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台灣賓士股份有限公司，成立於 2002 年 1 月，是汽車業巨擘德國戴姆勒集團在台之子公司。時至今日，台灣賓士持續專注發展、永續經營 Mercedes-Benz 之乘用車與商用車、以及 smart 汽車相關銷售及售後服務，其豐富完整的產品線滿足了客戶不同需求，並提供高規格的舒適度和行車安全體驗。

台灣賓士目前約有 240 位員工和超過30 間授權展示中心及服務廠，竭誠為客戶提供最高品質的專業服務，除汽車銷售業務，台灣賓士獨資成立子公司--台灣賓士資融，亦提供全方位的金融、租賃及保險相關服務。



Experience Enchanting Moments in Macau



Many first time visitors to Macau are impressed with its recent rapid development into a modern, fast-paced and forward-looking world-class tourist destination. But there is a lot more beneath the surface.

Macau is a place with events and places to visit that appeal to all interests. Whether you're here just for fun, for fine dining, or shopping, you'll find something to please your tastes. At the same time, it's also a place to refresh the spirit. One of the most enchanting elements in Macau is its artistic and cultural atmosphere everywhere.

The Historic Centre of Macau

In total contrast to Macau's modern skyline is the Historic Centre, the oldest, most complete and consolidated array of European architectural legacy standing intact on Chinese territory. It is the product of 400 years of cultural exchange between the Western world and Chinese civilization. The blend of Portuguese and Chinese culture has produced a visually unique and splendid experience for the visitor.

In July 2005, the Historic Centre of Macau was inscribed on the UNESCO World Heritage List, putting Macau squarely on the world's cultural map. The Historic Centre of Macau

comprises ancient fortresses, buildings, streetscapes, churches, and piazzas laden with colorful history. A-Ma Temple, for example, is reputed to be the point at which Portuguese sailors first landed in Macau, while the Ruins of St. Paul's was originally the Church of Mater Dei and St. Paul's College. Destroyed by fire in 1835, this imposing historic landmark now serves as the icon of Macau.

A free audio guide service from the Macau Government Tourist Office makes it easy to explore the Historic Centre of Macau. The device operates in Mandarin, Cantonese, Portuguese, English, German, Japanese, and Korean, and is available on a first-come-first-served basis, for a returnable deposit of MOP200 at the MGTO information counter in Senado Square from 9 a.m. to 5 p.m. daily.



Step out and explore Macau's communities

One of the best things about this small city is that so many of its most important sites are within walking distance of one another, and on the way to see them you can discover many diverse neighborhoods and points of interest. The Macau Government Tourist Office offers four walking tour routes so you can "Step Out, Experience Macau's Communities" confidently, with a printed guide and the free "Step Out, Macau" App downloadable from App Store.

"A Tour of Historic Trails" follows Avenida da Praia Grande to Praça de Ponte e Horta; "A Tour of Nature and Creativity" promotes a walk from the Kun Iam Temple to St. Lazarus Church; "A Tour of East Meets West" directs strollers from Senado Square to the Maritime Museum, and "A Tour of Arts and Culture" starts at Macau Fisherman's Wharf and ends at A-Ma Temple.

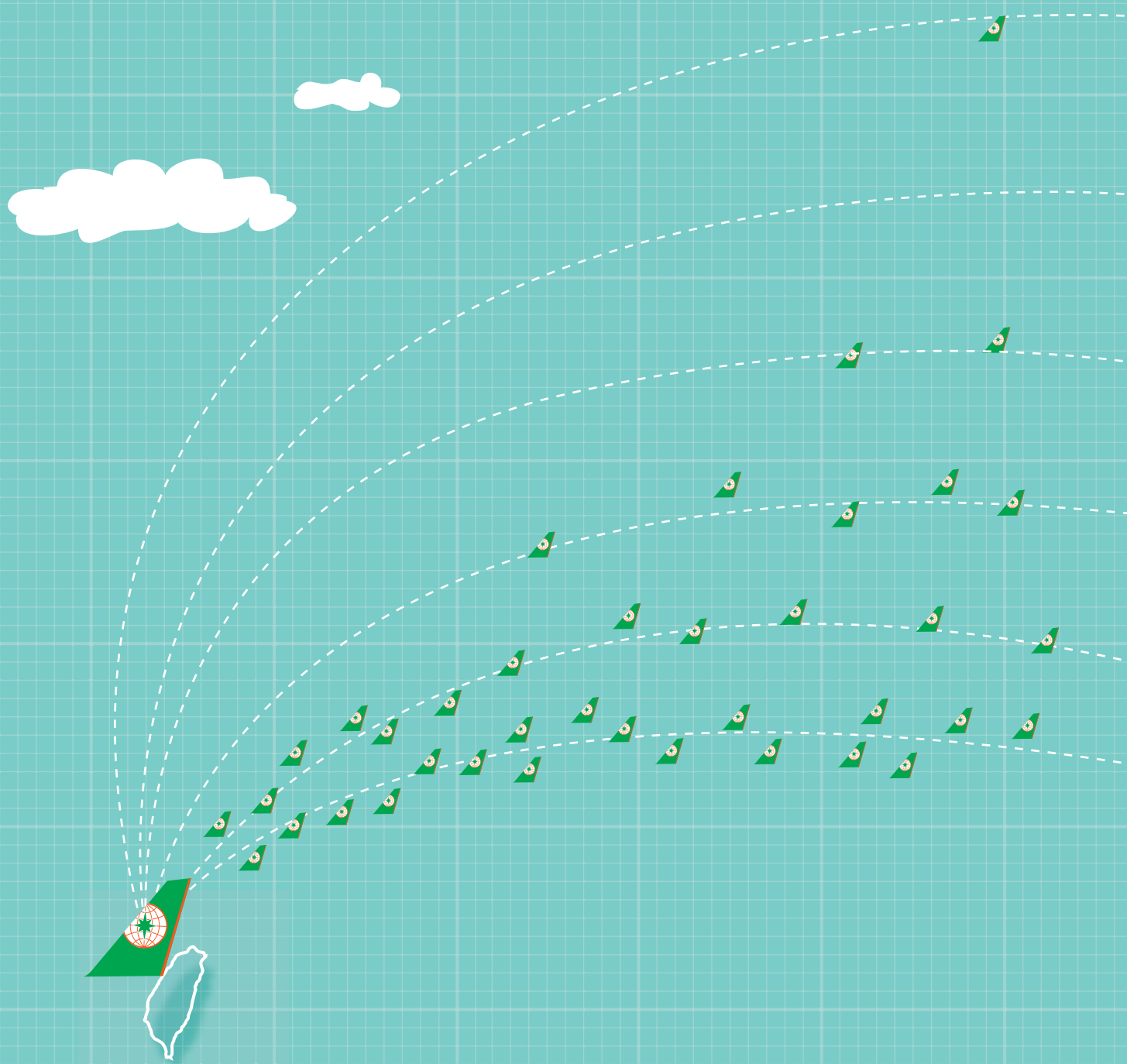
For more information regarding these four walking tour routes, please visit the official MGTO website at www.macautourism.gov.mo.

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FOREWORD

As part of the annual *Taiwan White Paper* process, AmCham Taipei keeps track of how much progress has occurred on our committees' suggestions since publication of the previous edition. The issue-by-issue scoring of the 2013 *White Paper* can be found on the chart on pages W16-W17 in English, and on pages W18-W19 in Chinese.


This year, in reviewing the status of the 103 suggestions raised in the 2013 *White Paper*, the relevant committees rated six of the issues as "resolved" and another 21 as "showing satisfactory progress." Together, those two positive categories accounted for 26.2% of the total, the highest proportion in the past five years (see the accompanying chart).

The six issues regarded as resolved are:

- **Capital markets:** Clarification by the Financial Supervisory Commission on how the financial industry should apply the notice and consent provisions of the Personal Information Protection Act.
- **Intellectual Property:** Revision of the Intellectual Property Case Adjudication Act to require defendants to make a substantive defense when plaintiffs have shown a likelihood of infringement. The Legislative Yuan passed the necessary amendment in May.
- **Manufacturing:** Establishment of effective communication channels by the Taiwan Power Co. to alert major users of electricity to potential upcoming incidents of power interruption or surges.
- **Medical devices:** The easing of restrictions on advertising medical devices.
- **Tax:** The restoration of tax exemption on royalties paid for foreign patents and know-how.
- **Telecommunications:** The National Communications Commission's completion of auctions and spectrum allocation to support the introduction of 4G LTE mobile broadband.

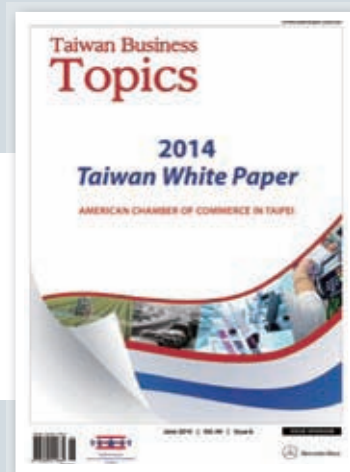
The suggestions rated as showing satisfactory progress cover a broad spectrum, including Asset Management (2), Banking (2), Capital Markets (1), Education & Training (1), Human Resources (1), Intellectual Property & Licensing (2), Medical Devices (2), Pharmaceuticals (1), Public Health (2), Real Estate (2), Retail (2), Tax (2), and Technology (1).

The significant headway achieved on so many issues across such a large number of industries and functions is a highly encouraging sign that Taiwan is serious about liberalizing its trade regime and embracing global regulatory practices. In doing so, it will be demonstrating its readiness to engage in more bilateral and multilateral free trade agreements, including eventual participation in the Trans-Pacific Partnership.

Yet another positive development may be the comparative slimness of this 2014 *Taiwan White Paper*, which contains a total of 82 suggestions for improving the business climate, in contrast to recent past editions with totals of more than 90 or even over 100. We believe the decrease reflects the greater responsiveness that most industry sectors are currently encountering from their respective regulatory bodies. Hopefully that trend will continue, and next year's *White Paper* will see an even larger proportion of issues resolved or making good progress. 

| Year of Publication | No. Resolved | No. with Satisfactory Follow-up | Total Issues | % Resolved or Satisfactory |
|---------------------|--------------|---------------------------------|--------------|----------------------------|
| 出版年度 | 已解決議題數 | 有進度的議題數 | 議題總數 | 已解決或有進度的議題所占百分比 |
| 2013 | 6 | 21 | 103 | 26.2% |
| 2012 | 2 | 14 | 95 | 16.8% |
| 2011 | 0 | 13 | 92 | 14% |
| 2010 | 2 | 12 | 114 | 12.3% |
| 2009 | 6 | 29 | 129 | 20.2% |

前言



台北市美國商會每年出版《台灣白皮書》時，都會持續追蹤前一年度版本各委員會建言的落實進展。有關《2013年白皮書》每項議題處理進度評估結果，英文版請見W16到W17頁附表，中文版則在W18到W19頁。


各委員會今年檢討《2013年白皮書》103項建言處理進度時，將其中6項列為「已解決」，另有21項為「進度令人滿意」。被列入前述兩類正向結果的議題共占整體的26.2%，比例為5年來最高（參見附表）。

被評為「已解決」的6項議題如下：

- **資本市場：**金管會釐清金融業落實個人資料保護法中，有關通知與同意條文的應有作法。
- **智慧財產權：**台灣修訂智慧財產案件審理法，要求在原告提出可能遭到侵權的指控時，被告須提出具體答辯。立法院已在5月通過修正案。
- **製造業：**台電建立有效的溝通管道，一旦可能發生電力中斷或電壓突升事件，預先警告主要電力用戶。
- **醫療器材：**放寬醫療器材廣告限制。
- **稅務：**恢復實施外國專利及設計生產know-how權力金免稅。
- **電信：**國家通訊傳播委員會（NCC）完成4G LTE行動通訊頻譜招標與分配。

處理進度令人滿意的議題包羅萬象，包括資產管理（2項）、銀行（2項）、資本市場（1項）、教育及訓練（1項）、人力資源（1項）、智慧財產權與授權（2項）、醫療器材（2項）、製藥（1項）、公共衛生（2項）、不動產（2項）、零售（2項）、稅務（2項）和科技（1項）。

涉及眾多產業和政府職責的許多議題出現重大進展，顯示台灣認真推動貿易自由化，並採納全球通用的規範慣例，著實可喜。這些具體的進展充分證實台灣已準備推動更多雙邊和多邊自由貿易協定，包括最終加入跨太平洋夥伴協議（TPP）。

《2014年台灣白皮書》出現另一項正面發展。相較於以往超過90項或100項，今年《白皮書》共有82項改善經商環境的建言。本會深信，建言減少顯示目前大部分產業從相關主管機關處獲得積極的回應。本會希望此現象能持續，並期待明年《白皮書》會有更高比例的議題，能夠獲評為「已解決」或「有具體進展」令人滿意的進度。 

Software and services – the key to Taiwan’s future

Taiwan is one of the world’s leaders in Information Technology (IT) supply chains, with major footprints in everything from motherboards to mobile phones to microchips. IT products comprise 40% of Taiwan’s exports, and technology is considered so vital to Taiwan’s economy that the government this year elevated it to ministry-level priority with the formation of the Ministry of Science and Technology (MOST).

