專業教育與執照系統，卻早已經由立法程序，使領有國外脊醫證照者得以合法執業。台灣醫師公會錯誤地視脊骨神經醫學為競爭對手，而非提供病患更理想醫療照護的合作夥伴。最終，該項提案在台灣醫師公會堅決反對下無疾而終。
- 堅持所謂的「教、考、用」並沒有法源基礎。這理由不斷被拿來做擋箭牌而且完全不合邏輯。試問，哪所台灣醫學院會在完全沒學科專業背景與資格下設立相關課程? 要讓一個專業在台灣開始生根最好的方式就如同本商會所提議的以「祖父條款」(即不溯既往原則)，讓在市場上已經領有證照的專業人員得以執業。待台灣擁有自己的(脊骨神經醫學)教育與執照系統時，整個新(專業)系統自然可被引入。
- 回應中提及「經由科學驗證療效及相關實證研究後」，衛生署顯然忽略國際在數十年間脊骨神經醫學上的研究，皆已顯示脊骨神經醫療照護的有效性、安全性、病患滿意程度、以及節省醫療支出。這些文件案例早已提交衛生署與公聽會參考。
- 「待技術逐步成熟後」更是一個不恰當的評論。脊骨神經醫學源起於1895年，甚至比中華民國建國早了16年。第一所脊骨神經醫學院正式創建於1897年，而台灣最高學府台大的前身，也不過是在日本殖民政府的1928年才創立。
- 關於衛生署第二點回應，將脊骨神經醫學歸類於「民俗療法」。以不得宣稱療效來免於列入查處重點，並將受過高等教育的專業人士列為「民俗療法業者」，實在是一種貶抑。於此同時，我們必須表示感謝的是，過去直接針對美國脊骨神經醫師的過度騷擾（如:不定期稽查、入侵家中、高額的罰款、甚至囚禁的威脅)已經減少，也讓他們有所喘息的空間。

應當注意的是，台灣對待美國脊骨神經專業的方式已經成為台美雙邊貿易的議題之一。該項議題在最近一次2007年的台美貿易暨投資架構協定(TIFA）會談，以及2011年由USTR（美國貿易代表署）

提出的國家貿易評估報告，均視此為一項貿易障礙。

我們明白衛生署在過去幾年有許多列為優先處理的事務，尤其是對於國民健康保險長久以來的財務危機。但隨著今年稍早二代健保法的通過，財務問題在可預見的未來應可獲得紓解。我們冀望衛生署新任署長可以開啟雙方全新且具建設性的對話，讓台灣能完全承認脊骨神經醫學的地位；也期待能像台灣大眾以及日益增長的銀髮族群提供我們的知識與技能，使他們獲得更好的健康與福利。

菸品

議題一：審慎考量菸品稅捐上漲對走私菸品問題的影響

菸品健康捐（菸稅亦同）調漲政策的主要目標是，透過以價制量的手段，「防制菸害，促進國民健康」。但值得注意的是，政府將健康捐（菸稅亦同）調漲後，菸價上漲反而導致走私菸品更形猖獗。

根據中華民國菸業協會2010年私劣菸品實證調查顯示，非法低價白牌菸品佔台灣菸品市場比例約5.2%，相當於每年約有1億包不受法律規範，也未完稅的白牌菸在市面流通販售。此等大量私劣菸品，多未受法律規範，尤其是品質控管的部分，不僅未經菸品成分申報，並將掠取合法、完納稅捐菸品之市場，進而導致稅基的侵蝕。

菸業協會調查結果亦顯示，低價菸品主要消費者對於菸品價格敏感度較高，尤其菸品健康捐（菸稅亦同）調漲，形同變相鼓勵民眾購買非法低價菸品，此舉亦不符合社會政策利益。因此，我們建議，菸品健康捐（菸稅亦同）的調整幅度應合理漸進，避免助長私劣菸品氾濫。同時，我們亦建議，政府財政及衛生部門應善盡協調分工之責，防堵伴隨大幅提高菸品健康捐（菸稅亦同）而來的私劣菸品猖獗問題。

有關菸品健康捐調整部分，商會建議政府採用定期定額且設上限的健康捐調漲機制，以維繫市場秩序；且穩定並可預期的財源方向，應更有助衛生主管機關有效推動國民健康政策。

吸菸率的降低有賴完整規劃的健全方案，包括有效的消費者教育；一味提高菸價，並不是解決所有問題的萬靈丹。

議題二：頻繁修法不如落實執法

回顧《菸害防制法》修法歷史，過去經驗顯示，頻繁修法將造成可觀的行政、社會與經濟成本。以2009年6月健康捐調漲為例，因調價之配套措施複雜，最終採行黏貼辨識標籤制，導致延宕健康捐開徵，不但造成合法業者在黏貼與運輸上的額外負擔，導致民怨與市場混亂，政府行政效能也因此飽受質疑。

此外，政府亦亟須加強查緝走私的效能。如上所述，私劣菸品在國內市佔率已具相當規模，目前除衛生署和財政部門外，關稅、賦稅及其他相關單位均被賦予查緝走私的任務，為提高打擊走私的效能，商會籲請政府，應擴大聯合稽查的人員編制，並增加稽查的頻率。

且當局可進一步思考從健康捐的分配運作辦法中提撥適當比例，提高查緝獎勵獎金、更新相關查緝設備。上述以具體執法取代修法的措施，應更能發揮實際功效。

舉例言之，現已有立委提出《菸害防制法》修正草案，要求警示圖文面積應佔菸品容器90%，並以全國統一之單一底色印製。此一要求，實已逾越立法目的，不僅有違自由貿易之精神，抵觸憲法所賦予之商業言論自由，更將侵犯業者智慧財產權。如此大幅擴張之警示圖文面積，勢將增加辨認品牌的難度，進而影響販售人員與消費者溝通，造成無謂之消費糾紛。

產業界向來積極配合政府政策，執行相關法令。有鑑於過去因《菸害防制法》修法所造成之艱困經驗，商會懇請主管機關，在啟動修法工作前，務必審慎評估其可行性與合理性，並邀請產業代表參與制定討論過程。透過事先溝通，方能針對執行面可能出現之問題，及早因應，確保提供業者及消費者一個穩定的法規環境。

製藥委員會

美國商會製藥委員會恭賀衛生署以及中央健康保險局於2011年1月4 日立法院通過第二代健保法案。此法案的通過對確保健保制度永續經營是非常重要的里程碑，二代健保改革應可使台灣人民受惠於一個更有效率與效能的醫療保健系統。

二代健保法規生效日期雖未確定，但開發性製藥產業敦促政府，希望立即推行新法案規定的藥品費用支出目標（Drug Expenditure Target, DET）機制。由於最近幾年藥價調查後的藥價調降機制已使台灣藥價墊居世界各國之底，致使許多優質藥物因價格因素被迫退出市場，產業界期盼新法案中的藥品費用支出目標機制能用以取代預定的第7次藥價調查。

雖然藥價調查制度過去達成政府節省預算的即期目標，但造成的藥價調降卻已導致藥廠、醫院與病患的困擾與混亂。除了中央健康保險局的行政負擔外，最重要的是，此藥價調降無法解決「藥價差」的潛在問題（「藥價差」即醫療機構購買藥物時的實際交易價格，與中央健康保險局給付醫療機構較高價格之間的差額）。過去產業界在提出DET相關事宜時，衛生署與中央健康保險局均不願意考慮取消 2011 年的藥價調查。在修法後，產業界希望在此過渡期間，尋求第7次藥價調查的替代方案，以作為長期運行 DET 制度的準備。期待在目前這種藥價調查制度尚未對台灣藥品市場造成更嚴重的傷害以前，政府能尋求更好的方式管理這個問題。

同時，開發性製藥產業也感謝中央健康保險局，出於獎勵創新的精神，於 2010年 1月公告新藥收載及核價作業標準。目前，新藥核價制度尚無法反應獎勵藥品創新的程度，因而降低了產業界引進新藥進入台灣市場的意願。下一階段則是落實此新標準的實施，並且希望能增加1B類別的新藥，以獎勵具明顯改善之藥品，進而獎勵創新，並加速病患取得新藥的時間。

我們對台灣食品藥物管理局近期鬆綁藥品採用證明（CCP）的規定，訂定新藥審查與登記的簡化程序，並建立核發許可函的機制，以縮短新藥審查時間，表示肯定與讚揚。開發性製藥產業期待能繼續與台灣食品藥物管理局合作，進一步加快新藥審查的速度，以增進台灣人民的健康。

美國商會製藥委員會感謝政府持續與原開發藥廠會談協商的意願與承諾。這些會談將有助於達成政府與原開發藥廠的共同目標，讓病患活得更長壽、健康、快樂，且更具生產力。

議題一：盡快實施「藥品費用支出目標」(Drug Expenditure Target, DET)

在過去幾年中，為了管控制日漸成長的藥費支出，健保局前後共進行了六次藥價調整，對生技製藥產業造成近500億元的影響。目前台灣已為國際上藥價最低的國家之一，原開發藥品在台灣的平均價格僅為美國的28%。最終，恐將因創新藥品在台灣上市的價格過低而被迫減少引進，導致病患無法受惠於最新的治療方法。

在業界持續與政府溝通此問題後，衛生署在2008年12月31日舉辦了全國藥品政策會議(National Health Conference)，其中一項結論即為「將藥價調整與藥價調查脫勾 」。根據這項結論，業界提議設立「藥品費用支出目標」(DET)以達到兩項目標：1) 確保病患使用創新藥品之可近性；2) 協助建立一個財務永續經營的健康照護體系。

在「藥品費用支出目標」制下，健保局與醫藥界可依據過去實際的歷史藥費支出，共同協商下一年度藥品費用支出目標。當實際藥費支出超過預設目標時，業界可透過償還(clawback)或藥價調整等機制來補足缺口。業界共同希望能儘速實施「藥品費用支出目標 」，取代第七次藥價調查以及藥價調整。相較2009年，2010年健保藥費支出成長僅有0.86%，此乃2009年10月藥價大幅調降所致。健保局應降低下次藥價調整幅度，使製藥產業界避免再受重創，以保障病患能持續穩定使用藥品。

在相關議題部分，健保局最近已著手整理藥價調查與(同成分同劑量同規格)同組的藥價調整實施原則。即使學名藥廠所提供的折扣遠高於原開發藥廠，在此藥價調整標準下，導致過專利期原開發藥品與學名藥間的藥價差更縮小。健保局在第六次藥價調查與藥價調整的同時引進 「同品質同價格」原則，上百個學名藥也依據政府設定的新條件調高健保價。然而，較高的健保價並未使學名藥廠受益，而是轉手將更大的價差提供給醫院，並且由於此新的分組機制調整，使的學名藥市場的折扣增加。這可能導致下一次的藥價調查/調整中被歸為同一組的藥品遭致更大的價格調降，意味著原本希望給較高品質藥品的獎勵方案，反而加速了藥價的下降。

更甚者，健保局要求原開發藥廠將所有藥品的Pharmaceutical Inspection Convention Scheme (PIC/S)、Good Manufacturing Practices (GMP)或Drug Master File (DMP)資料送審，原開發藥品才得以符合台灣訂定的品質定義。原開發藥廠若無法檢送這些資料，原開發藥品可能無法繼續被認可為標準品，其價格可能被調降至新標準品(學名藥)的20%。原開發藥廠認為，此項資料送審要求是不必要的，因為衛生署早已在新藥審查過程中確認了原開發藥品的品質與療效，並將其列為審查後續學名藥申請上市許可時需比照的標準品。於藥價調整時要求原開發藥廠再檢送上述資料是多餘的，期望衛生署能協調食品藥物管理局與健保局共同解決這個問題。

雖然要達成共識來執行「藥品費用支出目標」與藥價調整仍需更多討論，我們仍提出以下建議事項：

1. 政府訂定「藥品費用支出目標」時，需邀請生技製藥產業與其他重要關係人共同參與討論。
2. 以上一年度藥品支出費用加上成長率訂出的「藥品費用支出目標」取代今後的藥價調查。同時，只有超過支出目標的部分才需調整。
3. 新藥應被列為不調整藥價品項，尤其是仍在專利中的新藥。
4. 針對剛過專利期的藥品，能夠採取分階段合理調整藥價的方式。

5. 不應將原開發藥品與學名藥列為同組調整藥價。
6. 健保局不應要求原開發藥廠檢送PIC/S、GMP或DMP等資料，因為原開發藥品早已經過PIC/S會員國或十大先進國的政府，通過最高的品質要求而核准上市，也被台灣衛生署視為審查學名藥申請上市許可時需比照的標準品。健保局應繼續比照其他已開發國家的健保制度，以原開發藥品為後續上市之學名藥的基準。

議題二：改革新藥核價政策以獎勵創新

在2009年由業界舉辦兩場邀集衛生署與健保局，對給付和核價政策進行建設性對話的創新研討會後，2010年12月又舉辦了第三場評估新藥核價政策執行和對2011年提出行動建議的研討會。

台灣的新藥核價仍在持續下降中，2010年新藥平均價格僅達十大先進國中位價的47.81%和最低價的68%。

過去幾年藥品價格的嚴重調降，是新藥價格偏低的主要原因。多數的新藥是以現有藥品價格為基礎來訂價。在2010年，沒有任何一種新藥被認為具有突破性創新，可被歸類為第一類新藥並依十大先進國中位價作為核價。

另一個議題則是關於藥品價量協議制度，健保局要求藥商簽訂藥品價量協議，以在新藥或新適應症核准給付時和政府一同分擔財務風險。我們呼籲健保局透過與業界充分溝通討論，發展使價量協議流程更透明、結果更合理、更可預測的準則。

此外，醫藥科技評估(HTA)機制也在2011年1月《全民健康保險法》修訂時被納入，衛生署和健保局應與相關團體代表一同擬訂漸進式的計畫以導入HTA，並確保病患使用到新藥的時間不會被延遲。考量在藥價調降下，新藥核價參考品的價格持續降低，因此判斷藥物的成本效益顯得更趨困難。HTA審查過程應更透明化，且當局也需考慮到資料保密性的需求。

建議事項：

1. 執行新藥核價政策，並以十大先進國中位價作為核價，以獎勵第1A類具突破性創新的新藥，另進行台灣臨床試驗者核價後加算10%、進行台灣藥物經濟研究者最高可加算10%。
2. 將第1B類新藥(根據直接或間接比較資料，顯示其效果明顯優於現有藥物)加入新藥核價政策，提供創新藥品間更好的市場區隔。並根據國際經驗，對第一類新藥制定合理的比例。
3. 發展清楚的準則以管理價量協議制度，如：
   a. 新藥第一年額外的藥品費用支出超過新台幣二億元，才考慮是否需簽訂價量協議；
   b. 更合理的回扣方案(rebating scheme)；
   c. 取消現行價量協議中每年重新計算十國藥價的條文；
   d. 消除匯率不確定性；
4. 確保HTA執行過程透明及資料的保密性。

議題三：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: 新適應症／新用法三年保護；
   b. 新生物製藥: 十二年保護。

議題四：加強藥品上市後變更核准的品質監測制度，以確保藥品品質之一致性

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）、定期查廠、原料藥（API）管理系統、監控可能影響藥物品質的製程變更等。

優良產品製造規範（GMP）和現行優良藥品製造標準（cGMP，Current Good Manufacturing Practice），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。

衛生署亦需要建立每一個最終產品之主成分來源登錄系統資料庫，以便有效地監測主成分來源之改變。目前，衛生署要求每家原廠藥商公司主動檢送完整資料，作為確認主成分品質之依據。學名藥廠公司可比照類似2009年美國啟用的藥品主檔案（DMF，Drug Master File），根據現行健保局藥品品質分類標準，學名藥若有藥品主檔案的登錄，即可適用提高該藥品的健保藥價。然而，十大參考國家核准上市的藥品，已有行之有年、完善的主成分審查系統，而該審查結果亦被廣泛認可。因此，我們建議衛生署不應設立重複審查的機制，對於已經衛生署審查通過之新藥及來自十大先進參考國家的藥品，不應要求檢送DMF資料，以免重複不必要的作業。

此外，衛生署要求各公司檢送較現行台灣GMP嚴謹的完整的工廠資料，以確認輸入藥品之PIC/S現況。即使是GMP標準相當嚴格的PIC/S會員國之工廠，仍常收到衛生署審查時的許多問題，甚至遭到拒絕，而造成延緩藥品核准上市或已核准藥品的進口。

我們極力建議衛生署應將審查流程更合理化，尤其是來自已具國際GMP高標準國家的工廠，應縮小進口產品之審查技術障礙。

建議事項:

1. 加強現行藥品上市後品質管理機制，以及建立主成分來源登錄系統。
2. 建議衛生署不應設立重複審查的機制，對於已經衛生署審查通過之新藥及來自十大先進參考國家的藥品，不應要求檢送DMF資料，以免重複不必要的作業。
3. 針對PIC/S會員國的工廠資料申請、PMF（Plant Master File），以及實地查核等建立更合理的審查流程，

議題五：落實實施醫藥分業 (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充分考量病患利益，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，政府也應給予法定的藥品管理費用。

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，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。此外，根據亞洲大學2009年的研究，慢性病連續處方箋的釋出，能提升病患的用藥遵從性，這可能有助於臨床治療的成效，甚至可能因此節省醫療支出。

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. 政府應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，並建議以公立醫院釋出慢性病連續處方箋為示範，訂定各級公立醫院釋出率目標。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、減少非必要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。

不動產委員會

不動產委員會謹代表本委員會會員提出各項建言，以期帶動台灣不動產市場蓬勃發展，並有利於都市更新案之推動。我們相信，政府若能針對部份現行法規進行適當、合理的修改，將可創造一個更健全的不動產市場，以維護公眾利益，同時滿足機構法人投資需求。本委員會期待與政府相關部門持續進行對話交流，共同促進一個更良好的市場環境。

議題一：振興台灣不動產投資信託基金市場

台灣不動產投資信託基金（REIT）自2005年3月第一檔發行以來，過去數年累計有八檔REIT上市（櫃）。保險業者向來為台灣不動產信託基金市場的主要投資者，另外也有部份個人投資人參與該市場交易活動。儘管REIT投資人的配息收益享有分離課稅，台灣REIT市場與他國相比並不熱絡；此外，大多數由不動產投資信託基金所擁有的不動產標的表現不佳，長期落後於整體市場趨勢，其主要原因如下：

- 市場未存在任何獎勵機制，缺乏誘因促使不動產管理機構更積極、有效地管理REIT投資標的。
- 市場亦未有任何針對受託機構（銀行）之獎勵措施，以令其扮演好基金管理人角色，並採取積極的投資策略。
- 多數不動產管理機構為不動產投資信託基金發起人之子公司。

不動產委員會建議政府應鼓勵各檔基金建立獎勵制度，使REIT經理人充分發揮其管理角色，同時確保不動產投資信託基金成為一項可替投資人帶來長期穩定收益之投資工具。藉由鼓勵不動產管理機構採取積極的資產管理策略，及鼓勵受託銀行更活躍地參與、進行不動產投資，政府可進一步強化和帶動台灣不動產投資信託基金市場，同時亦可避免股價被低估之REIT申請清算。本委員會建議如下：

1. **訂定不動產投資信託基金總發行額度上限。**根據《不動產證券化條例》，受託機構如欲追加發行受益證券，可向主管機關申請核准。然本委員會建議，主管機關應於一檔REIT成立之時，便明確規定其未來可追加發行之數額。依現行規定，受託機構進行追加募集或任何不動產買賣時，均須經由主管機關同意。惟冗長的審查及核准程序，常使得基金經理人難以在不動產市場景氣熱絡之際，趁勢完成不動產交易。刪除目前追加募集時的申請程序，可令受託機構以更有效率及專業的方式從事不動產投資，進而為REIT投資人帶來較佳的報酬。
2. **增加投資標的含開發型不動產之REIT借款總額。**依《受託機構募集或私募不動產投資信託或資產信託受益證券處理辦法》第11條規定，不動產投資信託基金經信用評等機構二家以上評定為第一級者，借款總額不得超過信託資產總額之50%。由於開發型不動產具有高風險之特性，投資該類型不動產之REIT因而不易獲得較高的評等。本委員會建議政府可提高台灣不動產投資信託基金之借款上限，或將上述投資開發型不動產之REIT排除於該規定之外。
3. **提供績效獎勵予不動產投資信託基金經理人。**根據金管會審查受託機構募集不動產投資信託受益證券之程序、標準及發行後管理原則（第叁部份審查標準下之第五項第七款），受託機構及不動產管理機構不另收取績效獎金。本委員會強烈建議主管機關刪除該審理原則，使受託機構及不動產管理機構得以建立相關獎勵機制，鼓勵基金與物業管理經理人能以更積極的態度管理該檔基金或投資標的，進而使REIT受益人之投資利益最大化。

議題二：加速都市更新案件審查程序，並積極執行拆遷程序

依台北市都市更新處網站公布數據，歷年來台北市政府共核准都市更新事業概要421件。然而，自2006年迄今，僅有104件實施都市更新事業計畫獲得核准，其中共26件已取得建築執照。鑑於目前都市更新案件完成率尚低，本委員會促請台北市都市更新審議委員會加速其審查效率。

為鼓勵更多民間業者參與都市更新案，台北市政府於去年頒布「中低樓層老舊建物」更新專案，針對老舊公寓現地更新重建之案件，給予容積獎勵。至今共有七件申請案送交都市更新委員會審議，但由於目前市府並未訂定任何相關審議原則，導致這些申請案件仍未進行審查。缺乏審議原則供委員會作為審查依據，不僅延宕目前已十分冗長的審議程序，更加深了建商與地主談判的困難度。本委員會呼籲台北市政府體認起草該審議原則的必要性與急迫性，以利北市老舊公寓盡早透過都市更新手法獲得重建。

此外，依據《都市更新條例》第36條規定，「權利變換範圍內應拆除或遷移之土地改良物……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。」然實際上，除台北市政府曾於2010年6月辦理1件代為強制拆除案件外，我們並未觀察到其他案件的執行，令人不禁質疑《都市更新條例》第36條的效力，以及市政府執行公權力之決心與效率。不動產委員會再次敦促政府採取主動、積極的態度推動都市更新案之發展，並嚴格執行第36條之規定。

議題三：允許大陸地區投資人取得及開發商用不動產

自兩岸經濟合作架構協議（ECFA）於2010年9月正式生效後，來台設立據點之陸資企業已逐漸增加。本委員會樂見此一發展趨勢，並認為即使陸資企業初期來台的不動產需求規模不大，國內商用不動產市場也逐漸受惠於陸資企業來台所衍生的不動產租賃需求。

過去數季來，政府陸續推出多項穩定房市的措施，以避免不動產市場產生過熱之疑慮。本委員會體認相關新措施之政策立意，然與此同時，我們重申並呼籲政府修改《大陸地區人民在臺灣取得設定或移轉不動產物權許可辦法》第7條規定，使大陸投資人得以在台購買商用不動產。目前，僅有依《大陸地區人民來臺投資許可辦法》來台之陸資企業，且有其業務需要者，可在台取得各類型商用不動產。換句話說，大陸地區投資人並不能如同其它國家投資人一般，可單純投資台灣不動產。由於商用不動產通常為收益型不動產，且社會大眾並不受商用不動產市場波動之影響，本委員會促請政府修改相關法規，開放大陸資金投入本地商用不動產買賣投資市場。

不動產委員會感謝政府致力於兩岸經貿關係正常化，並持續改善、提升台灣的整體競爭力。迄今為止，政府總計已開放205項業別項目供陸資來台投資。依《大陸地區人民在臺灣取得設定或移轉不動產物權許可辦法》第9條，大陸地區法人因從事有助於台灣地區整體經濟之投資，可在獲得中央目的事業主管機關同意後，申請取得不動產物權。所謂「整體經濟之投資」包含住宅及大樓之開發或經營，以及工業區及工商綜合區之開發或經營。然實務上來說，目前經濟部尚未開放陸資來台投資不動產開發業，使得上述許可辦法第9條之規定形同虛設。本委員會敦促政府修改相關法令，並進一步允許陸資企業參與台灣不動產開發業。

零售委員會

零售委員會很樂意見證到過去幾年台灣政府，尤其是衛生署食品藥物管理局在增進某些消費性商品（例如化妝品管理法規）與國際實務接軌方面所作的一些重大努力，包括草擬化妝品衛生管理法修訂案，取消廣告播出前必須經過檢查等規定。得知食品藥物管理局正積極協同台北市化妝品商業同業公會設計一個能建立產品安全標準的機制，以及廣告業實務準則，以確保有效地保護消費者，亦令我們感到欣慰。

對於行政院消費者保護委員會願意在今年年初將我們的觀點列入考量，決定依謹慎原則實施「企業的消費者憲章」一事，零售委員

會也同時表示感激。

對於各個政府機關自動改善法規的品質，以及重新界定政府在制定標準方面的角色等行動，我們亦表示讚揚。

另一方面，零售委員會亦注意到上述這些正面的方向並未廣泛地被各政府機關接受。事實上，我們已觀察到制定「台灣特有」的法規甚至變成更普遍的趨勢。過去的《白皮書》已指出，使台灣的法規與國際上接受的實務接軌，將能有效提升台灣的政府效率及在全球的競爭力。

此種對國內產業及跨國公司同樣造成不必要行政負擔的「台灣特有」取向，可從下述各項議題顯現出來。這種持續的現象已經嚴重妨礙台灣的競爭力，若不予以改正，在未來快速發展及越來越競爭的全球經濟中勢將成為更嚴重的障礙。我們力勸相關政府機關採取緊急行動，使台灣法規與其他主要國家的法規接軌。

議題一：檢視並修訂不符現勢之商品標示規定

馬總統於2010年國慶演說中提到「臺灣面積雖小，卻胸懷遠大」，「樂於融入世界，勇於接受全球化的挑戰」。零售委員會與馬總統有共同願景，也持續向有關單位提出建言，期盼國內法規環境能與國際標準更加契合，使業者能與全球同類型企業公平競爭。惟對許多進口商而言，台灣目前特有之商品標示嚴格規定，使部份商品難以或根本無法引進台灣市場。尤其，在某些案例中，法規遵循之成本過高，已對業者造成無比沈重的負擔。此外，隨著消費者購物習慣逐漸改變，更多人選擇多包裝/量販包商品，台灣部份商品標示規定顯得不合時宜，亟待修正。

1. 多包裝食品（指內含數個完整包裝食品，非指需再經改裝、分裝或其他加工程序者）：依據《食品衛生管理法施行細則》第十三條第三款前段規定，進口商須於輸入商品前在商品上貼中文標籤。僅管我們知道多包裝食品可能被拆封個別轉售，而且不管產品包裝的大小或形態，消費者有權利於購買前得知產品相關訊息，但因產品於出口時已包裝完成，進口商無法單為台灣市場拆封，將其中個別完整包裝食品進行標示後再重新封包。由於中文標示僅適用於台灣地區，對國外製造商而言，在生產時為台灣業者另貼中文標示是標準化製造程序之外的額外手續，因此標示作業往往由進口商自行負責。我們建請政府釐清中文標示責任之歸屬。進口商若於產品外包裝已完成中文標示，即符合法規要求，購買此類產品再拆封轉售的業者應負標示之責任，以為合理。
2. 冷凍食品（重視品質的冰淇淋）：進口冰淇淋的困難點之一，就是控制及維持合適的儲存溫度。常溫的產品可以在保稅倉庫貼標，但冰淇淋產品卻因為現今台灣冷凍保稅倉貼標處溫度管控設備條件的缺乏，無法以此模式進行入關查核前貼標。本會期盼，針對冰淇淋等無法符合官方規定在政府單位查核前就完成貼標或是在保稅倉貼標的品項，調整免貼中文標示之申請程序規定，使其順利進口。而現今對於進口產品要核准延遲貼標，食品藥物管理局要求：無中文標示的產品必須要在國內有分裝、改裝或加工作業。但對冰淇淋產品來說，這類作業必須要重新製作紙盒使用，將增加冰淇淋產品包裝的使用量，有過度包裝之虞，亦有違馬總統與有關單位強調的環境保護理念。本委員會建請政府調整免貼中文標的申請作業，允許有需要的業者申請在海關查核後、產品銷售給消費者前在符合產品品質要求非保稅倉的指定倉儲內，進行中文標籤貼標作業。
3. 量販包的襪類商品：與前述多包裝食品情況類似，由於襪子為民生必須品，消費者已習慣大量購買襪類商品。然而，台灣「服飾標示基準」規定，不管一個販售單位裡有多少雙襪子，每一雙均需張貼中文標示。如此的標示成本不僅將轉嫁到消費者身上，在拆封商品、貼標及重包裝之過程中，往往破壞商品本體。因此，我們建議刪除每雙襪子均需標示之規定，而購買此類量販包產品再拆封轉售之業者，應負起標示責任。
4. 商品的製造商資訊：2009年，對於進口產品是否應標示製造商資訊一事，相關政府單位、零售商、進口商及數個台灣的產業協會曾數次開會討論。其中爭議點在於，一般而言，對於產品有疑問或欲客訴之台灣消費者，並不會與國外製造商直接聯繫，因此在產品上標示製造商名稱、地址及電話並無必要，僅標示進口商、代理商或經銷商即已足夠。2009年年底，經濟部商業司曾表示，將修法取消標示製造商資訊，並進一步提交審議，但至今之後續發展仍不明朗。