But surprisingly, Taiwan lags behind other developed economies in some essential metrics, putting the island behind the curve in technology trends. Government budget allocation for IT procurement, for example, lags behind other developed nations and continues to decline. While IT spending increased globally by nearly 6% annually between 2003 and 2010 – and almost 9% in Asia Pacific during the same period – Taiwan’s IT expenditure trailed at 5.89%. In addition, IT procurement focuses mostly on hardware, instead of software. The estimated ratio is 70% hardware to 30% software, the inverse of what is seen in the United States, Europe, and other developed nations. Developing economies naturally prioritize hardware as they build up their information systems infrastructure, but as the infrastructure is installed the focus should gradually shift to software to optimize the performance of that infrastructure.

A well-developed software and services sector has the potential to generate the economic growth and jobs that Taiwan needs. Software and services enjoy bigger margins than IT manufacturing and employ more people in white-collar jobs. A joint Korean/U.S. study published in the *International Journal of Information Management* noted that a 1% increase in IT spending results in .067% growth in GDP. The research also found that software investment enables hardware investment to be exploited to the greatest extent possible.

“Investment in software and services will generate much higher GDP impact than hardware,” says Vincent Shih, General Manager of legal and corporate affairs at Microsoft Taiwan, since the hardware increasingly is not built in Taiwan. “But if you buy software and services, you need people to do the services, and the money will stay here. If you want to help your unemployment rate, you should put more investment into software and services.”

Government as role model

Government procurement is vital to developing the local software and services industries, as government generally is the biggest consumer. Further, government can serve as a “test bed or marker for the domestic software and services industry,” says Shih.

Economist Kong Wei-hsin of the Taiwan Research Institute think tank notes that government can act as a role model for private industry. “Through the procurement process, the government can show that it recognizes the importance of software and services, causing others to put similar emphasis on it,” he notes. “The government’s procurement policy and price mechanism are important indexes for private businesses,

especially the procurement of knowledge and service.”

Chen Chian-hsi, director general of the Ministry of Justice’s IT department, suggests that the Taiwan government requires a position similar to that of Chief Information Officer to coordinate IT spending and advocate for the benefits that improved IT spending can bring. In charge of IT systems and procurement for most of the MOJ’s bureaus, Chen has witnessed the capacity-building enabled by better IT. In the past, for example, it was difficult to bring tax evaders to justice, but with improvements in technology, the government is now able to recover many times the revenue it was able to capture before. The logistics of operating the prison system is another area that has benefited tremendously from better IT.

Within the Executive Yuan, Taiwan already has several ministers without portfolio who could take on the role of CIO for Taiwan’s government. The newly installed Minister of MOST, Simon Chang, actually played a similar role during his previous service as minister without portfolio. Chang is no stranger to the needs of IT, having served as Chief Operations Officer for Google’s Asia-Pacific Infrastructure business group. As minister without portfolio, Chang had already focused on IT procurement, stressing that simply purchasing new computers is not sufficient and that IT procurement teams need to justify their hardware acquisitions. But ministers without portfolio lack the necessary administrative resources to effectively deal with the daunting task of cross-ministry IT management, not to mention that ministers without portfolio have a number of issues under their jurisdiction, preventing them from focusing exclusively on IT.

Now that Chang is in charge of his own ministry, it would seem that he would have greater power to guide Taiwan’s IT direction toward software and services. But the position of MOST minister encompasses responsibility for all of Taiwan’s scientific and technological endeavors – not just IT procurement. And rather than being concentrated in MOST, Taiwan’s IT procurement decision-making is spread throughout the ministries, with no inter-agency coordination.

MOJ’s Chen cites the United States as an example of how IT organization and budgeting should be coordinated. The Clinger-Cohen act of 1996 (sec. 5125 & 5126) created a clear framework that has enabled the United States to remain at the forefront of IT development ever since.

As times have changed, hardware has become a commodity, and software has become the added value. Vincent Shih cites the most prominent IT firms of the modern era – Facebook, YouTube, Twitter – as examples of the shift in significance. “They are all software and service companies – none of them are producing hardware. The world is moving in that direction. Software and service are the prime differentiators, while hardware is just infrastructure. If you want to stimulate innovation, only software and services can build on hardware to provide more creative ideas and effective management systems.”

軟體與服務—— 台灣未來的關鍵



台灣是資訊科技全球供應鍊的領導者之一，從電腦主機板到手機和晶片的生產，台灣都占有重要地位。資訊科技產品占台灣出口的40%，由於科技對台灣經濟極為重要，政府今年成立科技部，把科技事務提升到部會層級。

但令人意外的是，台灣在若干重要的衡量標準上，卻落後其他已開發經濟體，使得台灣未能趕上科技發展的趨勢。比方說，台灣政府在資訊科技方面的採購預算落後其他已開發國家，而且金額持續下滑。在2003到2010年期間，全球各國資訊科技的支出每年成長將近6%，亞太各國的成長率則逼近9%，但台灣的成長率僅達5.89%。同時台灣採購項目以硬體為主，而不是軟體。硬體與軟體的比例估計為7比3，正好是美國、歐洲和其他已開發國家的相反。開發中國家還在建構資訊系統的基礎設備，自然會優先採購硬體，但一旦基礎建構完成，重點應該逐漸轉移到軟體，以優化基礎設備的效能。

軟體與其相關服務業發展良好，就有潛力創造出台灣所需要的經濟成長和就業機會。軟體和服務可以帶來比資訊科技製造業更高的利潤，並創造更多的白領工作機會。《國際資訊管理期刊》一分由韓國和美國共同進行的研究結果顯示，資訊科技支出每增加1%，國內生產毛額（GDP）就會成長0.067%。這項研究並且發現，在軟體方面的投資，可以使硬體投資發揮最大功效。

硬體在台灣生產的比例越來越低，台灣微軟公司法務暨公共事務處總經理施立成表示：「投資於軟體及其相關服務對於GDP的刺激，遠大於硬體。你採購軟體和服務，就會需要有人來提供服務，花的錢就會留在台灣。因此欲提升就業率，就應該把更多的錢用來採購軟體和服務。」

政府當領頭羊

政府採購對於發展本地軟體和相關服務產業至為重要，因為政府往往是最大的消費者。施立成說，政府還可進一步成為「本地軟體和相關服務業的試驗場或評鑑者」。

台灣綜合研究院副研究員孔維新指出，政府可以成為民間企業的領頭羊。他說：「透過採購程序，政府可以證明它體認軟體和相關服務的重要性，讓其他各界跟進。政府的採購政策和訂價機制，是民間企業重要的指標，特別是在知識和服務的採購方面。」

法務部資訊處處長陳泉錫說，政府需要一位類似民間公司資訊長的官員，負責協調資訊科技方面的支出，並說明增加這方面支出所能帶來的好處。陳泉錫負責法務部大多數局處的資訊系統和相關採購，瞭解強化資訊科技所能發揮的效能。比方說，過去要讓逃稅的人面對法律很不容易，但資訊系統改善之後，政府現在稽查緝逃漏稅收到的稅款，比過去多出好幾倍。監所管理也因為資訊系統升級而大為改善。

行政院有好幾位政務委員，可以扮演政府資訊長的角色。新任的科技部長張善政原本在政務委員任內，其實就是扮演類似的角色。張善政對於資訊科技的重要性並不陌生。他曾任谷歌亞太基礎建設業務的營運總監，在擔任政務委員期間就已負責資訊科技方面的採購。他強調光是購買新的電腦不足以成事，並要求各部門負責資訊採購的人員必須為添置硬體設備提出正當理由。但政務委員沒有足夠的行政資源，無法擔起處理跨部會資訊管理的重責大任，況且政務委員要負責多項議題，不能只管資訊科技這一件事。

張善政如今掌管自己的部會，似乎會有較大的主導權，可以把台灣在資訊科技方面的發展導向軟體和相關的服務，但科技部要負責台灣科學和技術整體的發展，而不只是負責資訊科技方面的採購。資訊科技採購的決策也不集中於科技部，而是分散到各部會，而且部會之間並無協調。

陳泉錫以美國為例，說明資訊科技相關的組織和預算應該如何協調。1996年的克林格-柯恩法（第5125至5126條）建立明確的架構，使美國長期處於資訊科技發展的領先地位。

時代已經不一樣。硬體如今成了商品，要靠軟體才能加值。施立成以現今著名的資訊科技公司—臉書、YouTube和推特為例，說明這個重要性的移轉。他說：「它們都是軟體和服務公司，沒有一家在製造硬體。這是世界的趨勢。軟體和服務才真正能夠帶來差異，硬體則只是基礎設備。你若要刺激創新，唯有軟體和服務能夠在硬體的基礎之上提供更具有創意的構想和更有效的管理系統。」



台灣微軟公司法務暨公共事務處

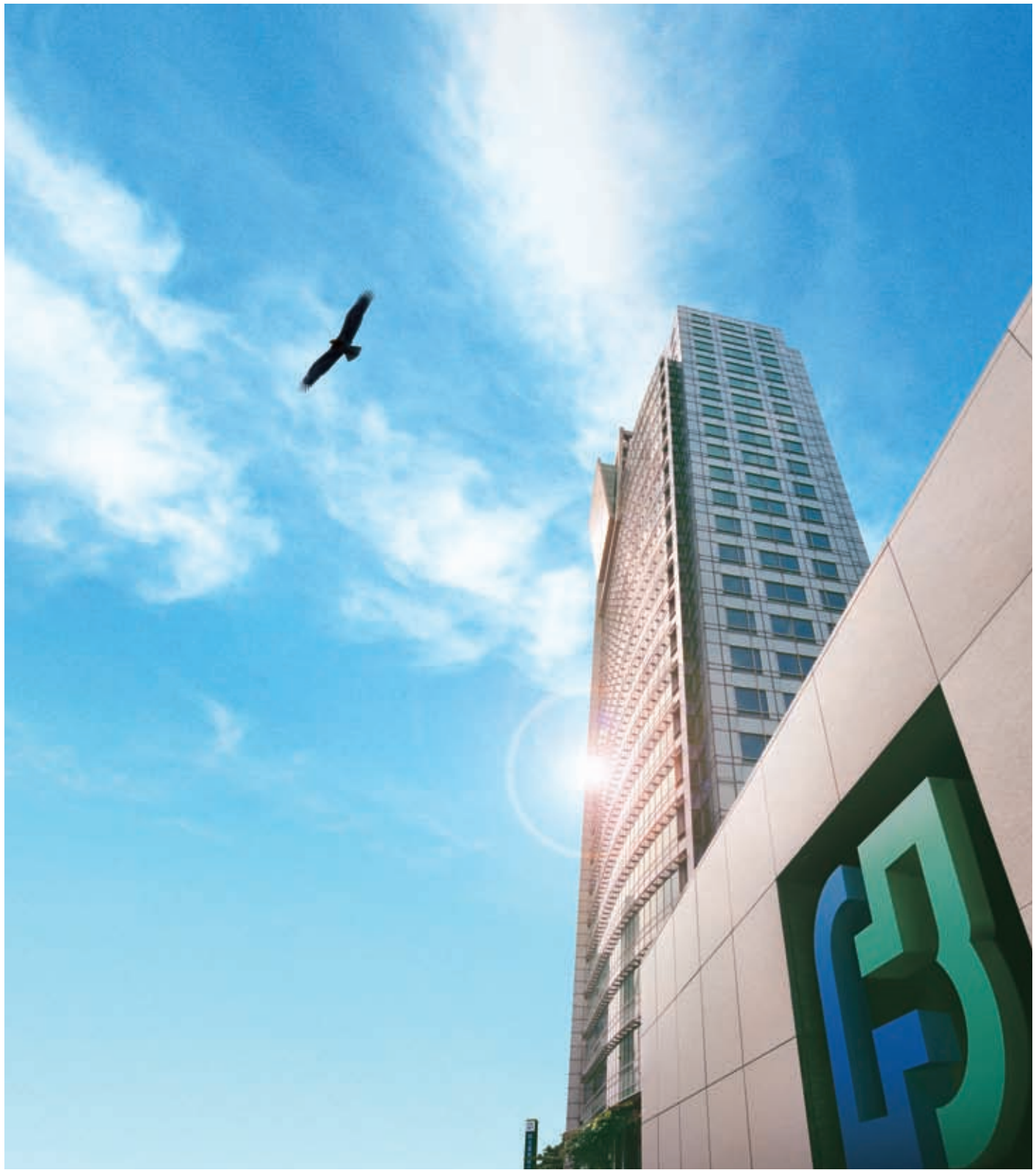
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台灣諾華

1996年，汽巴嘉基 (Ciba-geigy) 和山德士 (Sandoz) 兩大公司合併為諾華公司，將總部設於瑞士的巴塞爾，台灣分公司隨之成立。「諾華」取其「許諾中華，開發嶄新生命科技」的意義，反映出諾華致力於研究與發展創新產品。諾華在台灣有台北、台中、高雄三所辦事處，全體員工約七百三十人。

核心業務與產品

台灣諾華在心臟血管暨新陳代謝疾病、神經系統、皮膚疾病、呼吸系統、癌症、肝炎、器官移植、免疫系統、眼科等專業醫療領域中，提供醫藥相關產品。台灣諾華事業群包含：醫師處方用藥的創新藥物、愛爾康、疫苗、山德士學名藥與消費保健品（OTC指示用藥與動物保健）。

- Fortune World's Most Admired Companies 2013
榮登財星雜誌2013年全球最受推崇製藥企業第一名
- Cheers "Most Admired Companies for Young Generation"
榮獲快樂工作人雜誌2011年新生代最嚮往100大企業
製藥與生物科技產業第一名

諾華生醫合作備忘錄

2012年12月諾華與中央研究院簽訂合作備忘錄，合作主軸包括以下三方面：1. 學術交流和定期針對合作研發計畫進行評估；2. 共同發展轉譯醫學；3. 為生物醫藥研究產業培育人才。



諾華瑞士總部



諾華與中央研究院簽訂合作備忘錄

諾華企業公民

台灣瑞士生物醫學研討會

自2006年起，每年舉辦「台灣瑞士生技醫學研討會」(Taiwan-Swiss Biomedical Symposium)；結合諾華全球研發總部、中研院等研究機構，與行政院科技會報辦公室共同協助拓展生技產業視野，促進交流合作。



台灣瑞士生物醫學研討會

諾華世界關懷日

諾華自1996年成立以來，每年均選訂四月中的一天呼籲全球員工一起參與「諾華世界關懷日」，以落實企業公民的理念，積極回饋社會，用實際行動來關懷在地需要關懷的人。



諾華世界關懷日

諾華國際生技菁英培訓營

一年一度的「諾華國際生技菁英培訓營」由台灣諾華創辦於2004年，結合政府力量發掘與養成未來生技新秀。在行政院科顧組、經濟部及各大學的支持下進行。BioCamp從台灣出發，陸續在世界各地推廣。2007年起更擴大規模，成為諾華全球年度重要活動。



諾華國際生技菁英培訓營

新光計畫

自2003年起，每年「諾華世界關懷日」當天，邀集各部門同仁造訪海拔1,700公尺的新竹縣尖石鄉新光國小泰雅族原住民小朋友，並贊助校外教學與舉辦諾華接待家庭活動。讓這群與大自然為伍的小朋友，探索及發掘更多與台灣相關的社會事務，也提供諾華同仁關懷台灣土地的機會。



新光計畫

台瑞生技合作平台

與中央研究院及國內知名學研機構和生技公司攜手舉辦「台瑞生技合作平台」研討會促進產學界交流、協助國內生技研發成果與商業化銜接，尋找合作契機並促進台灣生技產業起飛。



台瑞生技合作平台

諾華慈善捐款計畫

由台灣諾華各部門同仁代表所組成的「台灣諾華慈善關懷委員會」，號召全體同仁愛心捐款，2014年捐助天主教少女城和十方啟能中心共420萬元，2013年捐助台灣天主教安老院和屏東青山育幼院共385萬元，2012年捐助天主教聖方濟育幼院與真善美啟能發展中心共342萬元。



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GSK spearheads drug research and development in Taiwan

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GSK entered the Taiwanese market in the 1980s. Since then we have introduced new drugs as well as advanced professional technologies and knowledge to Taiwanese doctors and patients.

葛蘭素史克自1980年代即進軍台灣市場。我們不僅為台灣的醫生和病人引進新藥，更引進領先的專業技術和知識。

Over NT\$1 billion of drug research investment in Taiwan since 2007

自2007年起在台藥物研發投資逾10億元

Since 2007, GSK has invested over NT\$1 billion in drug research and introduced over 50 large scale international clinical studies to Taiwan. The Taiwan R&D team manages more than 50 global and local clinical research studies currently, and is one of the largest R&D investors in Taiwan.

自2007年起，葛蘭素史克在台投資研發已逾10億元，醫藥團隊目前在台進行超過50項大型國際性與本地臨床試驗，為台灣研發投資第一大廠。

Continuous commitment to bring innovation and R&D investment to Taiwan

持續承諾對台創新與研發投資

GSK has established a new precedent in cooperating with the Taiwanese medical community through the establishment of clinical research and development centers at major medical centers since 2007, including National Taiwan University Hospital, Taipei Veterans General Hospital, Chang Gung Memorial Hospital-Linkou. In 2013 GSK became the first global pharmaceutical company to sign an MOU with the National Research Program of Biopharmaceuticals to expand R&D investment, and is committed to developing and introducing more new drugs and vaccines to help patients in Taiwan.

葛蘭素史克首创先例，自2007年起與台大醫院、台北榮總、林口長庚等大型醫學中心合作成立臨床研發中心。

2013年與生技醫藥國家型科技計畫簽訂合作意向書，啟動外商藥廠在台最大規模臨床試驗合作，秉持承諾將持續在台投資研發與引進新藥與疫苗幫助台灣病患。





Making the Most of Taiwan's Glorious Summer

Taiwan straddles the Tropic of Cancer at 23° 26'0", and like other places at a similar latitude it enjoys weather that ranges from sublimely comfortable to swelteringly hot.

Mount Jade – Taiwan and Northeast Asia's highest mountain peak – is a mere 2.5 kilometers north of the Tropic. Chiayi, the Taiwanese city nearest the Northern Tropic, has a climate like Miami's. In July, the daily mean temperature is 28.4 degrees Celsius (83.1 degrees Fahrenheit). More rain falls in June, July, and August than during the other nine months of the year; but because precipitation usually arrives in the form of short if dramatic afternoon showers, visitors are seldom inconvenienced.

Summer days in Taiwan are characterized by blue skies, rushing rivers, and an abundance of butterflies and wildflowers. High mountain peaks are clearly visible from the lowlands. Students enjoy long summer vacations, so urban areas and beaches are filled with a youthful vibe.

To encourage visitors to make the

most of the long days and uplifting sunshine, Taiwan's Tourism Bureau is gearing up for the 2014 edition of "Taiwan Fun on the Tropic of Cancer." Like last year, the festival offers an enticing combination of refreshing local delicacies best enjoyed in the summer, as well as exciting outdoor activities.

Each segment of the festival carries a pro-environment message, and aims to entice people who might otherwise react to high temperatures by staying indoors and cranking up the air-conditioning instead of embracing the glory of summer. The first of a series of events embodying the themes of coolness, calmness, and sustainability will be held on June 21, the date of this year's summer solstice, at the the Solar Exploration Center.

The center, in Chiayi County's Shuishang Township, is Taiwan's best-known Tropic of Cancer landmark. It is located beside the main north-south railroad line, and owes its existence to that railway. After Japan seized control of Taiwan in 1895, work on the rail link was speeded up. In 1908, when the tracks reached the Tropic of Cancer, the

colonial authorities erected a commemorative pillar there.

The pillar has been replaced several times since then, and the current building, which dates from 1995, serves as an educational center as well as tourist destination. Displays devoted to astronomy can be found inside, and within the grounds there is a replica of an ancient Chinese sundial.

In addition to the ceremony at the center, June 21 will see a cycling event with alternative 60-kilometer and 100-kilometer routes. Cyclists will set off from the oceanside Dongshi Fisherman's Wharf in the morning, then take Expressway 82 (sections of this fast, smooth road will be closed to ensure cyclists' safety) to the Solar Exploration Center before continuing on to the bucolic foothills around Zhongpu.

The number of participants is capped at 3,500, so those interested should contact the organizers, the



Kaohsiung Cycling Association (www.kacca.org.tw) or the Southwest Coast National Scenic Area (www.swcoast-nsa.gov.tw), as soon as possible.

On the same day, the solstice will be celebrated with a concert at Yuwengdao Lighthouse in Penghu County. Penghu is an archipelago of 90 islands, only 19 of which have permanent human inhabitants, and is a favorite summertime destination on account of its beaches, seafood, and picturesque coral-rock cottages. The Tropic of Cancer runs between Magong, Penghu's capital, and Wangan, one of its main islands. For information about the county, see the website of the Penghu National Scenic Area (www.penghu-nsa.gov.tw).

June 22 is also the time of the 2014 Xiuguluan River Rafting Triathlon. This is an endurance race with a difference, as rather than swim, competing teams have to navigate inflatable boats down the Xiuguluan River in the eastern county of Hualien. As soon as they get out of their boats, the triathletes will run 12.6 kilometers on Local Road 64, a route adored by cyclists because of the spectacular views it offers. The race concludes with a 44-kilometer bike dash to Taiwan's stunning Pacific Coast (eastcoast.nsa.com.tw/boat.html).



The following weekend will see the multifaceted Taiwan 235 Summer Carnival. One option for tourists is a relaxing break in Guanziling, a small town in the hills of Tainan and a popular hot-spring resort since the early years of Japanese rule. Those who prefer more vigorous activity will be drawn to the Tropic of Cancer Iron Horse Riding Tour. As you may guess from the event's name, participants exert themselves on bicycles. The tour kicks off at the Solar Exploration Center and heads east into the Alishan National Scenic Area ([www.](http://www.ali-nsa.gov.tw)



[ali-nsa.gov.tw](http://www.ali-nsa.gov.tw)).

Also on the weekend of June 28-29, one of the main events of "Taiwan Fun on the Tropic of Cancer" will be held in the sparkling new Kaohsiung Exhibition Center, located near the oceanfront in Taiwan's second city. As well as musical performances, fun DIY activities, the Sun Fair will feature seasonal foods, including a delicacy few Westerners will have seen or tried: *aiyu* jelly. This dessert made by soaking and squeezing a kind of fig (*Ficus pumila* var. *awkeotsang*), it goes down especially well on sizzling afternoons, being neither too dense nor too sweet. On the evening of June 28, tourists are invited to the "Starlight Cinema" when there will be an outdoor showing of the acclaimed environmental documentary "Beyond Beauty: Taiwan from Above." Those attending will be asked to turn off their electronic devices, relax in the evening breeze, and enjoy the company of those around them.


Meanwhile, in the East Rift Valley National Scenic Area (www.erv-nsa.gov.tw), indigenous dancing in full aboriginal costume will be on display. Among Taiwan's 14 Austronesian tribes are the Amis people, the original inhabitants of a broad swath of eastern Taiwan. If you arrive in Taiwan too late to catch the performances that form part of "Taiwan Fun on the Tropic of Cancer," you will still have the chance to view the harvest festivals that various Amis

villages hold throughout the summer, featuring traditional singing and dancing as well as feasting.

Interest in watersports has grown exponentially in Taiwan in recent years, and that passion will be evident at Lotus Pond in Kaohsiung City on June 28-29. This urban lake hosted the waterskiing competition during the 2009 World Games, and the sport will return in the form of cable skiing, in which the skier's handle is pulled by an electrically-powered cable rather than a speedboat.

Through the months of June, July, and August, "Taiwan Fun on the Tropic of Cancer" will continue with butterfly-appreciation activities, beach sculptures (the artists will use not only sand but also salt, which for centuries was harvested along Taiwan's southwest coast), and a series of events highlighting different aspects of Penghu County.

Summertime treats include the mangoes that grow so well in the Siraya National Scenic Area, Chiayi County's watermelons, and Penghu's purple-hued prickly-pear ice cream.

For more details about "Taiwan Fun on the Tropic of Cancer," plus a free smartphone app, go to the festival's official website: www.taiwan235n.tw. General travel information about Taiwan can be obtained from the website of Taiwan's Tourism Bureau (www.taiwan.net.tw), or by calling the 24-hour tourist information hotline 0800-011-765 (toll free within Taiwan). 



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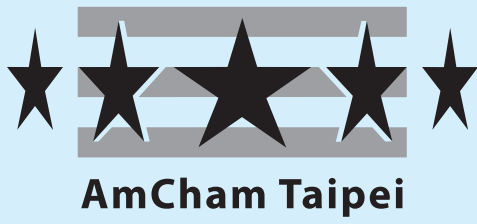


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The annual *Taiwan White Paper* is written and published by the American Chamber of Commerce in Taipei (AmCham). It includes an overall assessment of Taiwan's business climate, a review of the status of last year's priority issues, and statements of 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 1,000 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.

Taiwan Commits to Trade Liberalization

A WELCOME CHANGE OF COURSE

Last year's *White Paper* cautioned that Taiwan was at a "Crossroads," facing significant competition from other East Asian nations, and that decisions made in the coming 12 months could either move Taiwan toward long-term prosperity or relegate it to economic marginalization. The Chamber expressed concern that Taiwan's regulatory approaches too often fail to conform to standard international practice and that the Taiwan government was not attacking the problem with a sufficient sense of urgency.

Happily, this is being addressed, with the Ma administration instructing officials to align regulatory practices with international norms to both reinvigorate the local economy and prepare it for entrance into international free-trade groups such as the TPP. With the cooperation of the National Development Council, Office of Trade Negotiations, and other agencies, more and more of the Chamber's longstanding *White Paper* issues have begun to receive unprecedented attention, in some cases leading to significant breakthroughs.