議題二：維持牙膏產品合理的法規架構

1. *重新評估牙膏國家標準修訂草案：*

經濟部標準檢驗局目前正在修訂「牙膏與牙粉」國家標準（CNS439），此一修訂草案擬引用並參照ISO11609(2010版)之規定。本會與台灣區肥皂清潔劑工業同業公會與化粧品公會等相關公會之立場相同，即建請政府重新考量該修訂草案中以下之規定：

a) 除了已依台灣法規標示之支盒外，所有原始容器應再以繁體中文標示特定資訊：

- 此規定恐有歧視國際性品牌之嫌。為達一定的經濟規模，國際性品牌所屬每一製造廠以共用之配方及軟管製造產品，供應給不同的國家，讓消費者以最優惠價格享受最優質商品。此一軟管標示之規定若通過，台灣消費者原有之產品供應來源將大幅縮減。宥於台灣的市場規模，若要製造台灣專屬的繁體中文軟管，廠商之生產成本必大幅增加，國際性製造廠恐只能引進少數商品至台灣。
- 並非每一個台灣進口商均能達到供應商就繁體中文標示軟管所訂的最低訂購量，進而要求供應商於軟管標示中文。如此將會妨礙台灣某些商品之進口，違背自由貿易與WTO之精神。此外，若台灣進口商想要於軟管上加貼中文標示，須在產品上架展售前為之。此舉勢必破壞商品支盒包裝上原有之安全標籤，對商品之安全造成疑慮，而因此所增加之成本，亦將會一併移轉到消費者身上。
- 強制牙膏軟管上為中文標示與現行商品標示法規定相牴觸。依《商品標示法》所示，牙膏於支盒（外包裝）上標示《商品標示法》規定應載事項即可。而CNS439 牙膏牙粉國家標準，僅為標準檢驗局所制定之行政命令，其效力不應凌駕主管牙膏商品之準據法《商品標示法》。

b) 新標準生效前，未給予業者任何緩衝期：

標準檢驗局表示此一修訂草案將於未來幾個月內正式通過並公告，且標準檢驗局擬於2011年8月依據新修訂之標準，就市面上所販售之牙膏進行稽核，而查核報告將於同年10月公佈（可以推知公佈之對象為新聞媒體）。根據此一時程表，標準檢驗局除未提供合理的前置作業時間給業者有機會討論此一修正案，亦未給予業者任何緩衝期以符合新標準之規定。再一次地，對在很多國家市場經營的國際性品牌，因欠缺足夠時間做調整變動，將受到特別不利的影響。若某些商品因在準備新的台灣專屬軟管期間，而須將該商品暫時從市場下架以符合新標準的規定，難免會對公司在消費者心中之商譽造成難以彌補的傷害。

c) 單元容器內之氟化物量不得超過300毫克：

歐盟、東協會員國及中國等國家，在制定其國家標準或國內法規時，亦曾審視上述ISO規定。歐盟、東協會員國及中國等國家最後均決定不採用在牙膏產品中限制氟化物量之規定，因消費者可能吞食整支牙膏因而攝取過量氟離子之可能性顯然極低。此外，台灣主要的牙膏業者均已於包裝支盒上加註「不可吞食」警語。在此情況下，消費者依照使用方法正常使用牙膏，應無安全顧慮。

甚且，多數牙膏業者於其牙膏中添加法規規定上限1500ppm氟離子，以提供最佳防蛀保護。此一300mg限量之規定若通過，台灣市場上最受消費者青睞的200克裝以上之牙膏即無法符合此一規定，勢必剝奪台灣消費者選購對其家庭最為便利商品之權利。

基於上述，針對CNS439修訂草案，本委員會建請事項如下：

(1)草案中第6條有關「標記及標示」之規定應修改為「標記及標示依商品標示法之規定」，或允許於牙膏軟管上以中文或英文擇一標示應行標示事項，方能對國際性製造廠之影響降到最低。

(2)刪除第4.1.2條「單元容器內之總氟化物量不得超過300mg」之規定。國家標準中規定牙膏總氟化物濃度不得超過0.15%(1,500ppm)已足以保護消費者之安全。

(3)若此一修正草案之通過勢在必行，本會仍建請政府於新標準生效日後至少給予業者18個月之緩衝期，以利業者符合新標準之規定，並處理其存放於倉庫或通路之舊品庫存。此緩衝期應明白規定於修正草案中，且在判定是否符合新規定時，應以製造日期為準。

2. *維持牙膏之現狀產品分類（即一般商品）*

台灣將牙膏歸類為一般商品（氟離子濃度低於或等於1500ppm）或藥品（氟離子濃度超過1500ppm）已有數十年。歸為一般商品之牙膏不需事前查驗登記。現今，衛生署食品藥物管理局建議將牙膏商品由原來之一般商品變更類別至化粧品，並修訂《化粧品衛生管理條例》第三條化粧品定義之規定，將牙膏納入化粧品之定義內。本會建請食品藥物管理局停止此項修訂，理由如下：

a) 美國將含氟牙膏歸類為成藥（不須查驗登記，但所有藥品必須經FDA列示）。在歐盟，牙膏歸類為化粧品（未宣稱療效，僅須報備）。日本將之歸類為成藥（需查驗登記），中國則歸類為一般商品（不需查驗登記）。雖然牙膏在台灣被歸類為一般商品，其亦遵循上述國家之法規規範趨勢，即牙膏若宣稱療效或含氟量超過1500ppm時，被歸類為藥品而須查驗登記。

b) 目前牙膏之主管機關為經濟部。此外，衛生署亦公佈一般牙膏可宣稱效能之詞句。若針對某一宣稱是否涉及不實、誤導或影射療效有疑義，經濟部可依行政協調，尋求衛生署或公平交易委員會之專業意見。因此，將牙膏之主管機關從經濟部移轉至衛生署，對於消費者並無法提供額外保護。

c) 不像化粧品是由消費者決定選用以修飾人體外貌而施於人體外部之商品，牙膏是每一個人每天都須使用、保護牙齒健康且無安全顧慮之商品。鑑於目前政府之機制已足以管理牙膏商品，實無必要再將牙膏之主管機關由經濟部移至衛生署。

d) 若食品藥物管理局將牙膏重新歸類成化粧品，仍會維持目前上市後稽核之管理制度，而業者仍依照現有自主管理模式上市、管理其商品，此與現狀並無不同。

e) 若此一《化粧品衛生管理條例》修正草案通過，牙膏因應新法規而產生較高之額外成本，費用勢必轉嫁給消費者。此乃因《化粧品衛生管理條例》所要求之標示與《商品標示法》不同，其需標示全成份且標示之字體大小須符合一定規定，因此牙膏業者除必須報廢現有包裝，還須重新檢視其成分是否符合化粧品法規規範，甚或可能須變更配方以符合化粧品法規規定，如此均會增加額外成本，最後將會轉嫁給消費者。

本會建請維持牙膏產品分類之現狀。若政府仍認為須為台灣消費者提供更多保障，本會及牙膏業者非常願意配合政府在現今架構下探討並研擬相關改進措施。

議題三：加速審查並解除進口中國商品的限制

在2010年期間，國貿局既往的保守立場似趨緩和，因此本委員會提出要求政府刪除中國進口商品禁令的36項產品清單中，有4項已被解除。但若要真正實踐馬總統2010年國慶演說所強調「接受全球化的挑戰」，國貿局在此議題的處理上，須抱持更積極緊迫的態度。

在最近一次國貿局所舉辦的開放大陸物品輸入審查會議中（2011年2月22日），當局和企業代表討論中國進口商品的禁止品項，沒有任何一個品項被解除禁令。反對解禁的兩個理由是薄弱的：1）對國內產業有重大的潛在不利影響；2）缺乏一般大眾需求。台灣政府過去幾十年保護國內產業，試圖避免國外的競爭。某些傳統產業或許受益於這種保護主義（有些企業甚至在中國發展業務），但國內消費者成了最終的輸家，必須支付更高價格購買產品，購買的管道、選擇也日漸減少。至於所謂的不利影響當地產業，本委員會已多次要求工業局提供具體且更新的分析數據。遺憾的是，我們往往收到過時、不合邏輯的訊息。在未來，若是產品清單中的品項仍被裁決保留，我們希望政府能提供具體、即時的經濟評估以資了解。

從經濟的角度來看，對單一市場施加進口禁令難稱明智之舉，這在2010年《白皮書》已有徹底的說明。我們要再次呼籲政府在處理此議題時能考慮我們的建議：

1. 採取透明的審查程序，而國貿局對於此議題的進展應有明確的責任。
2. 逐項或逐類加速審查下列項目：

	未開放號列	
1	0705.1100.00-5	結球萵苣，生鮮或冷藏
2	1806.20.00.00-0	其他調製品成塊狀、板狀或棒狀重量超過二公斤者或液狀、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二公斤者
3	1806.31.00.00-7	其他巧克力調製品，呈塊、條狀或棒狀，重量不超過二公斤，有填塞物
4	1901.20.00.00-4	供製作第１９０５節烘製食品用之混合料及麵糰
5	1902.30.10.20-5	速食麵，不含肉者
6	1905.31.00.00-7	甜餅乾
7	1905.32.00.00-6	鬆餅及薄餅
8	1905.90.90.00-6	其他第１９０５節所屬之貨品
9	2004.1011.00-7	酸漬除外之調製或保藏馬鈴薯條，內包裝每包重量在1.5公斤以上者，冷凍
10	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
11	2103.20.00.00-8	番茄醬及其他番茄調味醬
12	2208.90.60.00-4	穀類蒸餾酒
13	3005.10.10.00-5	外科用膠帶
14	4823.90.00.90-9	其他切成一定尺寸或形狀之紙、紙板、纖維素胎及纖維素紙；其他以紙漿、紙、紙板、纖維素胎或纖維素紙所製之物品
15	7009.91.90.00-8	其他玻璃鏡子，未鑲框
16	7009.92.00.00-6	其他玻璃鏡，已鑲框
17	7013.37.00.00-8	陶瓷玻璃器除外之其他玻璃杯
18	6302.21.00.00.8	棉製其他印花床上用織物製品
19	6302.22.00.00.7	人造纖維製其他印花床上用織物製品
20	7010.90.00.10.3	超過１公升之玻璃容器
21	5806.32.10.00.6	人造纖維製緞帶
	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、斗篷、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、斗篷及類似品
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	6208.91.00.00.8	棉製女用或女童用汗衫及其他背心、三角褲、短內褲、便服、浴袍、晨衣及類似品

我們認為，從中國進口這些品項既不會威脅到國家安全，更不會對台灣造成任何潛在的經濟損失，而這是政府實施進口中國產品禁令時訴諸之唯二理由。保護主義跟追求經濟發展、提高競爭力等目標是相互違背的。更糟的是，它可能無法保護中、小規模的企業，卻有助於大企業進行擴張壟斷。

此外，解除禁令也將重建台灣的信譽，顯示台灣信守對世貿組織的承諾，是極具吸引力的投資地點，這將創造就業機會、拓展商機，是維持台灣長遠發展的生命線。

去年《兩岸經濟合作架構協議》（ECFA）的簽署，代表兩岸經濟關係的氛圍已有改善，因此我們樂觀地認為在這個議題上應可達成重大進展。

議題四：改革化妝產品相關的規章制度

國內化妝品市場產值估計達到新台幣八百三十億元，隨著對國際市場越來越多的化妝品出口量，國內化妝品業產值不僅可觀，而且以二位數的速度快速成長。為了符合當今消費者對產品安全及品質的期望，美國商會化妝品業會員歡迎食品藥物管理局目前加速改革法規，以便與國際實務更緊密接軌的計畫。美國商會支持這項行動，並對食品藥物管理局向各方面徵求意見的開放態度表示讚揚。

衛生署建立的現行管理制度要求含藥化妝品上市前必須登記，且所有化妝品廣告播出前必須經過檢查/取得核准。此項制度係沿襲為預防或治療特殊疾病的「藥品」而設計的制度。結果，政府耗費了可觀資源做文件審查工作，而這項作業與化妝品購買者主要關切事項一確保產品安全一反而並無關係。世界各地多數主要市場，包括美國、歐盟及東南亞國協各國，均不要求在上市前必須取得核准。但是，這些地區的主管機關均針對消費者主要的權益一安全、產品及品質一制定嚴格規定，並在懷疑產品是否符合該等規定時，要求產品必須接受檢驗。

各先進國家對化妝品廣告亦遵循類似的原則。廣告播出前不要求取得核准，以免妨礙公司溝通的能力，以及消費者收到相關必要資訊以影響其對產品選擇的權益。台灣目前作法是針對廣告陳述的內容訂定負面表列及正面表列，但對於可接受的廣告陳述並不作清楚的界定或提供指導性原則，結果使得審查官員必須如履薄冰地對表面字義斤斤計較。我們瞭解食品藥物管理局正在新近的法規改革行動中提議取消播出前的檢查制度，我們誠心讚揚並支持此一行動。