Major positive developments of the past half-year include:

- **Investment policy.** Officials have agreed to undertake a series of reforms, including the dropping of several incongruous criteria previously used to evaluate Private Equity investment applications, to make the system more transparent, predictable, and efficient.
- **Intellectual Property Rights.** Following passage of a strengthened Trade Secrets Act in 2012, measures are being adopted to bolster enforcement, such as enactment of amendments to the Intellectual Property Case Adjudication Act (IPCAA) and a proposal to grant immunity in trade secret cases.
- **Pharmaceutical IPR.** The Taiwan Food and Drug Administration (TFDA) has pledged to establish a Patent Linkage system to prevent generics from reaching the market while the original drug is still under patent and has agreed to study the extension of Data Exclusivity provisions.
- **Cross-border data flow.** Taiwan has abandoned plans to require foreign banking institutions and insurance companies to handle all their data processing in Taiwan instead of using centralized regional facilities.
- **Banking.** Taiwan's Financial Supervisory Commission has relaxed restrictions on Offshore Banking Units, promoted Taiwan as an offshore RMB center, and enabled the provision of fixed-income products to onshore institutional investors.
- **Education.** The Free Economic Pilot Zone (FEPZ) bill currently before the Legislative Yuan would make it possible for prestigious overseas universities to establish centers in Taiwan.
- **Technical Barriers to Trade.** Taiwan has taken concrete steps to remove TBTs in several areas.
- **Chiropractic.** Meaningful dialogue is taking place to seek a way to legitimize the profession in Taiwan.
- Progress has also been made in a number of other of other business sectors, including Capital Markets, Manufacturing, Medical Devices, Telecommunications, and Taxes.

STILL WORK TO BE DONE


But the recent positive trends have not been universally apparent across all sectors. Exceptions include:

- **Healthcare.** Unreasonable pricing policies are discouraging pharmaceutical and medical device companies from launching innovative new products in Taiwan. To meet healthcare needs in the face of a rapidly aging population, the government should increase overall health expenditures from the current 6.6% of GDP to 7.5%.
- Well-intentioned but impractical initiatives in consumer protection are damaging Taiwan's attractiveness to business without much actual benefit to consumers.
- Certain enforcement regulations for the amended Food Safety and Sanitation Act are based on some basic misunderstandings.
- Proposed regulations governing cosmetics, drawn from regulatory regimes around the world, lack internal consistency and could be deterrents to trade.
- A proposed Dispatch Labor Protection Law aims at protecting worker rights, but would seriously reduce employers' flexibility in managing human resources.
- Some agricultural issues, especially related to beef and pork imports, are still stalled.

ASSURING SUFFICIENT ENERGY SUPPLY

- Taiwan's ability to supply sufficient electricity to meet future demand still remains uncertain.
- Passionate opposition to the 4th Nuclear Power Plant makes it increasingly unlikely that the plant will ever be operated, removing a significant amount of power capacity from future supply. All other options also have downsides: renewable energy is inappropriate for baseload power, coal burning raises pollution issues, and LNG is both costly and requires an extensive storage infrastructure.
- The Chamber recommends that Taiwan utilize a balanced combination of energy sources, including nuclear and renewable. It also urges the government to engage in more effective public communication to help citizens understand the potential consequences of the energy decisions Taiwan will have to make.

BRIDGES TO THE WORLD ECONOMY

- Taiwan's high-level of education and strong foundation in technology-oriented industries should be leveraged to encourage innovation and create a more nurturing environment for startups.
- President Ma's decision to prioritize regional and global trade pacts, especially the TPP, are steps in the right direction, but more needs to be done and this year's momentum needs to be maintained.
- The U.S. and Taiwan should pursue a Bilateral Investment Agreement to further strengthen the bilateral economic relationship and demonstrate Taiwan's commitment to trade and investment liberalization. 

台灣承諾進行貿易自由化

令人振奮的新契機

去年在《2013年台灣白皮書》中，以「台灣經濟何去何從」為題提醒台灣當局，當下面對其他東亞國家激烈競爭，接下來12個月所做的決策，倘若無法使台灣提升競爭優勢，確保國家長久的繁榮，就極可能會令台灣的經濟面對邊緣化的狀況。而台灣法規經常悖離一般國際慣例，政府卻不認為有必要儘速解決此問題，本商會對此深表關切。

可喜的是，馬政府正視到此問題並指示所有政府部會檢討現行作法，找出嚴重悖離全球標準的地方，不只是為了替國內經濟注入新活力，同時也是為台灣加入尚在籌備的跨太平洋夥伴協議（TPP），以及其它重要國際貿易組織預做準備。在國家發展委員會及其法制協調中心的積極協助下，越來越多長久以來一再被《白皮書》提及的議題，逐步開始獲得前所未有的重視，有些議題甚且出現重大突破。商會也同時透過諸如經濟部談判代表辦公室等管道在這些議題上進行溝通並取得良好的績效。

針對過去半年來的重大正面發展，茲舉數例如下：

- **投資政策**：台灣官員現在同意推行一連串改革，將可能實現私募基金委員會的大部分要求，包括取消過去評估私募基金投資申請的數項不合宜標準，讓外資的審批程序更加透明、可預測和有效率。
- **智慧財產權（IPR）**：經過修訂強化的營業秘密法在2012年頒布，進而採取了更嚴苛的罰則，例如智慧財產案件審理法修正案的通過，以及在營業秘密法審判中准予證人豁免的權力。
- **藥品智財權保護**：衛生福利部食品藥物管理署承諾建立藥品專利連結系統，防止學名藥在原廠藥享有專利期間上市，並同意研議將資料專屬權條款擴充。
- **資訊自由流通**：台灣放棄過去要求外商銀行和保險業者必須在台灣進行所有資料處理業務、不得轉由區域性集中處理的計畫。
- **銀行**：金管會鬆綁了國際金融業務分行（OBU）業務、促進台灣成為人民幣離岸中心，以及使國內銀行可提供機構投資人固定收益產品。
- **教育**：自由經濟示範區法案可能就此開放知名海外教育機構來台設立據點。
- **技術性貿易障礙（TBT）**：台灣在移除這些障礙上，已有多方具體進展。
- **脊骨神經醫學**：在給予脊骨神經醫師明確法律地位的議題上首度和台灣政府進行有意義的對話。

其它出現值得注意進展的領域包括：資本市場、製造業、醫療器材、電信和稅務。

尚待努力之處

商會也必須指出最近的正面發展並未普及到各個領域。比方說：

- **醫療保健相關行業（藥品和醫療器材）**在訂價方面都同樣面臨很大的壓力，因此業者對於在台灣推出創新產品感到猶豫。為了因應急速老化的台灣社會醫療需求，台北市美國商會敦促台灣在醫療方面的總支出在國內生產毛額所占比例應從目前的6.6%增加到7.5%。
- 多項為保護消費者權益但卻不甚實際的施行細則，已為台灣競爭力造成負面影響。
- 食品衛生管理法修正案的執行細則中某些條文是基於誤解而訂立的。
- 部分擬議中規範化妝品業的管理辦法，是選取眾多國家的管理制度，以致於新的整體架構有欠缺一致性之顧慮，卻未對消費者提供實質利益。
- 正在審議的派遣勞工保護法草案目的在保障勞工權益，這是合宜的做法，但草案有些地方造成太多限制，將嚴重限縮雇主管理人力資源的彈性。
- 有些農業問題，特別是牛肉和豬肉對台灣的進口，依然對美台貿易關係造成重大困擾。

確保能源供應無虞

- 面對未來各種電力需求，台灣是否能提供足夠的電力方向並不明確。
- 從台灣內部激烈的反核運動看來，核四廠運轉的可能性越來越低。這使得台灣未來電力供應的可靠性出現很大疑慮。其他選項也各有其缺陷：再生能源不適合基本負載發電模式，燃煤火力發電廠存在污染的問題，液化天然氣價格高昂且需要一個完善的儲存配套設施。
- 商會認為台灣需要一個平衡的能源組合，包括核能發電，或者其他的再生能源等方案。為了幫助民眾瞭解台灣未來能源決策可能的後果，政府需要與民眾進行更有效的溝通。

與世界經濟接軌

- 利用台灣高水準的教育和科技產業穩固的根基，使台灣成為創新的島嶼，創造更多可以孕育新創公司的環境
- 馬總統裁示優先爭取進入區域和全球貿易協定，特別是TPP的決定，是朝著正確方向邁進。至於目前為振興經濟，而加入國際經濟體系做得多項政策改革的成果應持續努力。
- 美國台灣應該進行雙邊投資協議(BIA)的談判及簽訂，以進一步加強雙邊經濟關係，並展現台灣對貿易和投資自由化的決心。

■

Taiwan Commits to Trade Liberalization

A WELCOME CHANGE OF COURSE

A year ago in this space, under the heading of “Taiwan at a Crossroads,” AmCham Taipei cautioned that decisions made in the coming 12 months would be crucial in determining Taiwan’s economic future. “With the right policy directions and content, Taiwan has the chance to sharpen its competitive advantages to help assure its long-term prosperity,” the 2013 *Taiwan White Paper* counseled. “Missteps or inaction, on the other hand, will relegate Taiwan to economic marginalization and block it from reaching its true potential. Other countries in the region – especially Korea, and increasingly also China – are progressing so rapidly that Taiwan may be hard-pressed to catch up unless it acts promptly and resolutely.” The Chamber expressed concern that Taiwan’s regulatory approaches too often fail to conform to standard international practice and that the Taiwan government was not attacking the problem with a sufficient sense of urgency.

Before the end of last year, however, it was already clear that the Taiwan authorities were stepping up to the challenge by recognizing, and acting on, the crucial need to align this country’s policies and practices more closely with international norms. Moreover, it was evident that the new direction was being taken not only for the sake of injecting new vigor into the domestic economy but also to prepare Taiwan for participation in key multinational trade bodies such as the nascent Trans-Pacific Partnership (TPP).

President Ma Ying-jeou and Premier Jiang Yi-huah issued instructions that every government ministry should examine its current practices to identify areas that deviate significantly from accepted global standards and to report back with plans for correcting the disparities. As a result, AmCham has noticed a marked change in attitude among many government agencies in recent months. Instead of their past habit of simply explaining why industry suggestions could not be adopted, they began to show greater open-mindedness and willingness to explore change. With the energetic assistance of the National Development Council and its Regulatory Reform Center, more and more of the Chamber’s longstanding *White Paper* issues have begun to receive unprecedented attention, in some cases leading to significant breakthroughs. Through additional channels, agencies such as the Ministry of Economic Affairs’ Office of Trade Negotiations were also instrumental in bringing issues to resolution.

Below are some of the major positive developments of the past half-year:

Investment policy. AmCham’s Private Equity Committee has engaged in numerous rounds of meetings with relevant Taiwan government organizations (chiefly the Investment Commission and Financial Supervisory Commission) to discuss ways of making the foreign-investment approval process more transparent, predictable, and efficient. Due to uncertainties about that process, the level of PE engagement in Taiwan in recent years has been among the lowest in Asia, depriving the economy of access to one of the most active channels of investment capital and management know-how. But Taiwan officials have now agreed to undertake a series of reforms that would potentially satisfy most of the PE Committee’s concerns, including the dropping of several incongruous criteria previously used to evaluate PE investment applications.

Intellectual property rights (IPR). Following up on enactment of a strengthened Trade Secrets Act with stiffer penalties in 2012, the executive branch proposed revisions to several other laws to make enforcement of the Trade Secrets Act more effective. The most important such bill, an amendment to the Intellectual Property Case Adjudication Act (IPCAA), was passed by the Legislative Yuan last month. The amended IPCAA compels a defendant in a trade-secrets or other IPR case to make a substantive defense, rather than merely denying the allegations, when the plaintiff has specified the conditions of the alleged infringement. Another enforcement tool, the ability to grant immunity in trade-secret cases, is expected to be written into law when the Legislative Yuan takes up a proposed amendment to the Witness Protection Act.

Pharmaceutical IPR protection. The Taiwan Food and Drug Administration (TFDA) under the Ministry of Health and Welfare (MOHW) has pledged to establish a Patent Linkage system, similar to the U.S. government’s Orange Book in preventing generics from reaching the market while the original drug is still under patent. TFDA will first begin work on setting up the necessary patent database. In a related development, TFDA has agreed to study the extension of its Data Exclusivity provisions to cover new indications, new uses, and biologic drugs. Both Patent Linkage and expanded Data Exclusivity had been *White Paper* issues for a decade, without much movement until this year.

Free flow of information. During the high-level trade talks with the United States held in April under the Trade and Investment Framework Agreement (TIFA), the Taiwan side committed to ensure that cross-border data flows are not impeded. The assurance means that Taiwan will not pursue previous plans to require foreign banking institutions and insurance companies to handle all their data processing in Taiwan instead of using centralized regional facilities. Requiring the establishment of domestic data centers would have been an extremely costly undertaking for some companies.

Banking. Over the past year, the Banking Committee reports major progress by the Financial Supervisory Commission in relaxing restrictions on Offshore Banking Units, developing the Formosa bond market and otherwise promoting Taiwan as an offshore RMB center, and enabling the provision of fixed-income products to onshore institutional investors.

Education. From the time that AmCham's Education & Training Committee was organized in 2005, one of its primary concerns has been the onerous requirements preventing foreign universities from establishing their own branch campuses or academic programs in Taiwan. The Free Economic Pilot Zone (FEPZ) bill currently before the Legislative Yuan would provide a channel to circumvent those regulations in worthy cases, potentially opening the way for prestigious overseas educational institutions to establish centers in Taiwan as they have done in other regional locations such as Singapore, Hong Kong, and China. AmCham urges the legislature to pass the FEPZ authorization bill as soon as possible; besides its impact in education, the project will enhance Taiwan's overall trade liberalization and contribute to reinvigorating economic growth.

Technical barriers to trade (TBTs). A special bilateral working group set up at the 2013 TIFA Council meeting to resolve TBTs has led to concrete progress on several fronts. As one example, Taiwan agreed to drop its requirement that every pair of socks in a multipack must be labeled individually. As AmCham's Retail Committee repeatedly pointed out in its *White Paper* submissions, the regulation added to business costs without bringing any substantial benefit to the consumer. The TBT initiative also led to smoother implementation by the Ministry of Labor and Environmental Protection Administration of new chemical-ingredient registration systems, and Taiwan's acceptance of international testing methodology for imported ceiling tiles.

Chiropractic. Another long-term *White Paper* issue has been the lack of recognition of doctors of chiropractic who were trained and licensed abroad (usually in the United States), but who in Taiwan have been consigned to the status of "folk healers" and sometimes subjected to harassment. Currently Taiwan is one of only two countries in the world (the other is South Korea) that grants chiropractors neither

explicit legal standing nor de facto acceptance. After many years without any progress on this issue, in recent months the government has explored some possible solutions. Although no mutually acceptable outcome has yet emerged, it is encouraging that a meaningful dialogue is taking place for the first time.

Among other areas of noteworthy progress were:

- **Telecommunications:** the National Communications Commission's successful auction and release of spectrum to support 4G mobile broadband.
- **Medical devices:** amendment of the law so as to ease restrictions on the advertising of medical devices, and measures adopted by the TFDA to accelerate the code-assigning process for devices to qualify for patient self-payment.
- **Manufacturing:** improved communication by the Taiwan Power Co. with major electricity users to alert them to potential upcoming incidents of power interruption.
- **Tax:** agreement by the Ministry of Finance to grant tax exemption on royalties paid for foreign patents and know-how.
- **Capital markets:** clarification by the Financial Supervisory Commission of how the financial industry should apply the notice and consent provisions of the Personal Information Protection Act.

During the nearly two decades in which AmCham Taipei has been publishing the annual *Taiwan White Paper*, there has rarely been a year in which so many constructive developments could be cited.

STILL WORK TO BE DONE

At the same time, it is also important to note that the recent positive trends have not been universally apparent across all sectors. Some agricultural issues, for example, especially related to beef and pork imports into Taiwan, continue to be major irritants in the U.S.-Taiwan trade relationship. But AmCham realizes that due to the political sensitivity of these issues in Taiwan, they may still take some time to resolve. In the meantime, we urge the Taiwan government to devote concerted attention to these other critical areas to prevent them from developing into sticking points in bilateral economic relations:

Pharmaceuticals and medical devices. Although the cost-control methods utilized by the National Health Insurance Administration (NHIA) are different for pharmaceuticals and medical devices, both industries are under such intense pricing pressure that companies may hesitate to launch new and innovative products in the Taiwan market, to the detriment of patients and doctors. The Pharmaceutical position paper elsewhere in this volume cites several unreasonable drug-pricing policies that are discouraging multinational research-based companies from increasing their

business activity in Taiwan. One example is the inexplicably narrow definition of patent protection, which regards a drug as “off-patent” – and therefore subject to a steep price cut – if its compound patent has expired, even when it continues to hold other types of valid patents recognized by the Taiwan Intellectual Property Office.

Another example is the way the pilot Drug Expenditure Target (DET) system – originally supported by industry as a way to bring about greater predictability – has been skewed in the second year to impose an even greater pricing burden on pharmaceutical companies. Instead of calculating the new target according to the actual expenditure the year before, NHIA now proposes to base it on the prior year’s target. The inevitable result will be a lower target for the new year and a widened gap between the target and the actual expenditure, with industry taking responsibility for making up the gap through price cuts. This method of calculation is inequitable, creating a kind of double jeopardy, since industry has already covered the difference between the previous year’s target and actual expenditure.

For its part, the medical device industry is asking for simplification of the current complicated and drawn-out registration process and for adoption of a more efficient system for enabling products not covered by reimbursement to be approved for use on a patient self-payment basis.

Taiwan is on the verge of becoming an “aged society.” It will reach the threshold for that designation in another three years when those aged 65 or older account for 14% of the population, and it is expected to be a “super-aged society” (20% aged 65 or older) by 2025. To meet the future healthcare needs of the elderly, it will be impossible to rely on cost-control measures alone to keep the NHI system solvent while absorbing new medical technologies. The answer must be to provide more financial resources. Currently Taiwan devotes just 6.6% of GDP to healthcare spending, significantly lower than most developed countries. According to the World Bank, the comparable 2012 level in Japan was 10.1% and in South Korea 7.5%. AmCham urges the government to steadily raise the expenditure on healthcare in its budget requests over the coming several years, and we call on the Legislative Yuan to support that increase, targeting the 7.5% of GDP level now expended by South Korea.

Consumer protection. In recent years, there has been a series of initiatives that may be well-intentioned in seeking to protect consumer rights, but which go so much further than necessary that they threaten to damage Taiwan’s attractiveness as a place for doing business. The latest example is a proposed amendment to the Consumer Protection Act that would even undermine Taiwan’s reputation as a society of rule of law. It would grant wholly inappropriate police powers to administrative officials to monitor whether companies are adhering to terms and conditions in “standard contracts,” defined as including

posters, brochures, and advertising.

Food industry. Although some of the most problematic elements of the amended Food Safety and Sanitation Act were deleted before the bill was passed earlier this year, difficulties with the new law’s implementation still remain. As discussed in the Retail Committee’s position paper, the enforcement regulations proposed for governing the advertisement and promotion of “foods not suitable for children over a long period of time” take standards meant as guidelines for one’s total daily diet and misapply them to specific foods. Trying to put such unworkable regulations into practice would cause chaotic market conditions.

Cosmetics. Also under the Retail Committee, AmCham members in the cosmetics industry have multiple concerns arising from Taiwan’s current plans to transform the regulatory framework for cosmetics products. In some cases, the problem is a regulatory approach that combines the most stringent elements of the systems of several different countries, creating internal inconsistencies. In other instances, Taiwan has borrowed the methodology of another jurisdiction, but only partially, omitting other portions that are crucial to the coherence of the regulation. One such example is a proposed set of rules banning or restricting the use of certain cosmetic ingredients. While based largely on the EU’s extremely rigorous standards, it neglects to incorporate the provision in the European system allowing items to be removed from the banned or restricted list if they are later proved safe.

Human resources. A proposed Dispatch Labor Protection Law being reviewed by the Executive Yuan properly aims at protecting worker rights, but in certain respects would over-regulate to the point of seriously reducing employers’ flexibility in managing human resources. For example, the draft would impose an across-the-board cap on dispatch workers at 3% of a company’s total workforce, without considering that such a sweeping provision would seriously impact particular industrial sectors. We suggest setting a less rigid ceiling that takes the needs of individual industries into account.

ASSURING SUFFICIENT ENERGY SUPPLY

Besides the provision of regulatory rationality, consistency, efficiency, and transparency, business also looks to government to ensure adequate infrastructure to enable the economy to operate smoothly. In many respects – such as opening the Port of Taipei in northern Taiwan, improving the freeway system, and preparing to build a third terminal at Taoyuan International Airport – Taiwan has done well in meeting current needs and anticipating future demand.

A major exception is the energy sector. In the past several years’ *White Papers*, AmCham urged the Taiwan government to present the public and business community with a clear roadmap of how it plans to provide sufficient electrical power for the coming decade under various contingencies.

But rather than growing more certain over the past year, the path forward has become less so. Even if construction is completed on the fourth nuclear power plant, known as Longmen, the passionate domestic anti-nuclear movement is making it increasingly unlikely that the facility will ever be put into operation – which raises serious questions about the reliability of Taiwan’s future power supply.

AmCham recognizes the high degree of concern in Taiwan about nuclear safety, especially after the Fukushima disaster in Japan, and the Chamber does not consider itself a proponent of nuclear power *per se*. But the reality is that nuclear energy currently accounts for 19% of Taiwan’s power generation (half the level of two decades ago, but still sizeable), and the Longmen plant was counted on to satisfy projected growth in consumption. Without the new plant it would be almost impossible – without grave damage to the economy and inconvenience to power users – to close down Taiwan’s existing three nuclear plants as they reach the end of their scheduled lifecycles.

No ideal solution exists to Taiwan’s energy challenge. Renewable sources such as solar and wind power should definitely be promoted, but they can never make up a major portion of Taiwan’s energy mix. Since the sun does not shine or wind blow all the time, the inconsistency of their availability makes them particularly unsuitable for the all-important baseload power generation. Coal-fired plants encounter strong environmentalist and not-in-my-backyard (NIMBY) objections, while liquefied natural gas (LNG) is a relatively clean fuel but very expensive, with implications for the future competitiveness of Taiwan industry. LNG is also hard to store, reducing the level of energy security because of the limited inventory that can be maintained.

Since it can take up to a decade or more to plan, design, and construct a power plant, Taiwan cannot afford to wait much longer before finalizing concrete strategies for future power development. Under these circumstances, we believe Taiwan will need a balanced combination of fuel sources, including a continuing contribution from nuclear energy for some time to come. To help citizens understand the potential consequences of the energy decisions Taiwan will have to make, the government will need to engage in more effective public communication, especially in laying out the possible alternatives and their ramifications as clearly and objectively as possible. The business community and other stakeholders must also play their part in this candid exchange of views. Without adequate clarity about the future availability of energy resources, industry will be reluctant to enter into new investment projects, with unfortunate consequences for economic growth and job creation.

BRIDGES TO THE WORLD ECONOMY


If Taiwan can complete the job of putting its regulatory house in order, as well as find ways to assure energy

sufficiency well into the future, it will be well-positioned to regain much of the economic momentum it has lost in recent years. A few other matters will also require attention, however. One is to leverage Taiwan’s high level of education and strong foundation in technology-oriented industries to turn this society into an island of innovation, sharpening Taiwan’s comparative advantages in a whole host of fields. More must be done, for example, to create a more nurturing environment for start-up companies, enabling Taiwan to take full advantage of the considerable talent and ideas that are spawned here. AmCham has adopted “innovation” as one of its main programming themes in the coming year as a way to help in this effort.

Another key piece of the puzzle will be to advance Taiwan’s integration into the international economy. If the TPP becomes a reality, Taiwan’s prompt participation will be vital if it is to avoid finding itself economically isolated, with its exporters facing higher tariff and non-tariff barriers than its rivals in many markets. South Korea, for example, has not only forged free trade agreements with the United States and EU, but is in the process of negotiating pacts with China and ASEAN.

AmCham is pleased that President Ma is no longer talking about an eight or ten-year timeframe for TPP entry, but rather is aiming at accession “as soon as possible.” The regulatory reforms and liberalization initiatives such as the FEPZs that the government is undertaking are concrete demonstrations of Taiwan’s seriousness about readying itself for a TPP candidacy. But “as soon as possible” is still likely to be at least a few years away, and it is critical that this year’s momentum be maintained in the meantime.

To sustain that impetus, AmCham urges both the U.S. and Taiwan governments to make the launching of a Bilateral Investment Agreement (BIA) their top bilateral priority. The idea of a U.S.-Taiwan BIA was first announced in 2006, but was soon overshadowed by the imbroglio over beef, as well as technical complications that appear to be no longer an issue. With the TIFA process now resumed and proceeding smoothly, and with Taiwan embarked on the road to reform, the time has come to move ahead in earnest on a BIA. Such an agreement could facilitate the flow of investment in both directions, while serving as a perceptible signal of the continued close ties between Taiwan and the United States. Given the increasing uneasiness among a large portion of the Taiwan population about growing economic dependence on China – as evidenced by the difficulties the Ma administration has faced in mustering support for the Cross-Strait Agreement on Trade in Services – the BIA could also serve as a counterweight that helps Taiwan to diversify its economic activity and instills a greater sense of confidence in the Taiwan public about their economic future.

AmCham looks forward to the start of BIA negotiations as a steppingstone to the eventual acceptance of Taiwan as a TPP member. 