我們建議食品藥物管理局主辦與產業代表、皮膚科醫師及媒體學者的定期會議，以開發清楚、健全的準則，以便在市面廣告中減少不當的陳述，且更有效地保護消費者。食品藥物管理局也可以考慮將化妝品廣告監督及法規遵守仲裁的工作委託給一個非政府組織辦理，由受委任的專家及專業人員組成的團體處理有關廣告準則、執行及消費者糾紛等事宜。美國著名「優良企業行為協會」下「全國廣告部」就樹立了成功範例，這個單位執行上述許多功能，並提供運作良好的平台讓產業作自我規範。

此外，化妝品中化學品「微量存在」的議題仍然是我們關注的重要項目，我們也敦促食品藥物管理局儘快處理及訂定相關遵守法規的準則。某些化學品即使是禁止直接使用在身體上，多數仍具有一個容許安全存在量的標準。基於技術上原因，成品中可能無法避免的存在某些微量化學品，但這些數量極為微小，並且在容許安全存在量標準內。美國及日本均在實務上承認及接受此一事實，而歐盟則在歐盟「化妝品管理指令」中明確接受此一事實。我們建議食品藥物管理局透過由政府、業界代表及專家組成的化妝品成分審議委員會建立一個監督系統，定期舉行會議審查化妝品成分的安全含量。具備明確的準則清單後，食品藥物管理局即得以明確聲明：化學品禁用的負面表列將不適用於無法避免而經審查的微量成分上。

最後，零售委員會建議並支持以最有科學根據的管理制度為基準，例如歐盟及東南亞國協的管理制度，以修訂現行化妝品法規。此項改革將是消除法規的不效率，及提供台灣消費者最佳保護的契機。

議題五：以穩健持續的交流互動減緩危機風險之影響

綜觀現今國際經濟情勢，高度波動的原物料價格及持續高漲的消費者意識充斥全球，造成已開發國家之企業遭逢危機風險頻率較以往頻繁。有鑑於此，面對零售產業相關重要議題，基於保障消費者權益並同時維持經濟成長，業者及消費者皆仰賴中央及地方政府提出有效的雙向溝通，建立合理可行的法規架構與強而有力且能迅速反應、掌控現況的危機管理機制。

去年二月，台灣婦產科醫學會公開指出，消費者飲用外帶熱飲時，塑膠杯蓋製造成份聚苯乙烯（PS)所釋放之雙酚A（bisphenol A）對人體有害。然而，此說法並無明確科學研究佐證。對此，衛生署食品藥物管理局立即回應並聲明所有聚苯乙烯製造品皆符合台灣相關安全條例，消費者無需恐慌。此事件顯示，政府與國際標準同軌，並在必要時快速提出具公信力之科學證據，導正不實謠言的重要性。再者，為使廣大民眾能快速接收正確資訊，委員會建議相關政府機關及業者在此基礎下建立一個開放平台，以利持續、開放的溝通及交流，如此不僅可傳達正確可靠訊息予廣大民眾，更可遏止媒體渲染不實傳言，造成民眾恐慌。

議題六：建立適當機制管理膳食補充劑

為鼓勵跨國公司持續在台投資，本委員會建議主管機關與國際普遍接受的法規接軌，或是參考美國等世界主要國家的作法。以產品分類來說，許多成分在美國被視為一般的膳食補充劑一例如銀杏、牛奶薊、鋸棕欄—在台灣卻被列為藥物管理，增加了許多限制。此外，抗氧化劑Q10輔酶，在美國的每日最高攝取量為200毫克，在台灣卻限定為最高30毫克。

其他方面，台灣某些法規也限制了產業對消費者的溝通。如果能夠允許製造商或零售商藉由適當的標示對消費者溝通膳食補充劑的功能，可讓消費者有較多的知識選擇正確產品。舉例來說，已經有為數頗多的醫學文獻證實葡萄糖胺可維持關節健康，足以支持產品標示這樣的宣稱以告知消費者為何要使用葡萄糖胺。美國根據科學證據將功能宣稱區分為三種不同類別，我們建議台灣的主管機關可以參考美國的作法，允許膳食補充劑可有更多適當的功能性宣稱。

在膳食補充劑的製造品管方面，我們也希望台灣能夠參考美國制定一套膳食補充劑的GMP 標準，而不是目前所採用的一般食品的製造標準，以更確保消費者的使用安全與健康。

另外，我們建議主管機關參考國際趨勢，將維生素產品的管理獨立分類規範，與現行的傳統食品及藥品的管理有所區隔，如同美國以「膳食補充劑」類別管理。建立一個膳食補充劑的妥適管理機制，將能確保產品品質以及消費者的健康與安全，並讓消費者有充分的資訊做為選擇的依據。

透過正確的使用膳食補充劑以推廣自我照護，不但可以增加民眾照顧自己健康的能力，也有助於減少健保資源的耗用。

永續發展委員會

台灣因尋求達成多重目標，包括降低二氧化碳排放量，同時確保有充分電力支持經濟增長及提供國民舒適的生活方式，未來面臨的能源挑戰勢將益趨複雜。

台灣缺乏能源資源，幾乎所有能源均仰賴進口。其過去20年的用電量以每年平均5.2%的速率成長（在這段期間，台灣的國內生產毛額實質增長平均每年成長5.1%），在2009年時達到230兆瓦／小時。未來20年，假設電力需求每年僅增長3.5%，台灣每年將必須增加1,400百萬瓦的電量（相當於一座核能發電廠或兩座石化燃料發電廠）。

就能源組合而言，台灣現有選項方案中，沒有任何一項毫無問題。

- 日本最近的核災，將只會讓台灣內部對於持續依賴核能原就強烈的政治反彈，有增無減。
- 再生能源的使用迭有進展，但在2009年總體發電量中僅占4%，而且再生能源所占比例增長速度究竟能有多快，仍令人存疑。
- 目前對燃煤火力發電廠的高度依賴（77%的發電量來自化石燃料），持續產生大量碳足跡，前景堪慮。
- 液化天然氣（LNG）是較乾淨的燃料，但也極為昂貴。倘若它在台灣能源供應所占的比重太高，增加的生產成本可能導致國內產業居於競爭劣勢。

在找不到任何簡易解決方案的情況下，台灣除了更加重視節約能源外，別無選擇。當局已依循此方向採取若干措施。本委員會肯定台灣政府2007年推行的節約能源政策，這項政策包括多種措施一從建立財務誘因與管理機制以推廣節能，到改善製造業與住宅用戶的能源使用效率。我們認為這是正確的方向。

另一方面，我們認為政府有必要透過與產業、社會大眾經常溝通，讓這些誘因與管理機制更加透明化與廣為周知，同時下放資源給相關機構，以便有效落實這些措施。以下是本委員會提出的具體建議：

議題一：將獲得國際永續林木認證之原生紙漿衛生紙產品列入環保署綠色環保標章系統

本委員會感謝環保署對於2010年《台灣白皮書》中提出這個環保議題給予正面的回應。環保署於2010年曾允諾將研擬把原生紙漿製成的家用紙品如面紙、餐巾紙、及廚房紙巾等產品類別納入現行綠色環保標章規格標準，本委員會深切期待環保署在2011年能具體落實這個承諾。

國際間對於永續發展議題的觀點日益開闊多元，當前趨勢是在傳統的3R（Reduce減量、Reuse重複使用、Recycle回收）之外，再加上「Renew可再生的」，形成環保4R的概念。有鑑於新興國家對於各項資源的需求急速增加，天然資源的可再生性已成為攸關永續發展與經濟成長的急迫課題。此外，資源回收再利用並非減少環境衝擊的唯一方法。事實上，若用整體生命週期的觀點來分析，製造回收紙纖維產品，比生產原生紙漿產品產生更多的碳足跡，其中又以回收再造與脫墨程序所產生的碳足跡最多。因此，全球各地都在逐步地大力倡導國際永續林木管理系統與「產銷監管鏈」認證。例如歐盟與紐西蘭的國家環保標章標準，已經採用同時認證原生紙漿製品與回收紙漿製品的雙軌並行制度。

因應全球綠色環保的演進趨勢，台灣政府2009年於再生衛生紙與再生擦手紙類別的環保標章規格標準中，增列再生產品中之原生紙漿部分應有「Forest Stewardship Council」(簡稱FSC™)或「Programme for the Endorsement of Forestry Certification」(簡稱PEFC)之驗證證書。然而，考量到2010年全台灣回收紙類衛生紙品的銷售市占率僅有2%，同時台灣本地回收紙數量並不足以滿足市場整體需求量，因此市場上迫切地需要環保標章新增規格標準來認可有永續林木系統認證的原生紙漿衛生紙，同時提供消費者一個在實際選購環保紙品時的準則方向。本委員會呼籲環保署今年能加速將經國際永續林木系統認證之原生紙漿製面紙、餐巾紙及廚房紙巾等產品類別，列入環保標章規格標準，進一步鼓勵更多企業團體與消費者選購綠色環保產品，實現台灣政府與本委員會共同的目標。

議題二：推廣永續的公共基礎建設計畫

作為達到台灣政府二氧化碳排放減量目標計畫的一部分，行政院公共工程委員會已為公共基礎建設計畫制定一套「節能減碳政策」。此外，《政府採購法》第三十五條已經修訂，藉此鼓勵公共工程建設計畫採用能提供降低整體成本與強化環境保護的新材料與新技術。同時，內政部營建署在2009年12月23日公布一項新法規，授權由第三機構為公共工程建設計畫中考慮使用的新材料或技術進行認證。接著財團法人台灣營建研究院回應營建署，成立代理機構，提供支援這類應用的認證。

不過在實際實施時，工程業主與設計者擔心，可能會被控在計畫

設計階段有所偏袒，圖利特定的某方，以及自己可能要為所設定的規格標準負責。因此，極少有經過認證的新材料與技術詳列於工程計畫書中。大部分公共工程建設計畫仍採用老舊過時的建築規格與解決方法，既不節能，也不環保。

本委員會呼籲政府：

1. 充分授權台灣營建研究院及／或其他機構，對於已被先進國家在科學與統計上證明其應用於公共工程建設計畫效益的新材料與技術，予以認證。
2. 修訂《政府採購法》，凡工程業主與設計者因納入認證材料與技術至新公共工程建設計畫規格標準而產生的責任，明文規定予以豁免。

議題三：修正綠建材標章適用條件

內政部營建署的「綠建築」認證制度執行情況良好，「綠建材」標章也和「綠建築」規定一起實施中。

台灣不是限制溫室效應氣體排放量的2005年《京都議定書》（Kyoto Protocol）簽約國之一，但已採納議定書的原則，作為政策制定依據。因此，內政部建築研究所自2004年7月31日開始實施綠建材標章申請作業辦法。自那時起，這項責任移交給非政府組織—財團法人台灣建築中心。

在「綠建材」標章性能規格評定申請書的九大項目中，有三項可能令在台灣營運的跨國公司特別關切：

1. 第一項：基本資料表，包括針對組成成分、配方比例與製程的產品描述。
2. 第五項：產品原產地國政府主管機關所發給的證明文件，以證明在某段期間內沒有違反任何環保規定。
3. 第九項：附件，包含a)材料成分說明，以及b)構成材料之來源證明（申請再生與生態綠建材項目者必須檢具）。

跨國公司認為，要求揭露成分與配方是侵害所有權，且就本委員會所知，要求原產地國政府主管機關提出證明文件，在國際間聞所未聞。我們相信，要求前述三大項目資料是要設立高標準，但本委員懷疑這些條件能合理執行。倘若不予以矯正，這些缺失將阻礙「綠建材」標章申請作業，剝奪台灣取得全球認證建材的機會，甚至會被視為是一種新形式的非關稅貿易障礙。

議題四：加強公共工程建設與建築物的保養維護

台灣許多公共工程建設已使用非常久；舉例而言，在全台44座水庫中，22座已使用超過40年，然而水泥的正常使用年限明載為25至50年之間。根據各國經驗與統計資料顯示，良好的維護保養是最佳解決之道，最糟的則是重建。但在台灣，欠缺對於混凝土／砂漿維修材料的國家標準，增加公共建設與建築物持久保養維護的挑戰。

歐洲已自2009年1月1日起實施EN 1504針對水泥砂漿修復的規範。這已證明是一項良好措施，而且廣為美國市場接受，作為砂漿修復保養的參考依據。因此，本委員會希望向台灣政府做出以下建議：

1. 參考EN1504規範，並將EN檢驗方法轉換應用於中華民國國家標準（Chinese National Standards，簡稱CNS）／美國測試與材料協會（American Society for Testing and Materials，簡稱ASTM）標準上，以促成台灣施行這項歐洲規範。
2. 透過使用符合EN 1504規範，將目前進行中的「強化」公共工程建設建築（例如橋樑）抗震計畫，與延長建築使用年限的附加任務，做一結合。

議題五：落實水泥業的二氧化碳排放減量與節能

全球的二氧化碳排放量，有5%來自水泥生產。水泥業也消耗大量能源，能源在水泥業生產總成本中占了相當大的比例。可透過防止水泥窯外漏，改良設備以便在水泥生產過程中自預熱機與冷卻機回收熱能再利用，以及有效利用工業廢料等方式，節省能源。

在水泥生產過程中，已有獲得各國認可、可降低二氧化碳排放量並提高能源效率的解決之道。應用爐石、飛灰與石灰等補充水泥材料（supplementary cement material，簡稱SCM），不失為達成此雙重目標的一項方法。

使用補充水泥材料，水泥製造業者可生產出等量的水泥，卻減少20%至30%的熟料投入，而不會在水泥生產過程中犧牲細粒徑研磨能力，或水泥最終成品的工作性與強度。由於減少熟料產出，加上耗能較少，此舉也可削減二氧化碳排放量。

使用者可依照用途，選擇所想用的水泥等級。中國最常見的是PC級產品。在台灣，最近一次更新的水泥規格標準是在2009年10月21日公布，和其他國家相比，是相對較晚的修訂版。