台灣致力貿易自由化

令人振奮的新契機

台北市美國商會去年在《2013年台灣白皮書》中，以「台灣經濟何去何從」為題提醒台灣當局，接下來12個月所做的決策對決定台灣經濟前途至關重要。當時《白皮書》提出的忠告是：「如果政策的方向與內容正確，台灣將有機會提升競爭優勢，確保國家長久的繁榮。但如果政策錯誤或者裹足不前，台灣的經濟將會邊緣化，真正的潛能無法發揮。區域內的其它國家在快速發展——尤其是南韓，中國的發展速度也越來越快，因此台灣若不快速採取果斷的行動，將會很難追趕。」台灣法規經常悖離一般國際慣例，政府卻不認為有必要盡速解決此問題，本商會對此深表關切。

不過台灣當局在去年底顯然已察覺，讓國家政策和作法更貼近國際規範極為重要，因而採取行動，加速因應挑戰。而且此一轉變顯然不只是為了替國內經濟注入新活力，同時也是為台灣加入尚在協商的跨太平洋夥伴協議（TPP）與其它重要國際貿易組織預做準備。

馬英九總統和行政院長江宜樺指示所有政府部會檢討現行作法，找出嚴重悖離全球標準的地方，然後向中央提報矯正計畫。本商會察覺許多政府機關的態度在最近數月出現顯著轉變，一改過去只在口頭解釋無法採納業界建言原因的作法，開始以更開放的態度與意願來研究改變之道。在國家發展委員會及其法制協調中心的積極協助下，越來越多長久以來一再被《白皮書》提及的議題開始獲得前所未有的重視，有些議題甚至出現重大突破。商會也同時透過諸如經濟部談判代表辦公室等管道進行協調解決議題。

針對過去半年來的重大正面發展，茲舉數例如下：

投資政策：本商會私募基金委員會和相關台灣政府機構（主要是經濟部投審會和金管會）多次開會，討論如何讓外資的審批程序更加透明、可預測和有效率。由於審批過程充滿不確定性，近年私募基金對台投資量為亞洲次低，讓台灣經濟失去可以取得投資資本和管理技術的活躍管道。不過台灣官員現在同意推行一連串改革，可能足以滿足私募基金委員會的大部分要求，包括取消過去評估私募基金投資申請的數項不合宜標準。

智慧財產權（IPR）：經過修訂強化的營業秘密法在2012年頒布，採取更嚴苛的罰則，接著台灣政府提案修改其它數項法律，以提高營業秘密法的執法成效。其中最重要的就是智慧財

產案件審理法修正案，已在上月獲得立法院通過。修改後的此一修正案強制要求，當營業秘密官司或其它智慧財產權案的原告具體提出侵權行為指控後，被告須提出具體答辯，而非只是否認指控。另一項執法工具——法官在營業秘密法審判中准予證人豁免的權力，預料在行政院提出證人保護法修正案時會一併明文列入。

藥品智財權保護：衛生福利部食品藥物管理署承諾建立藥品專利連結系統，亦即類似美國政府防止學名藥在原廠藥享有專利期間上市的橘皮書（Orange Book）。台灣食品藥物管理署將先從建立必要的專利資料庫著手。此外該署同意研議，將資料專屬權條款擴充涵蓋新使用範圍、新用法和生技藥。過去十年來，《白皮書》一再提及專利連結系統和擴充資料專屬權議題，今年終於出現進展。

資訊自由流通：台美4月舉行貿易暨投資架構協定（TIFA）高層貿易談判時，台灣承諾會確保跨境資料流通不受妨礙。這意味台灣放棄過去要求外商銀行和保險業者必須在台灣進行所有資料處理業務、不得轉由區域中心集中處理的計畫。要求業者在台建立資料中心，對多數公司來說是成本極高的工作。

銀行：本商會銀行委員會指出，金管會在國際金融業務分行（OBU）業務鬆綁、發展寶島債市場、促進台灣成為人民幣離岸中心，以及國內銀行可提供機構投資人固定收益產品等議題上，過去一年來有顯著進展。

教育：本商會教育及訓練委員會自2005年成立以來，最關切的議題之一就是台灣制定種種條件，不讓外國大學前來設立分校或學術計畫研究。立法院目前正在審查的自由經濟示範區法案，將排除這些規定阻礙具有價值的獲選個案來台，可能就開放知名海外教育機構來台設立據點，一如這些機構在新加坡、香港和中國等地採取的作法。本商會敦促立法院儘快批准自由經濟示範區。這項計畫除了對教育領域有影響外，還可強化台灣整體的貿易自由化程度，有助於重振經濟成長。

技術性貿易障礙（TBT）：台美在2013年貿易暨投資架構協定聯席委員會（TIFA Council）會議中，成立雙邊特別工作小組解決技術性貿易障礙問題，至今已在數方面獲致具體進展，例如台灣同意放棄要求量販包襪子須每雙個別標示的作法。本

商會零售委員會多年來不斷在《白皮書》建言中指出，個別標示規定徒增業務成本，卻無法為消費者帶來任何實質好處。技術性貿易障礙工作小組也幫助勞動部和環保署的新化學成分將登記系統變得易於執行，並促使台灣接受以國際檢測方法檢驗進口的天花板。

脊骨神經醫學：《白皮書》長年以來不斷提到的另一個議題，就是台灣不承認在海外（通常是美國）培育並取得執照的脊骨神經醫師。這些醫師在台灣被視為「民俗治療師」，有時還會受到干預。目前全世界只有兩個國家既不給予脊骨神經醫師明確法律地位，也未實際承認他們，其中之一就是台灣，另一個則是南韓。此議題多年來毫無進展，不過台灣政府數月前開始研究一些可能的解決方案。儘管目前還未出現彼此都能接受的結果，但本商會和台灣政府首度進行有意義的對話，確實可喜。

其它出現值得注意進展的領域包括：

- 電信：國家通訊傳播委員會（NCC）完成4G行動通訊頻譜招標與釋出作業。
- 醫療器材：修法放寬醫療器材廣告限制，同時食品藥物管理署加速器材健保代碼編派程序，以利病患自費使用。
- 製造業：台電和主要電力用戶的溝通改善，一旦可能發生電力中斷事故，台電會預先警告用戶。
- 稅務：財政部同意外國專利及設計生產技術權力金免稅。
- 資本市場：金管會釐清金融業落實個人資料保護法中有關通知與同意條文的應有作法。

本商會年年出版《台灣白皮書》已將近二十年，但很少像今年這樣，有如此眾多的建設性發展可供《白皮書》列舉。

尚待努力之處

在此同時，也必須指出最近的正面發展並未普及到各個領域。比方說，有些農業問題，特別是牛肉和豬肉對台灣的進口，依然對美台貿易關係造成重大困擾。但台北市美國商會瞭解，這些議題在台灣具有政治敏感性，可能還需要一些時間才能解決。在農業問題解決之前，我們促請台灣政府各部會同心協力關注以下這些重要的領域，避免這些問題演變成雙邊經貿關係的障礙：

藥品和醫療器材。中央健康保險署對藥品和醫療器材所採取的節省成本措施有所不同，但這兩個行業在訂價方面都同樣面臨很大的壓力，因此業者對於在台灣推出創新產品感到猶豫，而這將不利於病人和醫師。本期刊登載了製藥業的立場說明書，其中舉出好幾項不合理的藥品訂價政策，並指出這些政策使得以研發新藥為主要業務的跨國公司不願擴充在台灣的營運。比方說，專利保護的定義狹窄到令人難以理解。一項藥品即使擁有台灣智慧財產局承認的其他有效專利，只要它的化合物專利到期，這個藥品就被認定為過了專利保護期，因此價格要大幅降低。

另一個例子是試辦中的藥費支出目標制度。業界原本支持這個制度，因為它便於各界預期未來藥價走向，但制度實施到第二年便開始走樣，導致製藥公司在藥價上承擔更多壓力。健保署計劃不再依前一年的實際支出計算新的目標，而是以前一年

的目標當做基準。結果必然是新年度的目標會比較低，目標與實際支出之間的差距也會加大，業者則必須藉降低價格填補這個差距。這種計算方式不公平，對業者形成雙重懲罰，因為前一年的目標和實際支出之間的差距，也是由業者來補足。

至於醫療器材業者，他們要求將目前複雜而且漫長的登記程序簡化，採用較有效率的制度，以便於健保不給付的產品能獲得許可，提供給自費的病人使用。

台灣即將成為「高齡社會」。再過三年，台灣65歲（含）以上人口將達到總人口的14%，就算進入高齡社會，到了2025年，則將進入「超高齡社會」（65歲以上人口占總人口比例達20%）。為因應未來老年人口的醫療需求，全民健保制度要吸收新的醫療技術，就不可能光靠管控成本的措施避免破產。正確的做法是提供更多財政資源。目前台灣在醫療方面的總支出在國內生產毛額所占比例只有6.6%，遠低於多數已開發國家。依世界銀行的資料加以換算，日本在2012年的比例是10.1%，南韓為7.5%。台北市美國商會敦促政府在未來幾年的預算中穩定增加醫療支出，也促請立法院支持，讓醫療支出能跟南韓已經達到的水準一樣，占國內生產毛額的7.5%。

消費者保護。台灣近年有多項措施，出發點雖然是為了保護消費者權益，但程度遠超出實際需要，以致於影響企業在台灣經商的意願。最近的例子是消費者保護法的修正草案，甚至可能損及台灣做為法治社會的名聲。根據這項草案，行政官員將獲得完全不合宜的警察權，可以監督各企業是否遵守「定型化契約」當中的各項規定，而草案言明，定期化契約包括海報、商品型錄和廣告的內容。

食品工業。食品衛生管理法修正條文今年稍早通過時，當中有些問題最大的部分遭到刪除，但修正後的法律在執行時仍有些困難。商會零售委員會的立場說明書當中提到，食品衛生管理法施行細則有關「不適合兒童長期服用食品」的廣告和促銷的部分，誤將單一消費者每日整體攝取量標準的建議，用在個別的食品之上。若將這種行不通的規定付諸執行，會在市場上製造混亂的局面。

化妝品。這也是零售委員會的議題。台北市美國商會的化妝品製造業會員，對於台灣目前改革化妝品管理架構的計畫有諸多關切。部分問題在於擬議中的管理方法，是選擇好幾個國家的管理制度當中最嚴格的部分，以致於新的架構本身有些不一致的地方。有些問題則來自台灣在採用其他國家的管理制度時，只採用了一部分，而捨棄對於整體的一致性來說十分重要的部分。其中一個例子是，擬議中的規定包括禁止或限制使用某些化妝品成分。這套規定大致根據歐洲聯盟非常嚴格的標準，但在歐盟的管理制度下，遭到禁止或限制的項目如果後來證明安全無虞，就會從禁止或限制名單中剔除，但台灣卻沒有採納這部分規定。

人力資源。行政院正在審議的派遣勞工保護法草案目的在保障勞工權益，這是合宜的做法，但草案有些地方造成太多限制，將嚴重壓縮雇主管理人力資源的彈性。比方說，草案規定各行各業派遣人力不得超過公司總員額的3%，沒有考慮到這個全面性的規定將嚴重衝擊特定產業。我們建議訂定較為寬鬆的上限，將個別產業的需求納入考量。

確保能源供應無虞

除了管理制度要合理、一貫、有效率而且透明化，企業也希望政府確保基礎設施能夠讓經濟順利運轉。在許多方面，台灣確實能夠達到目前的需求，並針對未來的需求做好準備，例如在北台灣開闢台北港、改善國道系統和準備在桃園國際機場興建第三航廈。

能源產業是個明顯的例外。台北市美國商會在過去好幾年的白皮書當中，都敦促台灣政府向民眾和企業界提出明確的計畫，說明在未來10年各種可能發生的情況下，要如何提供足夠的電力。但在過去一年，未來的道路並未更加明確，反而是更不清楚。即使稱為「龍門」的第四核能發電廠完工，從台灣內部激烈的反核運動看來，核四廠運轉的可能性越來越低。這就使得台灣未來電力供應的可靠性出現很大疑慮。

台北市美國商會體認台灣對於核能安全的高度關切，特別是在日本福島核災之後，而且美國商會並不認為是核能的提倡者。但台灣目前發電量有16%是靠核能（只達20年前的一半，但比重依然相當大），這是個事實。龍門發電廠原本是要因應預估的電力稍耗成長。如果沒有這座電廠，也沒有一個完善的應變措施，要想和平地將使用年限即將到期現存的三座核電廠淘汰，又不要讓經濟受到重創，民生不受干擾是完全不可能的。

台灣面臨的能源挑戰，並無理想的解決方法。太陽能和風力等再生能源應該推廣，但這類能源永遠無法在台灣占很大比重。畢竟不可能天天都是大晴天，風也不會吹個不停，這個時有時無的特性，使得太陽能和風力特別不適合重要性很高的基本負載發電模式。燃煤火力發電廠面臨環保團體和各地方強大的反彈，液化天然氣的污染較低，但價格十分高昂，可能影響台灣產業未來的競爭力。而且液化天然氣難以儲存，因此存量會受到限制，能源安全程度會隨之降低。

發電廠從計畫、設計到實際建造所需的時間可能長達10年，因此台灣必須在短期內完成未來電力發展的具體策略。在目前的情況下，我們認為台灣需要一個平衡的能源組合，包括在未來一段時間繼續使用核能發電。為了幫助民眾瞭解台灣未來能源決策可能的後果，政府需要與民眾進行更有效的溝通，包括盡可能清楚而客觀地說明可能的選項以及各個選項可能的影響。企業界和投資人也會參與這個坦誠的溝通。如果未來能源資源要從哪裡來的問題沒有明確答案，產業會不願意展開新的投資計畫，而這對經濟成長和創造就業將帶來不利後果。

與世界經濟接軌

如果能完成法規的改革，並找出方法確保未來能源長期不虞匱乏，台灣過去幾年所失去的經濟動力，就可以恢復一大部分。但還有幾件事情需要注意。一是利用台灣高水準的教育和科技產業穩固的根基，使台灣成為創新的島嶼，提升台灣在許多領域的競爭優勢。比方說，必須做出更多努力，以創造更多可以孕育新創公司的環境，讓台灣可以充分利用許多在地的人才和構想。台北市美國商會已將「創新」列為未來一年計畫的主軸之一，藉以協助推動這項努力。

另一項重點是要推動台灣加入國際經濟體系。一旦TPP簽署完成，台灣的盡速加入才不致於陷於經濟孤立，出口商也才不會在許多市場面臨關稅和非關稅障礙高於競爭對手的情況。比方說，南韓不僅已經和美國及歐盟簽訂自由貿易協定，而且在與中國及東南亞國家協會洽談自貿協定。

台北市美國商會樂見馬總統不再將加入TPP的時程定到未來8年或10年，而是以「盡早」加入為目標。政府推動的法規改革和自由經濟示範區等自由化的作為，具體顯示台灣確實在為加入TPP做準備。但「盡早」還是可能至少要等好幾年。因此目前因振興經濟，為加入國際經濟體系而做得多項政策改革的成果應努力持續。

為此，台北市美國商會敦促美國和台灣政府把雙邊投資協議列為兩國關係的第一要務。美台洽簽雙邊投資協議一事最早在2007年提出，但很快因美牛銷往台灣的爭議和一些技術問題而擱置，但問題似乎已不復存在。TIFA會談已經恢復，而且進展順利，台灣也已開始改革，開始認真洽談雙邊投資協議的時機已經到來。這項協議有助於雙向投資，同時也是台美保持密切關係的明確信號。從馬政府未得到人民對服貿的支持上所遇到的困境可以意識到台灣大部分的民眾對於經濟過於依賴中國的現象明顯趨於不安。因此，台美雙邊投資協議的制定可發揮其制衡的功效，讓台灣分散其經濟活動的同時更名為台灣人民帶來對經濟前景的信心。

台北市美國商會期盼台美展開雙邊投資協議的談判，當做台灣成為TPP會員國的踏腳石。



ONLINE ACCESS

The content of the *Taiwan White Paper* is available in the Publications section on the AmCham Taipei website (www.amcham.com.tw). Back issues are also included starting from 2007.

The Publications section also contains an archive of monthly issues of *Taiwan Business TOPICS* magazine going back to 2001.



MESSAGES TO WASHINGTON

Suggestion 1. Open formal consultations with Taiwan on the feasibility of negotiating a Bilateral Investment Agreement.

The prospect of concluding a Bilateral Investment Agreement (BIA) between the United States and Taiwan is an idea whose time has come. The exceptional progress the Ma Ying-jeou government has made in recent months in liberalizing its regulatory regime has demonstrated its seriousness about making Taiwan an attractive and reliable partner for trade and investment. In addition, a U.S.-Taiwan BIA would serve the interests of both sides in facilitating the two-way flow of investment dollars, and the very process of negotiating the agreement would provide an opportunity to resolve a number of remaining issues affecting commercial activity between the two sides.

The notion of exploring the feasibility of a BIA was first raised by then American Institute in Taiwan Director Stephen Young in 2006 in his address to AmCham Taipei's Annual General Meeting, a speech that had undoubtedly been cleared with higher levels of the U.S. government. The agreement proposed was the same as what is ordinarily known as a Bilateral Investment Treaty (BIT), but in the absence of diplomatic relations between Taiwan and the United States, the pact would not be called a "treaty."

The two sides' trade negotiators proceeded to hold several preliminary discussions by digital video conference (DVC), but then a series of obstacles caused the proposal to be sidelined. A major hurdle was the friction over Taiwan's restrictions on the import of American beef. The dispute not only diminished U.S. willingness to consider any new agreements with Taiwan, but even caused the normally routine bilateral Trade and Investment Framework Agreement (TIFA) talks to be suspended for more than five years.

Other complications also arose. The U.S. government, which was in the process of reviewing and revising its model BIT, considered it inappropriate to initiate any new negotiations while that process was still underway. Further, the question was raised of whether a BIA – once negotiated and signed – would need ratification by both houses of Congress, or only by the Senate as is the case for

BITs and other treaties. State Department legal advisers had not rendered a definite opinion on the approval process, and with the end game uncertain, there was reluctance to commit the resources to move forward.

But the factors that previously held up progress toward a BIA are no longer valid. The new model BIT was unveiled in 2012, and earlier this year U.S. government lawyers communicated their decision that both the House of Representatives and the Senate should approve a BIA. At the same time, most types of U.S. beef products are now allowed into Taiwan and are selling extremely well, though AmCham is mindful that some sensitive agricultural issues are yet to be resolved, including continued import restrictions on some forms of beef as well as on pork containing the feed additive ractopamine.

We are convinced, however, that the best way to gain traction on those issues is within the context of trade negotiations. In the face of strident opposition from both farmers and consumer groups, the Ma administration had to expend immense political capital to achieve the market opening for the majority of American beef products. With the president's popular support still barely in double digits, it can be expected that the administration will continue to be reluctant to push through further action on beef and pork at this time. Rather than requiring resolution of these thorny outstanding issues as a precondition for even entering into BIA negotiations, which could well stymie the chances of gaining any concessions, it would be more effective to seek their resolution as part of a BIA package offering benefits to both sides. In any case, just as with the suspension of the TIFA talks from 2007 to 2013, it is unfair to block engagement on an initiative that would benefit the U.S. business community as a whole for the sake of leverage for a single sector. The companies that have committed the approximately US\$20 billion in U.S. investment in Taiwan deserve the protection and backing that a BIA could bring.

From an even broader perspective, negotiation of a BIA would support the U.S. "rebalancing" to Asia, recognizing and encouraging the constructive role that Taiwan plays within the region. While the United States may be

constrained in how it can interact with Taiwan on security and political matters, much more latitude exists with regard to economic issues, and it is in the interest of the United States to ensure that the development of Taiwan's economic relationship with China is balanced by growth in Taiwan's economic ties with the United States as well.

Yet another consideration is that less than two years now remain before a new government takes office in Taiwan. No matter which party is then in control, it will take months before all the high-level positions are filled, the new office-holders become fully familiar with their jobs, and new policies and programs are in place. The time to act on a BIA is now, while all signs indicate that the Taiwan government is eager – and ready – to move forward.

Suggestion 2. Support Taiwan's eventual candidacy for TPP participation.

Negotiation of a BIA would help pave the way for Taiwan's eventual acceptance for entry into the TPP by demonstrating its determination and good faith as a negotiating partner.

Assuming that the current negotiations among the 12 prospective TPP members reach a successful conclusion without long delay, active consideration will begin as to which countries and economies should be invited to take part in TPP expansion. AmCham is convinced that Taiwan has the credentials to be selected as a leading second-round candidate. As outlined in the *White Paper Overview*, in sector after sector the Ma administration is already pursuing liberalization measures to bring Taiwan in line with international best practices. In addition, Taiwan has long been a major player in world commerce, with particular strength in vital technology-oriented industries such as semiconductors and computer products. It has also played an active and constructive role in APEC. From a purely U.S. perspective, the US\$63.7 billion in two-way trade last year ranked Taiwan as our 12th largest trading partner. As a result of those factors, Taiwan has much to contribute to TPP, and its exclusion would leave a major hole in the agreement.

Further, Taiwan's economic reliance on China has grown in recent years to a level that is worrisome to many people in Taiwan. It is in the interest of neither Taiwan nor the United States to see that dependency increase any further. Taiwan's participation in TPP would help in diversifying its trade and investment as a way to counterbalance the pull from across the Taiwan Strait.

Of course, the United States is only one of the 12


prospective TPP members, but its influence is substantial. We urge the U.S. government to support Taiwan's candidacy when the time comes, and to the extent possible within the bounds of TPP-negotiation confidentiality, to help keep Taiwan apprised of developments that might impact that candidacy.

Suggestion 3. Utilize the TIFA process to full advantage.

TIFA can be a highly effective channel for ensuring close communication between the U.S. and Taiwan authorities on trade and investment issues, and the abandonment of that mechanism for five and a half years was a costly mistake. Thankfully, the TIFA Council has now resumed holding regular annual meetings, and the 2013 Council session set up two working groups dealing with investment issues and technical barriers to trade (TBTs) respectively. Due to personnel shifts and resource questions on the U.S. side, however, those working groups were late in getting started and have not fulfilled their potential.

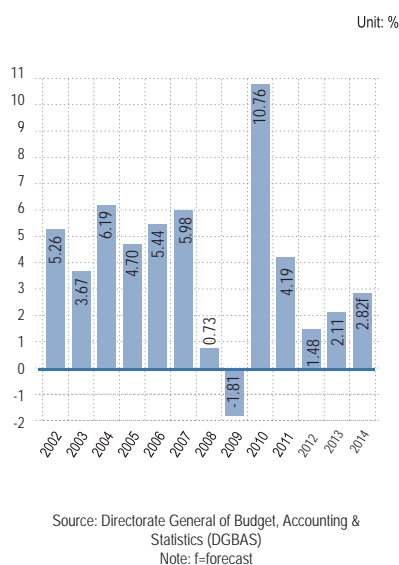
Another issue is that within USTR, Taiwan issues must constantly compete for attention against the large number of pressing concerns in the U.S.-China economic relationship. But AmCham was heartened to learn that USTR this year should have sufficient travel budget to send officers to Taiwan to engage in more meaningful discussions than can be accomplished through DVCs. We hope the U.S. government will use the TIFA process to its fullest potential.

Suggestion 4. Consult the U.S. business community overseas regarding plurilateral agreements under negotiation.

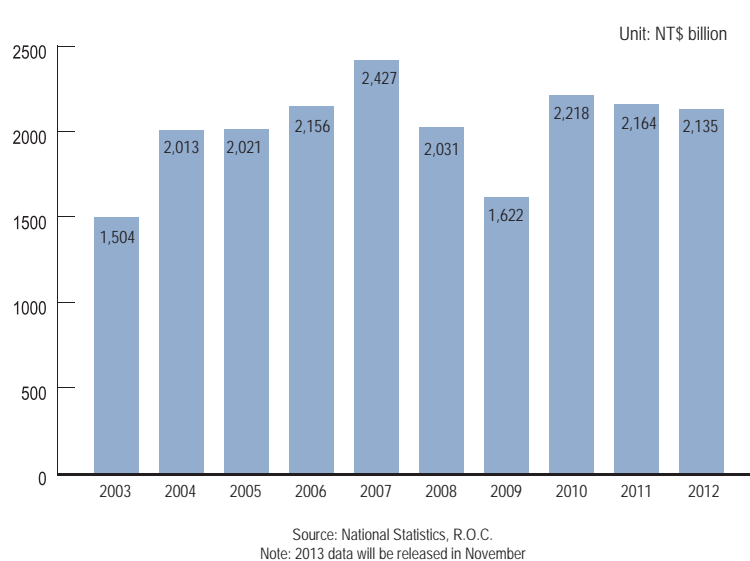
AmCham Taipei appreciates the close coordination it has been able to maintain with the American Institute in Taiwan and the relevant agencies in Washington regarding the TIFA agenda and other bilateral initiatives. But there has been no opportunity for similar communication concerning plurilateral agreements such as the Trade in Services Agreement (TISA) and expanded Information Technology Agreement (ITA) that are being negotiated in Geneva under the umbrella of the World Trade Organization (WTO). Taiwan is a party to both of those negotiations, and both will potentially have a large impact on the Taiwan economy and on many U.S.-invested companies operating in Taiwan. Input from AmCham member companies could provide valuable guidance for the reference of U.S. negotiators. We urge the U.S. to avail itself of the resources that the American Chambers in Taipei and other locations have to offer. 