但姑且不論不同類型水泥的補充水泥材料組成成分，台灣製水泥以28天齡期進行抗壓強度發展，較中國製水泥低許多。這種低強度標準被視為是將責任轉移到使用者身上一換言之，使用者風險自負。因此，自從施行新的水泥規格標準後，預拌混凝土生產業者已避免使用低強度的混合水泥，仍繼續購買傳統PI-PII等級（熟料加石膏占內容物95%以上）。由於混合水泥的需求不振，水泥生產業者缺乏推廣混合水泥等級產品的誘因。

台灣因而錯失了在水泥生產過程中達成二氧化碳排放減量與節能的良機，即使部分台灣水泥製造商在其海外設施，尤其是在中國，採用了更多的補充水泥材料（20-30%）來生產高強度發展規格的水泥。因此本委員會堅信，技術不是障礙；相反地，重點在於經濟與監管措施。

要解決此一問題，本委員會敦促政府：

1. 修訂台灣目前的水泥規格標準，將國際間最佳的慣常作法納入考量，特別是在強度發展的規格標準方面。
2. 開放國際業者進軍水泥業，以引進最新的節能技術。
3. 對於節能與製程二氧化碳排放量低的水泥，頒發「綠建材」標章。

議題六：持續加速建設公共污水下水道

台灣儘管在許多方面的經濟發展令人印象深刻，但在家戶連結污水處理系統的比例上，落後許多其他國家。根據內政部營建署的資料，截至今年三月止，儘管台北市的家戶接管普及率達到100%，全島家戶接管率僅54.18%。此一數字仍屬過低，但與2007年底的39.47%相較，已大幅提升。

本委員會肯定台灣政府，在追求環境利益與生活水準提升的情況下，愈來愈關注污水下水道系統建設。納入「愛台十二建設」的多項工程計畫，預定在2014年將全國家戶接管普及率提升至64.47%。由於吸引民間投資遭遇困難，政府放棄採取民間興建營運後轉移（BOT）模式，然而以公共建設的方式推動這些計畫，仍迭有進展。令人遺憾的是，未能設計一套有效的定價機制來鼓勵民間部門投資這項活動，所幸未讓此一問題造成整個計畫停滯不前。

我們敦促台灣政府持續努力，在廢水與污水處理方面，引領台灣完全達到已開發經濟體的水準。

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~~過去十年來，台灣的經濟穩定成長。政府預估，2011年經濟成長率若達4.51%，國內生產毛額（GDP）將達4580億美元。瑞士洛桑國際管理學院（IMD）發布的《2010年世界競爭力報告》（2010 World Competitiveness Yearbook）也指出，台灣在競爭力排名上有大幅進步，從2009年第23名上升至接受調查58個經濟體中的第18名。經濟情勢與競爭力排名都顯示台灣適宜投資，也在全球經濟發展中發揮了關鍵功能。

台灣政府積極建立健全的租稅環境，不僅已將營利事業所得稅稅率從25%調降到17%，也用研發活動適用租稅優惠等措施獎勵部份企業。

然而，經過幾番稅制改革，仍有一些租稅問題亟待解決，問題遲遲無解恐怕會削弱台灣吸引外資的能力。本委員會期盼財政部能持續改善這些問題，我們也會與財政部一同努力，創造更具競爭力的租稅環境。我們相信，政府若能在近期之內解決這些問題，必更能提昇台灣的國際競爭力。

議題一：修正失衡的所得稅制結構

1. **外國營利事業之中華民國來源所得適用扣繳稅率應降為17%或更低**

   台灣營利事業所得稅率自2010年起調降為17%，使台灣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。但是調降營所稅之同時，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。

   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。參照其他國家之扣繳稅率，皆較營所稅率為低，如新加坡之營所稅率與台灣同為17%，然其非居住者之扣繳稅率均低於或等於營所稅率，並無扣繳稅率較營所稅率為高之不合理情形。我們呼籲外國營利事業之中華民國來源所得適用之扣繳稅率應降為17%或更低，方符國際潮流。

   事實上，《各類所得扣繳率標準 》所訂定20%扣繳稅率之規定，牴觸所得稅法，應屬無效之規定。《所得稅法》第三條第三項明定：「營利事業之總機構在中華民國境外，而有中華民國來源所得者，應就其中華民國境內之營利事業所得，依本法規定課徵營利事業所得稅。」

   而依現行《所得稅法》第五條第五項之規定，營利事業全年課稅所得額超過十二萬元者，就其全部課稅所得額課徵17%。但其應納稅額不得超過營利事業課稅所得額超過十二萬元部分之半數。亦即營利事業之所得稅率上限為17%。

《各類所得扣繳率標準 》規定，給付在中華民國境內無固定營業場所或營業代理人之國外營利事業之所得依20%扣繳稅率課徵。不過，《各類所得扣繳率標準 》是財政部擬定，並由行政院核定，屬行政命令，其位階低於法律。其所訂定20%扣繳稅率之規定，明顯牴觸《所得稅法》規定之17%稅率上限，屬無效之規定。依此，我們呼籲外國營利事業之中華民國來源所得適用之扣繳稅率，應降為17%或更低，以為適法並符國際潮流。

2. 應重新評估綜合所得稅率

如前所述，台灣的營利事業所得稅率於2010年從原先的25%降至現今的17%，與其他亞太地區國家相比，已不相上下。然而，台灣的綜合所得稅率仍高達40%，與其他亞太地區國家的稅率相比，缺乏競爭力，無法吸引國際人才以加速台灣經濟成長。台灣的綜合所得稅率與僅17%的營利事業所得稅率有如此大的差距，與其他國家之稅制相較，實屬罕見。

除此之外，並非所有國家皆對其國民的全球來源所得課稅以及承認國外稅額抵減。外籍員工在台灣40%的租稅負擔可能比其在母國之租稅負擔高出許多，也因此高額的租稅負擔已成為台灣在促進經濟發展過程中吸引及留任國際人才的一大阻礙。

議題二：對於中華民國來源所得認定原則之適用及其中貢獻度之認定，應有更明確的指引

本委員會樂見財政部於2009年9月3日公佈「所得稅法第八條規定中華民國來源所得認定原則」（下稱「本認定原則」），原先亦冀望本認定原則可釐清認定中華民國來源所得之相關疑問。惟令人遺憾的是，本認定原則過於抽象，以致在稽徵機關與納稅者之間產生許多爭議。謹就本會會員於過去兩年間遭遇之主要爭議之一說明如下：

根據本認定原則，若外國事業對國內營利事業提供勞務且該勞務全數在中華民國境外提供時，所取得之服務報酬非屬中華民國來源所得。然而，由於未依規定扣繳稅款可能遭處相當於扣繳稅款之罰鍰，除非受領報酬之外國事業能證明稽徵機關已明確認定該服務報酬全數非屬中華民國來源所得，否則國內營利事業往往會堅持應進行扣繳以避免受罰。對於此類申請案件，稽徵機關之回覆通常為下列二者之一：

1. 請申請人依照本認定原則規定辦理；或
2. 稽徵機關會指明，因為所得給付人為中華民國營利事業，該服務不可能完全於中華民國境外提供，故該所得不得全數視為「非中華民國來源所得」。從而，稽徵機關會要求申請人揭示該勞務於中華民國境內之貢獻度並提供相關文件，例如會計師之簽證報告、移轉訂價報告或是專案計畫，以佐證該貢獻度。

第一種回覆，稽徵機關其實並未提供申請人任何幫助。至於第二種回覆，基於下列原因，申請人無法提供稽徵機關要求之文件或無法滿足稽徵機關之要求，導致申請人無法證明所謂之貢獻度：

- 移轉訂價報告不會直接說明貢獻度，因為移轉訂價報告係用以評估關係企業間交易價格/功能風險之分配，較難解決目前之難題。
- 會計師不能亦無法就一於中華民國境外經營之事業，其於中華民國境內勞務之貢獻度出具簽證報告。
- 稽徵機關往往會主張專案計畫或是工作紀錄無法證明確實無任何服務係於中華民國境內提供。

綜上，建請財政部(1)進一步釐清於所得給付人為中華民國事業時，全部所得均得認定為非中華民國來源所得之構成要件，以及(2)提供決定貢獻度之方法，俾解決上述爭議。

議題三：依據成本分攤協議給付之價款，不應被視為中華民國來源所得，且應准予認列費用

為了節省營運成本、達成規模經濟、增進經營效率及生產力，於不同國度之公司（通常是同一集團內之關係企業）往往會根據不同目的，例如為了研發一套軟體或一項技術、或成立帳務/帳單處理中心以處理共同合意之事項，簽署一成本分攤協議（下稱「成本分攤協議」）。而於成本分攤協議居於領導地位之外國公司，往往先行支付所有成本分攤協議所產生之各項費用，然後再將費用分配予所有參與之公司。雖然該外國公司並無從其他參與者所支付之款項賺取利潤，但稽徵機關往往將由中華民國公司所給付之此類價款視為中華民國來源所得，從而該中華民國公司應就該給付辦理扣繳。此外，儘管中華民國公司給付之成本分攤費用與其營業相關，稽徵機關通常仍否准該中華民國公司認列費用。如此一來，稽徵機關對於成本分攤協議中費用之稅務處理已產生雙重課稅問題。

依據「所得稅法第八條規定中華民國來源所得認定原則」（下稱「本認定原則」），國內營利事業所支付與外國營利事業供共同開發技術之價款，若將共同擁有所取得之智慧財產權，且各參與者可獲得合理之預期利益，則該給付金額不會被視為中華民國來源所得。惟本委員會想敘明，一個成本分攤協議亦可能因其他目的而成立，例如共同投資、共同分攤成本及風險、發展或取得資產或服務。而對於給付分攤費用之中華民國公司而言，該給付實為其營業之目的。故本委員會建請財政部就本認定原則相關規定擴大適用至到其他類型之成本分攤安排，且准中華民國公司將給付之成本分攤認列為費用。

議題四：修正對外商委託國內廠商「境內加工境外轉售」所產生利潤的課稅政策

台灣致力發展高科技產業，吸引許多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，委託台灣製造商就半成品進行加工並直接運送至境外買方，是極為普遍的商業模式，可稱為「境內加工境外轉售」。惟委託加工過程所產生之附加價值，是否應於台灣課稅，財政部傾向於視是否於台灣境內完成銷售行為而定。

財政部更進一步解釋，「在台灣完成銷售行為」指貨物離開台灣以前，已有既成訂單，且買主及交易條件均已確定。然而，境內加工境外轉售模式因其交易之特殊性，深受財政部上述見解所苦。實務上，外國企業鮮有於確定買方和達成買賣協議以前即下訂單予台灣加工廠商進行加工，因此境內加工境外轉售模式在財政部的見解下，將被視為在台灣完成銷售行為。惟財政部的見解與國際實務悖離，在國際實務上，完成銷售通常是指貨品已交付運送，而在境內加工境外轉售模式下，貨品係在海外交付，而非在台灣，實不屬台灣來源所得。這並非僅是單純的儲存與運送貨物問題。由於外商無法被視為在台無常設機構而受到租稅協定之保護，即使外商所在國家和台灣有租稅協定，亦無法解決此問題。

此外，在境內加工境外轉售模式下，外商的所得直接就反映了在台灣境內所產生的產品增值，而由台灣加工廠商申報營利事業所得稅。若是台灣政府對於外商於境內加工境外轉售模式下產生之所得課稅，將會造成雙重課稅問題。

最後，台灣雖於特定區域如科學工業園區、加工出口區、自由貿易港區、國際機場園區之儲存及簡易加工給予租稅優惠，但是給予此優惠並不適用於不僅只進行儲存及簡易加工的境內加工境外轉售模式產生之所得。

稅務當局對於境內加工境外轉售模式的課稅見解，已使外商重新衡量是否選擇台灣做為其半成品的加工地點，阻礙了台灣發展成為高科技中心的競爭力。稅務委員會懇請財政部重新評估其對於「境內加工境外轉售」模式之見解，並參考國際實務作法，避免台灣高科技產業因此處於競爭劣勢。

議題五：釐清集團企業移轉訂價調整之核准原則，對調增與調減有一致處理標準

因關係企業間交易日益增加之趨勢，集團企業會依據全球移轉訂價報告之結果，進行不同國家間企業利潤調整。若為調整減少，應予作為課稅所得減項；若為調整增加，亦應作為課稅所得加項，以符如OECD國家等通用之國際慣例。

我國現行稽徵實務，若是調整增加者，稅捐機關並未要求條件，即予以認定課稅所得增加並予以課稅。然而，對於發生一次性調整減少的情形，法令並無明文准許調減課稅所得之規定，稽徵實務則逕予否准調減課稅所得。財政部曾做出非公開之個案函釋，雖准許該個案企業符合特定要件則得進行一次性移轉訂價向下調整，但細觀該個案函釋所規範要件，仍屬嚴格。交易雙方需於進行受控交易之事前即簽訂合約，敘明影響移轉訂價之所有因素，並申請預先核准。事後實際調整時，還需具體佐證該調整係因外在經濟因素而不得不為之，否則仍可能經稅捐機關質疑係關係企業間衍生之安排。我們認為，這些條件與發生一次性調增課稅所得的審核情況相比，顯較嚴苛。

依「營利事業所得稅不合常規移轉訂價查核準則」第6條規定，營利事業於辦理營利事業所得稅結算申報時，應評估受控交易結果是否符合常規，或決定受控交易之常規交易結果。稽徵機關進行不合常規移轉訂價之調查及核定時，亦同。因此，既營利事業已依相關規定準備移轉訂價報告，評估受控交易之結果是否符合常規，則據以一次性調整減少課稅所得時，稅捐稽徵機關亦應依該規定予以審查核准，而非額外要求營利事業個案事先申請核准並要求符合額外之特定條件。

此外，因該調整而支付外國企業部份，所得性質應屬營業利潤，其利潤亦應屬中華民國境外發生，依「所得稅法第八條規定中華民國來源所得認定原則」第10條規定，非屬中華民國來源所得，無需扣繳。

針對上述問題，建請財政部能予以釐清頒佈明確之法令，並同意企業於年終進行一次性之移轉訂價時，其下修調整應予作為課稅所得減項，以利企業因應並與國際接軌。

議題六：修正商譽攤提及分攤總公司管理費用之審核認列標準

1. 合併商譽審核標準應統一，稽徵機關須尊重專家意見

按目前稽徵實務，營利事業依《企業併購法》進行合併，採購買法者，得將收購公司收購成本超過可辨認資產之公平價值扣除承擔之負債後淨額部分，列為商譽。

實務上，稽徵機關持950313台財稅第09504509450號函（下稱95年函令），認為「公平價值」需按資產、負債「逐項」衡量。未逐項鑑價者，商譽「一蓋剔除」。惟部分資產依其性質，帳面價值與公平市價本無差距，是否有必要鑑價不無疑義。況且鑑價報告並非唯一之證明文件，舉凡能客觀佐證可辨認資產之公平市價者，均應一併採納，如：

a. 會計師查核報告書或工作底稿。
b. 依《企業併購法》第6 條規定委請獨立專家就換股比例或配發股東之現金或其他財產之合理性之專家意見書或專家報告。
c. 其他能客觀合理評價被併購公司可辨認淨資產公平市價之資料。

納稅義務人提供資料之證明程度若達一定比例（例如：鑑價之資產價值佔淨資產之比例達70%），應可依重大性原則辦理，准予認列商譽。

另一問題是，縱使營利事業委請專家就各項資產逐一鑑價，稽徵機關仍指摘鑑價報告不可信賴，恣意將商譽剔除。這造成實務上併購案無一可成功認列商譽者，如此作法與法律規定相違，嚴重影響我國國際形象。本委員會期盼有關單位針對上述合併商譽問題修正作法。合併商譽審核標準應統一，且責成稽徵機關尊重專家意見，其認定標準亦須符合一般經驗法則及比例原則。

2. 申報分攤國外總公司之管理費用時，應准予台灣分公司提供替代文據作為佐證

依規定，外國總公司在台灣分公司若能提供某些文據要件，得申報分攤國外總公司之管理費用，這些要件包括經外國總公司所在地合格會計師簽證之財務報告。

然而，台灣分公司所屬國外總公司若不是集團最終母公司，或依當地法規規定財務報告無需經該國外總公司所在地合格會計師簽證者，其財務資訊皆合併於其最終母公司之合併財務報告。而實務上，合併財務報告常未就各該集團內個別子公司及分公司之營業收入、管理費用明細及分攤內容等細項分別列示。

為符合台灣法令規定申報所需，台灣分公司之國外總公司必須特別就台灣分公司所應分攤管理費用之分攤基礎等相關資訊及分攤金額，委請其所在地合格會計師依相關協議查核程序對國外總公司之營業收入及總公司管理費用予以查核，並出具相關報告（即Agreed Upon Procedure，「協議程序執行報告」）。

問題在於，《營利事業所得稅查核準則》（《查準》）第70條規定，台灣分公司需出具國外總公司所在地合格會計師簽證，載有國外總公司之營業收入及總公司管理費用金額之財務報告。稽徵機關於實務審查時，往往未究明「協議程序報告」之實質內容及其業經相關查核程序，僅因該報告為「協議程序報告」，而核定剔除。

探究《查準》第70條要求提供國外總公司所在地合格會計師簽證報告之意旨，應係考量各國之會計準則並非完全一致，以致稅捐稽徵機關實際上無法直接有效查核該國外總公司之全部營業收入及相關管理費用，才要仰賴該公司所在地之合格會計師之專業。如僅以報告之標題為由剔除相關管理費用，恐有以文害義，忽略有利於納稅義務人之事項之虞。

本委員會建請財政部修正相關規定，准予以國外總公司所在地合格會計師所出具之協議程序報告，或其他經國外總公司所在地合格會計師所出具之查核替代文據，作為分攤國外總公司管理費用之佐證文件。

議題七：儘速公布適用權利金免稅的產品及專門技術清單

多年來，台灣政府積極鼓勵外國企業技術轉移，希望藉此促使產業升級，並對提供專利權、商標權及專門技術的權利金給予租稅優惠。

根據《所得稅法》第四條第一項第二十一款及「外國營利事業收取製造業技術服務業與發電業之權利金及技術服務報酬免稅案件審查原則」第七條之規定，本國被授權者支付予外國授權者生產被許可產品及專門技術之權利金可予免稅。被許可產品及專門技術指的是在《新興重要策略性產業屬於製造業及技術服務業部分獎勵辦法》第五條第一項附表所列之產品及技術服務。惟該獎勵辦法於2011年3月11日廢止，而財政部至今仍未公布更新的產品及專門技術清單。因此，支付用於生產被許可產品及專門技術服務的權利金是否適用所得稅免稅，至今仍不明朗。

若是上述權利金不再適用租稅減免，權利金免稅的適用範圍將大幅縮減。除此之外，隨著《促進產業升級條例》的落日及《產業創新條例》的施行，扶植重要產業的誘因已經大幅減少。在這樣的狀況下，外商轉移其專門技術予台灣的意願將會降低，有礙台灣產業及科技的發展。稅務委員會懇請政府當局儘快公布適用權利金免稅的產品及專門技術清單，以降低此法令空窗期對台灣經濟的衝擊。

科技委員會

科技委員會堅信高科技產業及其為研發所投注之心力是台灣經濟成長及繁榮之基石，故一向致力於提出促進台灣科技產業發展及全球頂尖技術交流之建議。今年我們持續關注攸關業界發展之最重要議題，亦即如何鼓勵研究發展、促進再生能源產業、移除向國外事業取得技術與服務之障礙，及增加對電腦軟體、服務及智慧財產之支出。

本委員會樂見經濟部在去年公布了《公司研究發展支出適用投資抵減辦法》，不過後續如何執行落實尚待觀察。為使政府提供之投資抵減誘因能有實際效益，我們認為必須要簡化審核程序，規範應明確且透明化，以確保公平並能真正獎勵企業對於創新科技之投資。

3月11日造成日本重大損害的地震及海嘯，促使世界各國重新檢視能源政策。台灣雖然在2009年7月通過《再生能源發展條例》，但本委員會認為政府設定之再生能源使用率仍趨保守。我們呼籲政府應參考其他國家，設定更積極的目標。

本委員會樂見政府對營利事業所得稅所進行的改革，將稅率自25%調降至17%。然而，提供產品及服務的外國事業一許多是為技術移轉所必要之高科技產品及服務一仍面臨20%之所得稅扣繳稅率。一方面，對外國事業課予高於本國企業之稅賦不符公平正義，致使外國事業降低在台灣提供產品或服務之意願，造成本國消費者之選擇減少，較難取得高品質之產品及服務。另一方面，如該等產品或服務無法自國內取得，外國事業可透過議價，將稅負轉嫁給需要產品或服務之本國產業。無論何者，本國產業面臨較其他採行較低扣繳稅率或零扣繳稅率國家之競爭廠商更不利之競爭環境。

以下為本委員會今年之具體建議。

議題一：持續改善「公司研究與發展支出適用投資抵減辦法」案件之審核程序及效率

在美國商會2010年台灣白皮書中，我們建議將研發投抵的審核權改由專業之目的事業主管政府機關認定執行，如：經濟部工業局。我們很高興經濟部工業局目前已擔任此角色並公布「研究與發展支出適用投資抵減辦法」之條文。2011年是辦法實施第一年，委員會樂見此結果，並鼓勵主管機關沿續下列幾點以持續改善案件之審核程序及效率：

1. 明確制定和具體定義「高度創新活動」之範圍及適用「公司研究與發展支出適用投資抵減辦法」合格之基礎標準。制定明確規則後，公司和政府機關方能更有效精確地管理資源。
2. 所謂「高度創新活動」之範圍，應與政府中、長期工業／科技政策及發展策略一致，並鼓勵早期研究發展活動。
3. 在審核研發投抵文件程序期間，應確保相關文件受智慧財產權保護。
4. 持續簡化案件之審核程序，提高效率並排除相互矛盾的步驟（第四條文與第七條文），以求儘早通知評估結果。此外，專案小組成員的選拔公平性也十分重要。

議題二：調降外國事業向本地公司提供產品或服務之營所稅

本委員會歡迎政府將營所稅從25%降至17%之措施。然而，外國事業提供有關產品或服務時，仍需面對20%扣繳稅率，使外商處於競爭劣勢，而不願將該等產品或服務提供給台灣，其中不乏許多對國內科技產業而言非常關鍵的高科技產品或服務。若外商提供的是國內無法取得之產品或服務，通常會將相關稅負移轉至國內客戶負擔。不管是哪種情況，國內產業會發覺他們比其他不需或較低扣繳稅率之國家立於不利之競爭地位。

我們強烈建議政府降低扣繳稅率，建立有利之企業投資環境，以確保台灣在全球創新鏈中具競爭優勢。對於外國事業提供有價值之有形與無形資產予國內企業時，政府實無適當之理由對外商課徵較高之稅負。另外，根據2009年9月3日公佈之《中華民國來源所得認定原則》之規定，即便勞務完全於國外提供，應可不視為中華民國來源所得，實務上國內企業仍傾向於扣繳；此乃因為並無清楚之稅務規範，如未扣繳稅款，企業們恐遭罰則。

美國商會稅務委員會已於本年白皮書中提出相同之稅務建議，唯此議題對台灣高科技產業具高度重要性，本委員會希望與稅務委員會共同建請政府，盡速採取行動來矯正現今不平衡之稅務結構。

議題三：增加政府軟體與資訊服務之年度預算

為強化台灣的創新力與競爭力，我們建議政府，未來三年間國內

公、私部門花費在軟體以及資訊服務之預算，制定出比目前高一倍之目標。

目前台灣資訊業過度偏重硬體之研發製造與外銷，其產值高達台幣三兆六千萬（約美金一千兩百億）；而軟體與資訊服務，只有台幣三千億（約美金一百億），僅佔全國資訊產業總值之百分之八。

全球著名International Data Corporation（IDC）顧問公司2009年針對全球資訊軟硬及服務之總支出所進行的調查顯示，軟體與資訊服務佔總支出之61.3%，而台灣僅達到37.7%，遠遠落後全球之平均指標。而2008年全球資訊科技與服務聯盟(WITSA)的報告亦指出，台灣軟硬體與資訊服務之總支出，僅佔當年度國民生產毛額之1.46%，遠遠落後於美國的4.18%、英國之3.52%、新加坡之2.85%、德國之2.69%、日本之2.40%及韓國之1.79%。若不能扭轉形勢，對台灣長期經濟發展將深受其苦。

是以我們期盼政府將未來三年花費在軟體及資訊服務之預算，制定比現行高一倍的金額目標，亦即達國民生產總值之3%。

議題四：改進政府軟體採購之合約條款

本委員會希冀政府能採取下列改進採購合約條款之措施，以建立一個公平的商業環境：

- 建請於各式採購契約中規定智慧財產權歸投標廠商或原廠所有，而由採購機關取得智慧財產之使用授權。蓋因智慧財產權係投標廠商或原廠之核心價值，採購機關取得使用授權，可避免其他不必要之權利而增加採購成本。
- 政府標案之合約中應詳細界定機密資訊之定義及範圍，且除非法律另有規定，保密期間應於機密揭露日起五年內，俾使有所依循。
- 採購合約中廠商之賠償責任應限於直接實際損害，並以合約金額為賠償上限。蓋要求廠商負無限賠償責任不僅不合理，亦非大部分廠商所能承擔。採購機關應選擇有能力並能成功履約的廠商，而非因其願意承擔不可預料的風險金額。
- 採購合約應規定軟體廠商於軟體授權使用期間及其後，得驗證查核軟體使用情形。按軟體授權之商業模式中，有一次安裝計價方式，也有依實際使用量來計價。作為使用者，採購機關需遵守軟體市場規則以計算其使用情形，合約不僅應規定軟體廠商得驗證查核採購機關使用情形俾利計價，軟體廠商也有權驗證查核採購機關各處所之安裝或使用授權軟體是否遵循軟體授權合約條款。
- 資訊專案採購之付款排程，應按專案各階段付款，而非規定需驗收後才付款予廠商。蓋因許多政府資訊服務採購案的履約期限常逾二年，採購機關又規定採驗收後付款，這種要求廠商負擔專案品質又要廠商承擔專案驗收前全程之財務，是非常不合理的做法。是以，建請政府各採購機關就採購案之付款排程，應採按專案各階段付款方式。

議題五：提供更多的補助及誘因，以鼓勵台灣再生能源產業的發展

本委員會期許政府，透過跨部會（環保署、經濟部、交通部）的協調聯繫，進一步整合再生能源政策，並制定獎勵計畫。

政府應善用台灣在再生能源領域的技術及市場優勢，設定更積極的發展目標。近期歐洲、日本、美國、和中國所採取的政策，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，德國政府訂定再生能源佔總能源比例，於2010年須達12.5%、2020年達20%、2050年達50%的目標；中國2009年公布的一項能源使用政策中，也明訂在十三個主要城市提供極優惠的補助，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年達成再生能源佔總能源比例10%，以及2020年達成12-16%的目標。

相較而言，台灣政府對再生能源比例以及裝置量制定的目標顯得十分保守－於2025年達成佔總能源8%比例，以及自2009年公告實施《再生能源發展條例》起，計畫於二十年內補助650~1000萬瓩再生能源裝置量，但至今裝置量比例仍然偏低。

此外，因應未來國際碳排放的規定及標準，台灣如未能及早提高再生能源使用量，將付出極為可觀的成本。政府制定2025年要減低二氧化碳排放量到2000年水準之目標，然而根據台灣大學應用力學所陳發林教授的研究指出，2000年台灣每人平均碳排放量約為9.7噸，比國際對2025年所設定排放量標準要多出一倍以上，意即台灣到2025年時將需要每年付出至少約新台幣3,540億元(美金120億元)之碳權成本。

本委員會肯定台灣政府對再生能源提供專案補貼，但也期盼政府，在程序上使相關的優惠措施更公正、透明及公開，並向社會大眾作更廣泛的溝通。行政規則的公布與修正應遵循正當法律程序以及信賴利益保護之法治原則，以維護人民利益。

電信及媒體委員會

台灣與世界大多數先進經濟體相同，面臨準備進入次世代數位匯流的迫切需求，一方面要維持在經濟上的競爭力，另一方面則要持續改善人民的生活品質。有鑒於世界其他國家的高層業已針對此一重要任務積極進行相關準備，美國商會電信及媒體委員會所屬公司會員，非常願意分享在世界各地所獲得的相關經驗，協助台灣政府進行事前準備工作。本諸此一精神，我們期盼與台灣當局加強更多的對話與磋商。

國家通訊傳播委員會（以下稱NCC）自2006年成立以來，一直是回應本商會每年年度意見書所提多數議題的主要政府機關。我們瞭解NCC是這個領域的直屬主管機關，但本委員會同時也相信，NCC所施行的各項工作，應與台灣最高行政機關行政院訂定之政策目標適度結合。

透過在台灣持續擴展業務領域，替台灣民眾創造更多高價值工作機會，美國商會會員對台灣政府建設國內經濟的目標作出貢獻。有鑒於此一共同目標，我們誠摯希望以下幾項建議能受到行政院層級的相關官員關注、檢視，以增加企業信心，同時替台灣增加投資機會。

議題一：依據兩岸WTO承諾，鬆綁兩岸間相互投資電信產業之限制

台灣若要有效掌握並全球電信產業發展動態，就必須善用亞太地區最佳潛在成長契機。因此，如不除去目前對「陸資來台」及「台資赴陸」之相關限制（尤其針對中國大陸對台灣電信事業之資金投資），台灣之電信業者將無法具備足夠規模，面對市場之激烈競爭。當中國已取代日本成為世界第二大經濟體，2011年此議題將更顯重要。

為落實世界貿易組織（WTO）入會承諾，台灣同意「外國人直接及間接持有第一類電信事業之股份總數不超過百分之六十，且對第二類電信事業無限制」。惟現今兩岸間仍然限制「屬第一類電信事業及特殊第二類電信事業」之投資，並且對於投資人之資格及持股比率均有設限，實不利台灣業者搶進大陸市場之機先，更阻礙了於亞太地區擴張服務之能力。此不僅有違WTO承諾，亦使台灣電信產業坐失區域經濟整合及全球分工鏈聯結之先機。面對目前「台灣資金大量流向大陸、大陸資金卻進不了台灣」之兩岸經貿傾斜現象，政府應儘速將電信服務業納入下一階段之ECFA協商項目，對等開放並加速兩岸電信業交互投資腳步，以利兩岸雙向的資金、技術、人才、市場與全球接軌，創造台灣產業最大價值。

台灣已擁有完整之資通訊產業鏈，透過強化兩岸電信服務業之雙向投資與合作，非但有助於加速電信產業發展，亦能促進台灣電信產業及其上、下游產業，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之競爭力及發展空間，更有利於開展應用服務創新，擴大市場商機，尋求開拓全球市場利基。

我們瞭解，目前政府對於開放兩岸間電信事業相互投資，有國家安全、個資保護及其他非經濟因素之慮。惟於2010年5月26日公布實施之《個人資料保護法》堪稱為舉世個資保障最嚴謹之立法之一，再參酌NCC全力推行之ISO/IEC 27001電信業資通安全擴大驗證事宜，將資通安全落實於台灣電信業者之日常營運措施俱足，上述論者疑慮實不存在。

此外，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合作之面板業或其他重要產業之作法，於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，我們呼籲以更積極之態度促進跨區域（包括中國）之各類電信產業投資，以利台灣電信產業邁向數位化新紀元。

議題二：解決頻譜問題，使台灣於行動網路服務具備競爭力

目前行動及網際網路具高普及率，加上幾乎所有新的行動裝置都可上網，消費者大量採用行動網路技術是大勢所趨。業界估計，2015年之前全球都會環境行動網路普及率將接近100%，全球使用的智慧型手機將達48億支，也因此，確保所有裝置的網路連線將為一大挑戰。

台灣現在及未來都將繼續成為行動網路革命的催化劑。台灣生產的智慧型手機及個人電腦廣受全球市場肯定，台灣目前更應打造真正無所不在的行動寬頻，進一步推動先進行動寬頻技術與服務。若採取以下措施，台灣將得以充分利用此絕佳機會。

A. 執行「頻譜釋出藍圖」

目前行動寬頻服務的需求及消費成長速度之快，前所未見。協助引進並開展先進無線技術及服務之需求日益殷切，而頻譜釋出亦是關鍵項目，台灣政府應擬定、公佈並逐年更新「頻譜釋出藍圖」，並採納以下重大措施：

1. 公佈頻譜可供利用及招標的明確時間表。公佈時間表將使相關各方明確了解頻譜可供利用與否，並為企劃及投資決定奠定更堅實的基礎，並使相關各方有足夠時間及資訊追尋市場商機。短期內，時間表應包含700 MHz及2.5 GHz頻譜的釋出計畫。
2. 採用前瞻性、積極的頻譜管理方式。政府應掌握利用率偏低的頻譜，並依據目前的技術及市場發展狀況，考慮是否

適當變更配置或分配。考慮進行的一切變更，應於「頻譜釋出藍圖」排定時程並公佈。

3. 參考區域內範例。香港電信局及澳洲通訊及媒體管理局每年公佈頻譜釋出計劃，註明計劃頻譜可供利用的時程。政府的藍圖應仿效這些成功案例，這些案例中相關各方由於清楚了解頻譜資源，因此得以擬定營業計劃。

B. 以區域或全球為基礎調和頻譜的使用

以區域或全球為基礎調和頻譜的使用，將使台灣的消費者及業者受惠於設備成本降低的規模經濟，並創造更廣泛可供使用、物美價廉的使用者裝置。針對行動服務而言，調和的無線頻譜使用也促成國際漫遊功能，使台灣行動用戶得利用海外網路漫遊，並開放台灣的網路服務來自外國的訪客。

政府應認真考慮將2.5 GHz的頻段與國際趨勢及業界最佳實作相調和。許多國家已採用此等調和方式，其中許多案例是根據歐洲建議的頻段計劃（此為國際電信聯盟建議的頻段計劃之一，即Option C1 of ITU-R Recommendation M.1036-3）推出商業服務。

就700 MHz頻段而言，亞太電信組織無線小組（AWG)已展開調和的努力，並已擬定區域內可望採行的頻段計劃。波士頓顧問集團最近一項研究顯示，無法調和700 MHz頻段的頻段計劃，將導致嚴重的負面經濟衝擊，包含提高手機成本。反之，若台灣依據亞太電信組織無線小組同意的頻段計劃分配此珍貴頻譜，對於台灣國內生產毛額的成長、稅收收入、建立新事業與提高就業率等方面，都將有正面助益。此外，此頻段也為支持商業及非商業應用普及近用的較佳頻譜。

C. 採用技術中立的法規及監理架構

本委員會強烈建議政府採行技術中立的無線電信法規及監理架構。若業者可彈性選擇並決定最符合其營業及服務計劃的技術組合，政府將使台灣電信業得以靈活因應技術及市場狀況的改變，並將稀有的頻譜資源作最有效率的使用。

在全球許多國家都可以見到實施技術中立的發照架構，例如歐盟指令允許900MHzc和1800MHz頻段發出的GSM執照調整使用HSPA和LTE技術，也讓2.3G和2.5G頻段的WiMAX執照可以轉換為LTE技術，其他如澳洲、加拿大、香港、紐西蘭、新加坡和美國所發出不對使用技術設限的執照都是最佳例證。更且，一些拉丁美洲國家針對3G和後續服務發出的執照，也都採取術中立原則，正如印度最近也對3G和無線寬頻接取業務(BWA)拍賣釋照時採取統一發照的機制。

此外，在技術中立的架構下，執行面的努力僅需確保遵循諸如不得干擾等廣泛指標，應可減少政府的管制行政負擔。

D. 確保足夠的權責區分及透明度

1. 改進與業界的諮商。政府應提供與業界更多諮商的機會，從而協助監理機關與相關各方進行定期對話。屆時，政府官員將更能了解相關議題，並改進資訊蒐集及回饋的系統。業界的參與也可提高業界對於新政策倡議的支持。我們鼓勵政府考慮採取正式及非正式途徑，幫助監理機關與業界交換資訊、溝通優先工作及觀點。
2. 強化制定監理政策及決策過程的透明度。政府若提高政策制定及決策過程的透明度，將使台灣電信業大幅受惠。如infoDev/ITU ICT Regulation Toolkit所載，透明度將提高服務供應商、投資人及其他相關各方的信心，從而降低投資風險，並提高國內資通市場的投資吸引力。我們相信，一切監理規則及政策、監理決策及協議所奉行的根本原則，以及諮詢程序本身，應屬於公開記錄。但現況並非如此。若可提高透明度，政府將可提高其公信力，並避免任一方認為決策偏頗、獨斷或摻雜歧視。
3. 釐清相關單位之頻譜監理責任。我們呼籲政府明確劃分NCC、交通部、行政院以及任何負責制定頻譜政策及從事頻譜管理之相關機關的權責。目前交通部及NCC的角色有部分重疊或模糊的地帶，造成政府以外各方利益關係人無所適從，也為業界與政府的溝通造成障礙，降低溝通效率及生產力。

議題三：建立新的審批制度，加快新技術和服務引進台灣市場

NCC批准新電信技術的過程冗長，已造成台灣在提供新式、創新服務上落後許多國家。例如，國外電信業者已在2008年開始佈建Femtocell，但政府耗費兩年多時間才將相關法律與法規修改完畢，最終於2010年12月頒布。

與此同時，國際市場進展迅速。由於Web應用程式、社群網路、智慧型手機和平板電腦等創新技術的發展，加上網路不斷演進，在過去兩年中，世界各地行動數據流量持續急劇地蓬勃發展。在某些國家，負責公共安全的政府機構已經建置緊急廣播系統（例如美國的Warning, Alert and Response Network, WARN)，能透過手機即時傳遞緊急通知。

在全球各地，許多服務供應商紛紛採用開放式平台策略，促進第三方開發商開發新的應用軟體。並利用多螢幕服務以彌補正在下滑的語音業務利潤；使用多波段多模式無線接入、智慧話務管理和網路策略控制，以確保用戶頻寬的品質；採取數位匯流技術以優化網路利用率，並同時支持優先呼叫服務。藉由一系列創新計劃和策略，業者實現了更高的峰值速率、更低的延遲、更好的頻譜效率，也創造更多價值、更廣泛的服務覆蓋範圍，提高能源效率，減少碳足跡，提高公眾安全。

今年1月，美國聯邦通信委員會宣布，預計在未來5年，全美行動通信的話務量將增加35倍。單單增加新的頻譜將不足以應付話務需求，聯邦通信委員報告指出：「我們需要鼓勵更多的創新和有效率地利用頻譜。我們將繼續鼓勵動態頻譜共享和二級市場的頻譜，以及開發和部署家用微型基地台（Femtocell），智慧型天線技術和設備，透過如Wi-Fi這類無授權的頻譜從蜂巢式網路卸載流量。」

在歐美幾個主要市場，行動通訊服務供應商已採用異質網路及小細胞結構的無線接入網路解決方案，包括符合3GPP、3GPP2 以及WiMAX 等特定標準的Femtocell，並從佈建於住宅，擴展至企業、公共設施和農村地區。根據全球行動供應商協會（GSA）今年3月公佈的調查，LTE在投資數量方面增長最快，現在已經有196個LTE網路分佈於75個國家，140個LTE網路佈建計畫在56個國家，35供應商已公佈啟用了將近100個LTE用戶設備。為了滿足這些規模驚人的需求，改善用戶使用經驗，Wholesales Application Community（WAC）和Global TD-LTE Initiative（GTI）等產業團體相繼成立，以促進整個電信服務產業生態系統的成長，擴大價值鏈至其他產業。

此外，委員會讚賞行政院宣布其數位匯流發展計劃。其中主要目標是到2015年達成50%的數位電視（DTV）滲透率，並讓6百萬個家庭能使用100Mbps頻寬服務。

然而，要台灣競爭力的真正提昇，有賴政府積極主動與服務供應商一起努力，確保服務供應商的投資部署使最終用戶在未來能享受品質更佳的新服務。政策重點應該在促進新服務的啟用，而非檢查或驗證產品技術。無論在現有或未來新的網路上，政府若減少對新型技術、解決方案及服務的控管限制，幫助營運商優化其認證條款，必將加速網路的現代化。

建立一個精簡的新審批制度，迅速反映市場需求，擴大市場服務，必將鼓勵創新。這將避免新技術、新服務的推出受阻而延遲，對那些已被其他先進國家廣泛採用的政策而言，更是如此。

議題四：強化智慧財產權保護以因應匯流時代的需求

數位匯流時代中，由於數位內容可輕易透過網路加以散播，智財權保護議題也更加迫切。因此，台灣政府有必要在智財保護方面有更積極的作法，以加強保護業者數位化基礎投資的經濟利益。

值得密切關注的重要議題之一是，台灣需要更前瞻的政策來面對網際網路上的智財侵權行為。其中最重大的挑戰來自於日趨普遍的跨境服務（OTT)業者以及網際網路上的串流視訊。跨境服務業者多半藉由提供未經合法授權的內容獲取不當利潤，而且此種侵權獲利行為將隨著消費者上網頻寬的迅速擴充而日益頻繁。因此，政府有義務採取更積極有效的措施，保護國內內容產業的智慧財產，以及投入鉅額資本興建寬頻網路基礎設施的業者利益。

典型的跨境服務經營模式，通常透過設在海外的伺服主機提供服務，同時藉由信用卡或PayPal跨國交易支付平台收取費用。這些境外服務業者在台灣沒有任何直接投資，未創造任何就業機會，也沒有投資任何網路基礎設施或繳納稅負，更不須遵循台灣的法令規範，對台灣本土產業形成不公平的競爭。例如，現行的《有線廣播電視法》要求頻道供應商及系統經營者應有一定的自製節目比例及基礎建設投資，但對跨境服務業者卻形同具文。長期而言，這些跨境服務業者對本土內容產業所造成的經濟損失將嚴重衝擊台灣經濟，並削弱本土產業對新產品與新服務的投資意願。

跨境服務業者散佈非法內容的事實讓整體情況更加惡化。不僅只有好萊塢製片廠成為跨境服務的受害者，大受歡迎的電影「海角七號」及電視劇等台灣本土製內容，也可以經由海外的跨境視訊服務來收視，而當消費者免費或以極低廉的價格來觀賞這些節目時，製作者卻無法由跨境服務業者取得任何報酬。此外，由於這些跨境服務業者規避台灣所有的法令規範，其所散佈的色情節目、線上賭博遊戲也對台灣社會帶來極為負面的影響。因此亟需政府介入並管制此類跨境服務，同時結合社會教育，勸阻消費者使用這些非法內容。

台灣另一個重要的智財保護議題是有線電視私接。有線電視私接對台灣的內容產業及國際的節目製造商造成巨額的金錢損失。誠然有線電視私接並非台灣獨有的現象，但許多國家已經意識到私接所衍生的負面影響，並以更有力的法律規範對私接戶課以刑事責任，提供內容供應商更完善的法律保護。

智財侵權行為導致台灣有線電視產業巨額金錢損失，也阻礙整體影視內容產業的正常發展。為確保數位匯流時代健全的發展環境，

作為WTO，尤其是「與貿易有關之智慧財產權協定」（TRIPS)負責任的簽署會員之一，台灣有義務建立更完整的智財權保護機制，以確保國內所有業者皆能公平競爭。

交通運輸委員會

交通運輸委員會相信，從國際觀點出發精心設計的運輸系統，將會是台灣經濟持續成長的主要條件。運輸物流產業的跨國際企業見證了鄰近市場的快速改善，台灣也不能落於人後。本委員會呼籲政府能找出淺在弱點，設計可能的策略來因應，並快速地實施解決方案。

今年的意見書包含委員會的三個相關產業類別：快遞貨物業、汽車業與航運業。

快遞貨物業

議題一：建立快遞貨運通關風險管理分級的法規環境，促進快遞貨運業發展

快遞貨物的通關時效往往是決定快遞產業競爭力最主要的因素。因此，各國無不致力於創造並維護便捷、安全的快遞貨物通關環境。

目前台灣的快遞產業由各式不同型態、不同服務的業者所組成，但僅依靠財政部的《快遞貨物通關辦法》規範管理所有的快遞貨物進出口通關。如此一體適用的管理模式並不實際，違反確保時效與安全通關的目標，進而嚴重影響台灣快遞產業的競爭力。我們建議修訂《快遞貨物通關辦法》以涵蓋先進的分級風險管理，以助各種型態的快遞業者發展。

台灣現行快遞貨物通關法規包含許多已明顯無法適用於所有業者的規定。例如：必須取得低單價進口商品快遞收貨人授權書；出口貨物必須事先報關制度；不合理的快遞貨物重量限制；出口貨物必須待進倉後始得進行通關作業；不合理的額外快遞貨物通關處理費等等。此外，海關單位長期人力不足也使通關流程變慢。

反之，如果快遞貨物通關法規能利用先進的分級風險管理制度，依業者的風險層面來制定不同的規定，則效率將會大為增加。如果無法修訂現行法規，我們建議新增《整合型快遞貨物通關辦法》，讓低風險的大型快遞貨物公司能享有更彈性的規定。

汽車業

儘管各國已逐漸走出2008年經濟風暴危機，經濟復甦過程卻也面臨許多挑戰，例如歐盟部分會員國債信問題、原油與商品價格上揚、今年3月日本大地震引發海嘯與核電廠災害造成供應鏈斷鏈危機（此一危機使各國重新審視能源政策，期能保護環境、維持安全）。對台灣而言，開徵「奢侈稅」恐衝擊不動產市場，並對整體經濟帶來短期負面影響，對經濟復甦是雪上加霜。本委員會企盼政府能參照各國政府的作法，提出審慎週延的政策，持續促進經濟穩定與成長，避免台灣經濟再次陷入衰退局面。

除了目前《兩岸經濟合作架構協議》（ECFA）中優先將零組件及整車列入第二回合兩岸經濟合作委員會談判清單，本會更希望政府盡速與東協簽訂自由貿易協定，以幫助車輛業者開拓區域競爭力，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，阻礙國內車廠與國際母廠技術接軌。有關單位應盡速調和車輛法規，簡化認證流程，協助業者降低成本，縮短時間。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，但仍期盼政府的獎勵政策能以降低二氧化碳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。

「氣候變遷」為當前全球面臨最嚴峻的考驗，台灣政府也推動《溫室氣體減量法》草案因應。本會再次呼籲政府能夠擴大現行對電動車、油電混合車貨物稅免徵及減徵措施。由於台灣對能源進口倚賴程度極高，加上電動車於充電使用過程，以及所充電力發電過程仍有相當大的二氧化碳排放量，使用純電動車對二氧化碳減排的實際影響規模應比一般人所認知的規模還小。政府需要擴大目前的獎勵措施，更有效率地導入潔淨車輛，並增加對於使用其他替代能源的獎勵。

議題二：加速清潔、環保暨安全車輛導入台灣市場

台灣汽車市場暫時走出金融海嘯帶來的低迷景況，市場銷售量由22萬台上升至33萬台。但以全國車廠產能70萬台而言，產能利用率僅50%，唯有增加內需提振經濟，並同時擴大出口產能，才能使台灣汽車產業帶動整個供應鏈，達到具有國際競爭力的經濟規模。我們建議政府盡速訂定台灣汽車產業長期發展政策，落實二氧化碳減量目標。除了具有環保效益，此政策亦有助於帶動國內汽車產業的發展，提供額外稅收。我們的具體建議為：

在國內市場，應擴大對潔淨車輛的獎勵措施：

1. 目前電動車及油電動力混合車僅是一種過渡技術。我們建議，應考量獎勵所有提前達成低污染排放、燃油效率較高之技術車輛（或是達到與電動車相當之二氧化碳排放量的汽車，亦即符合歐洲五期污染排放標準的車輛），無論所採技術為何。
2. 建議政府採用類似歐洲國家的綠色消費稅，取代現行貨物稅與隨車徵收能源稅的機制，真正落實獎勵低污染及低二氧化碳排放之車輛。政府也應加速使用中高污染車輛的淘汰，並將稅收用於獎勵高燃油效率及二氧化碳排放量低的車輛。
3. 政府目前在電動車方面有先導發展計畫，並且希望電動車零組件或整車製造商加入國際車輛製造商的供應鍊，但是政府缺乏吸引這些跨國企業的有效政策。台灣應有機會提供國際車廠測試先進綠色能源車輛的一流環境，政府必須研擬有競爭力並且公平的獎勵措施，讓國際製造商產生強烈興趣，也為台灣相關產業創造更多發展機會。

在國際市場方面，本委員會建議：

1. 政府應加速簽訂區域內自由貿易協定FTA及積極推動兩岸ECFA汽車產業相關談判，以減少關稅貿易障礙，增加整車出口。

議題三：促進台灣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，車輛業者亦努力配合政府的政策目標。我們感謝台灣政府在調和國內制度與國際法規方面的努力，例如導入歐洲車輛技術法規。環保署亦將在下一階段，接受部分聯合國歐洲經濟委員會相關合格證。然而，因為目前的認證制度仍無法與國際制度完全一致，導致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接受檢驗，或送至財團法人車輛研究測試中心重新執行測試，不僅造成額外成本，也耗費更多時間。此外，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。

另一方面，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更龐大的額外成本及時間，政府更將於2013年一月一日起，全面禁止美規車輛進口。

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，並對引進美規車輛採取更具彈性的作法，以促進台灣整體車市的蓬勃發展。

航運業

航運業已從最近一次的金融危機復甦起來。全球大多數航運公司及其他專門提供相關服務的行業在2010年都有不錯表現。然而，因為燃料價格上漲、日本核能危機、美國及歐元國家復甦腳步比預期慢，2011年航運業仍有許多新挑戰。有鑑於這些挑戰，委員會敦促台灣當局採取更多措施，啟動能刺激經濟發展的方案，確保航運和物流業保持成本競爭力和吸引力，以期能與新加坡、香港和中國並駕齊驅。為此，我們有以下建議：

議題四：持續為航運業解套，並降低管理費用

委員會強烈敦請恢復2009年實施的港口/碼頭土地租賃折扣計劃，同時也請全面審查目前還在徵收「港口管理費」的碼頭。這些積極作法及計劃，將有助於緩解在此艱困時期經營者的成本負擔。

議題五：審查台灣是否具有足夠的長途貨運服務設備

委員會促請交通部著手研究台灣城市的貨櫃貨運和運輸服務，以及其對航運與物流業未來發展的潛在影響。一些新的工程專案和地方促進觀光業發展的強烈意願，已對航運物流業產生了「緊縮」效應，導致許多貨運資產被轉換到其他用途，甚至引發貨櫃拖運業外流。這些事態發展已嚴重影響航運和物流公司，包括難以確保成本競爭力和南北重要陸上運輸服務的品質，包括北部、西部和南部的海岸，以及最近擴大開發的部分港口，如高雄港和台北港。

議題六：提供誘因，刺激航運業成長

我們重申先前的建議，促請台灣政府採取更積極、更具體，且協調一致的方式，推動與各機構相關的政策和激勵措施，使台灣在全球航運及運輸業競爭上有更好的定位。台灣雖位處東西方貿易通道的十字路口，卻仍缺乏一個激勵計劃以獎勵經營者或營運商通過台灣各港口並做停留。我們敦促交通部和各港務局積極與航運和物流公司討論合作與協調，從而訂定有效的政策，以大幅提高台灣航運業經濟成長與競爭力。

旅遊與觀光委員會

自2008年5月總統就職大典之後，馬英九總統宣布台灣將積極推動六大產業之發展，其中包括了旅遊及觀光產業，作為未來十年驅動經濟發展的施政計畫之一。為了支持這項計畫，美國商會在2009年正式成立旅遊與觀光委員會，希望藉由業界專業人士的觀察及建議，促進旅遊暨觀光產業的發展。

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，促使台灣成為旅遊聖地

日前本委員會有幸與交通部觀光局局長賴瑟珍女士會晤，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
要標榜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。近年來台灣強調的主題大部分著重於原住民文化。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值得推廣，包括自然美景、卓越品質與多元化美食、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的明確特色，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，即一次全面性出擊，並足以深入滲透世界各地的宣傳活動。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」、and「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。
今年觀光局推出了一個新的觀光標語「Taiwan - The Heart of Asia」，我們認為此舉跨出了很好的一步，但這個標語顯然需要在國內以及國際更廣泛地去推廣。提高台灣民眾對新觀光標語的認識與了解其目的，促使旅遊推廣成為一場全民運動，是很重要的工作。
此外，我們建議觀光局邀請旅遊及觀光業者開辦座談會，說明觀光局新策劃的觀光標語，並藉此讓相關業者可採取應對行動來支持新標語。觀光局更可利用說明的機會，與業者分享推廣計畫之進度、哪些項目已然完成、哪些計畫即將展開，以及哪些促進觀光的策略即將實施。從經驗分享以及制定產業標準的角度來看，這類政府與相關產業齊聚的溝通會議將極具價值。

B. 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，吸引網友的瀏覽意願並提高該網站的瀏覽人次。

C. 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，台灣政府與國際上專業的會議活動籌辦單位應建立並保持穩定互動，提供適當的獎勵措施，以協助引進會議展覽產業（MICE）、大型團體、高知名度活動，甚至「特殊目的旅遊」。
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。
此外，台灣有實力成為醫療旅遊的理想地 －台灣不僅能為那些以華語為母語的觀光客（來自中國，新加坡等）提供服務，也可以吸引全球各地有興趣來此獲得先進、優質醫療方案與服務的旅客。

D. 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。
本委員會認為，對任何新的活動計劃，政府都應該以較目前更為積極的方式來推動，使這些活動可以真正提升國際能見度，進而認識台灣。
在台灣舉辦世界女子職業高爾夫協會（LPGA）競賽活動（以台灣高爾夫球選手曾雅妮的天賦與和實力作為優勢），引進國際化、高水準的活動，就是最好的例子。這類活動可以有計畫地全年度進行，其涵蓋的層面可從各式體育活動，如國際自行車比賽，甚至跨到藝術及表演領域－比方說展示名滿全球的雲門舞集。

E. 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。旅遊服務中心的啟用，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，以利入境旅客建立親善的「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，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，持續深化於民眾的心中，喚醒民眾的國家光榮意識和熱忱。台灣人赴海外旅遊時，也應將自己視為台灣「觀光大使」，直接宣傳台灣之美。
我們還想指出一點，海峽兩岸的合作交流，從未像現在這樣密切、熱絡，但是目前對入境台灣之中國商務旅客的管理政策和入境手續，卻過於複雜繁瑣。因此如何讓兩岸商務人士能夠更方便地安排會面洽談，是至關重要的議題。目前的作業程序如果不適度簡化，可能會抑制中國商務旅客來台訪問的興趣，相對地也會減少其在台投資的意願。
最後，我們呼籲各政府機構之間要加強合作與協調，創造一個更「觀光友善」的環境，從而讓更多的散客和背包客願意選擇來台灣休閒度假。所謂「觀光友善」的特色，應包含建立更大的外語導遊人才庫、提供外國遊客參考的旅遊指南等印刷宣傳品、為自駕遊環島的旅客設置更清晰的公路標誌、連結外環城市更方便的公共交通網（讓旅客能更便利、更頻繁地探索台灣各地）、考慮銀髮族需要以利推動「敬老套裝行程」，並針對戶外活動和冒險探索行程提供更優質的道路安全。

議題二：加強旅遊產業人才的培訓和發展

觀光旅遊業的管理階層多年來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極為過時，培訓內容並不完全與當前產業的需求相關。同時，政府應鼓勵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或文憑。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。儘管觀光局將升等為行政管理單位，權限提升到可以制訂及執行政策，本委員會仍深信，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，以利產業的長遠發展。

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，充分發揮台灣的觀光旅遊的最大潛力。