BY THE NUMBERS

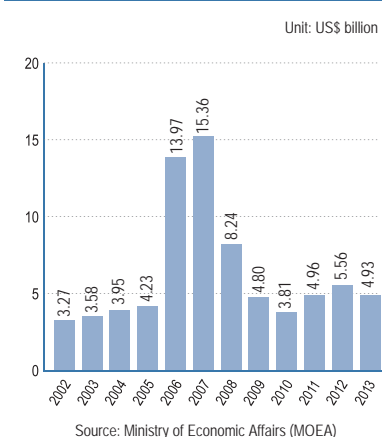
GRAPH 1: ECONOMIC GROWTH RATE



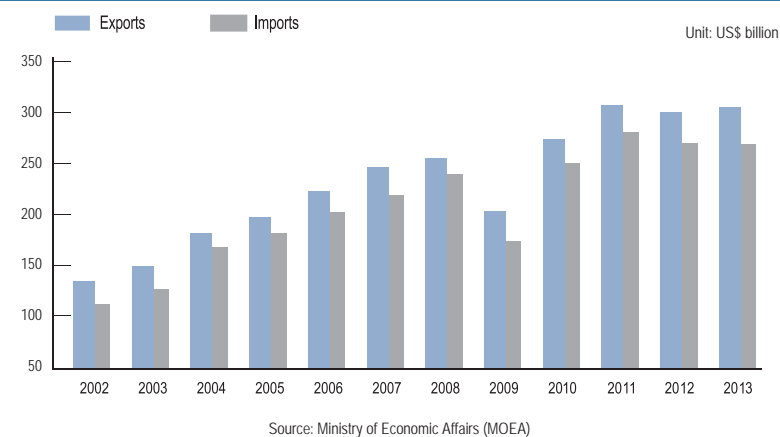
GRAPH 2: PRIVATE DOMESTIC INVESTMENT



GRAPH 3: FOREIGN DIRECT INVESTMENT



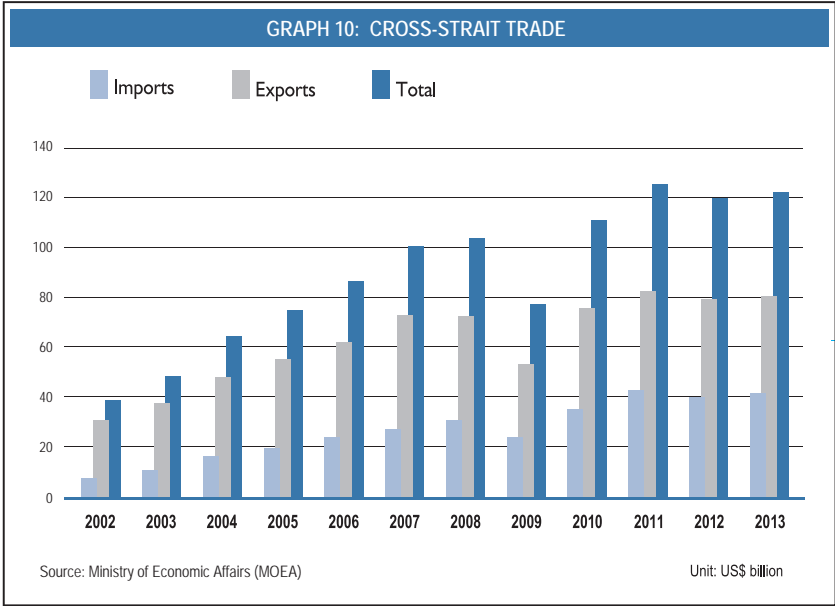
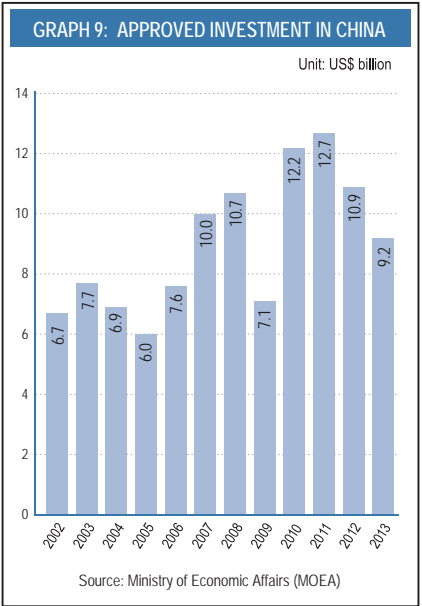
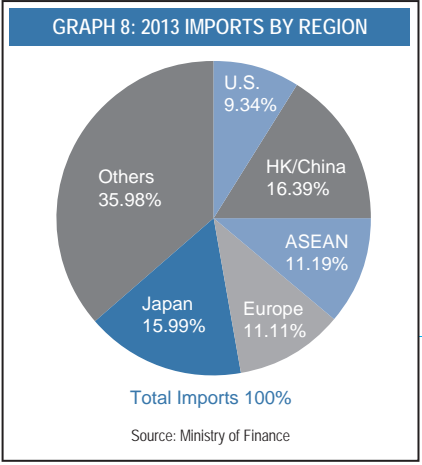
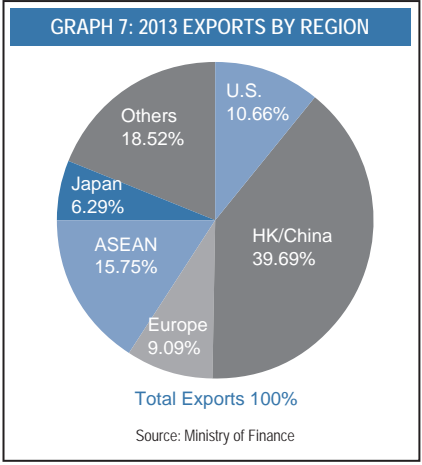
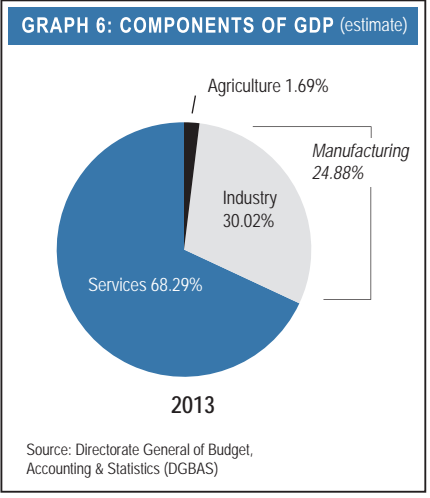
GRAPH 4: TOTAL FOREIGN TRADE



GRAPH 5: KEY ECONOMIC INDICATORS

| | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 |
|---------------------------|------------|------------|------------|------------|------------|------------|------------|-------------|
| Gross Domestic Product | US\$393 bn | US\$403 bn | US\$400 bn | US\$376 bn | US\$428 bn | US\$465 bn | US\$475 bn | US\$ 489 bn |
| Per Capita GDP | US\$16,491 | US\$17,154 | US\$17,399 | US\$16,359 | US\$18,503 | US\$20,057 | US\$20,423 | US\$ 20,958 |
| Gross National Savings | 29.55% | 30.36% | 28.36% | 27.62% | 31.68% | 29.97% | 28.83% | 29.12% |
| Unemployment | 3.91% | 3.91% | 4.14% | 5.85% | 5.21% | 4.39% | 4.24% | 4.18% |
| Inflation (CPI) | 0.60% | 1.80% | 3.53% | -0.87% | 0.96% | 1.42% | 1.93% | 0.80% |
| Foreign Exchange Reserves | US\$266 bn | US\$270 bn | US\$291 bn | US\$348 bn | US\$382 bn | US\$386 bn | US\$403 bn | US\$409 bn |

Sources: DGBAS, Central Bank



AMCHAM TAIPEI 2014 TAIWAN WHITE PAPER

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REVIEW OF 2013 WHITE PAPER ISSUES

The chart below is a status review of all priority issues in the 2013 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 Good 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 103 issues raised in the 2013 White Paper, 6 are rated Solved, 21 In Progress, 37 Under Observation, 30 Stalled and 9 Dropped.

| Committee | 2013 White Paper Issues | Rating 2014 WP | Notes on 2014 Status |
|--|--|----------------|---|
| Agro-Chemical | 1. Adopt clear and effective rules governing new product registration. | 4 | * |
| | 1. Revise the pension fund scheme to adopt a self-directed, defined contribution format. | 2 | changed to "Simplify the new pesticide registration system and accelerate the approval process for the sake of promoting environmentally friendly products and food safety" |
| | 2. Allow the introduction of RMB-denominated offshore products. | 4 | * |
| Asset Management | 3. Negotiate with the U.S. government on FATCA and assess the regulatory impact. | 2 | changed to "Foster the development of RMB-denominated financial products." |
| | 1. Allow banks to engage in the securities business to provide fixed-income products to customers. | 2 | |
| | 2. Rationalize regulations governing banks' single-lending limit. | 3 | * |
| Banking | 3. Create a competitive Formosa bond market. | 2 | changed to "Support Taiwan enterprises' need for strategic funding for project finance." |
| | 1. Enhance the capital markets' depth and breadth by enabling the offering of more products. | 4 | |
| | 2. Enhance the market infrastructure and market efficiency. | 4 | * |
| Capital Markets | 3. Clarify questions regarding the Personal Data Protection Act. | 1 | |
| | 4. Continue to enhance the Securities Borrowing and Lending (SBL) market. | 4 | |
| | 5. Create an efficient and cost-effective investment environment to compete in the Asia Pacific region. | 2 | * |
| Chemical Manufacturers | 6. Provide flexible underwriting rules. | 5 | changed to "Allow wider participation in Taiwan's capital market to foster market growth and international visibility." |
| | 1. Allow the use of pyrophoric specialty chemicals by high-tech industries in the science parks. | 5 | |
| | 2. Improve regulations on greenhouse gas (GHG) emissions. | 3 | |
| | 1. Establish a licensing system for the study-abroad industry. | 5 | |
| | 2. Encourage students to go abroad for study rather than work holidays. | 4 | |
| | 3. Encourage partnerships between Taiwan universities and international counterparts to help make Taiwan's higher education sector globally competitive. | 2 | |
| Education & Training | 1. Reconsider proposed amendments to the LSL concerning labor dispatch so as to balance labor protection and the impact on business. | 3 | * |
| | 2. Consider amendments to the LSL to allow retiring employees to receive pensions in installments under the "Old Pension Scheme." | 4 | |
| | 3. Amend the LSL to provide clearer regulations on the enforceability of non-competition covenants. | 3 | * |
| | 4. Exempt employees with higher positions or a monthly salary above a certain level from the provisions on extended working hours and overtime pay. | 4 | * |
| | 5. Eliminate the two-year work experience requirement for foreign professionals. | 2 | * |
| Human Resources | 1. Adopt a realistic energy policy in light of lessons learned from the recent electricity tariff increase. | 4 | |
| | 2. Provide the public with balanced information in advance of the nuclear- energy referendum. | 3 | |
| | 3. Reconsider policies that may deter foreign direct investment in the area of infrastructure. | 4 | |
| | 4. Improve the energy-infrastructure planning process and explore international strategic partnerships with low-cost LNG suppliers. | 3 | * |
| Infrastructure | 5. Establish landscape architecture as a licensed profession in Taiwan. | 3 | changed to "Rethink the procurement policy for LNG." |
| | 6. Further expand government-procurement opportunities for foreign companies. | 4 | |
| | 1. Provide customers with increased choice and easy access to insurance. | 3 | * |
| | 2. Increase the premium tax deduction and repeal Ministry of Finance Administrative Ruling No. 079800542850. | 4 | changed to "Increase the convenience and ease for consumers to obtain protection insurance." |
| | 3. Devise a new labor-pension investment platform. | 4 | |
| | 4. Increase consumer awareness of insurers' financial strength. | 3 | * |
| Insurance | 1. Amend laws necessary to enable the recently revised Trade Secrets Act to be enforced more effectively. | 3 | * |
| | 2. Strengthen the function of the IP Court and improve the expertise of general District Court judges in trying criminal IP cases. | 2 | * |
| | 3. Make needed revisions to the Copyright Act. | 2 | changed to "Improve the insurance industry's financial strength," execution of trade secrets protection." |
| | 4. Reform the legal environment to enhance the efficiency of copyright collective management organizations(CCMOs). | 3 | * |
| | 5. Implement effective measures to deal with on-line infringement. | 4 | * |
| Intellectual Property & Licensing | 6. Revise the IP Case Adjudication Act to require defendants to make a substantive defense. | 1 | changed to "Remove the minimum guaranteed interest rate requirement for "voluntary" pension contributions." |
| | 1. Improve electricity power-supply service and transparency. | 1 | changed to "Improve the insurance industry's financial strength," execution of trade secrets protection." |
| | 2. Take steps to strengthen transparency and corporate governance to give confidence to supply-chain partners. | 5 | changed to "Strengthen the functioning of the IP Court." |
| | 1. Harmonize the regulation of medical devices with global practices and international trends. | 3 | * |
| Manufacturing | 2. Simplify product registration requirements. | 3 | * |
| | 3. Enhance the quality and efficiency of the review process for medical devices. | 3 | * |
| | 4. Clarify and simplify the implementation of Good Distribution Practice (GDP) certification for medical devices. | 3 | Combine to "Expedite and simplify the medical-device registration process." |
| Medical Devices | 5. Amend provisions related to advertising medical devices. | 1 | |
| | 6. Improve the classification-inquiry review process for IVD devices. | 2 | |
| | 7. Liberalize the import of medical devices manufactured in China. | 5 | |
| | 8. Establish a rational system for the reimbursement and management of medical devices. | 2 | * |
| | | | |

| | | | |
|---------------------------------------|---|---|---|
| Others - Tobacco | <ol style="list-style-type: none"> Engage in comprehensive dialogue with industry and comply with due process of law before introducing any new measures on tobacco control. Adopt a policy of moderate, regular, and predictable adjustments in tobacco taxes to avoid increased levels of illicit sales and smuggling. | 3 | <p>changed to "Reevaluate the tobacco tax policy to reduce market disruption and protect the interests of the lawful tobacco industry."</p> |
| Others - chiropractic | <ol style="list-style-type: none"> Provide a legal base for the chiropractic profession through legislation or executive order, and legalize the status for overseas-trained chiropractors to practice freely in Taiwan. Reform the new-drug approval process to accelerate patient access. Strengthen IP protection through Patent Linkage and Data Exclusivity. Implement a rigorous system of Separation of Dispensing from Prescribing (SDP). Reduce and control healthcare-associated infections (HAIs) so as to enhance patient and healthcare-worker safety, as well as healthcare efficiency. | 3 | <p>changed to "Create a new category of healthcare professional that would enable foreign-licensed doctors of chiropractic to practice their profession with appropriate status."</p> |
| Pharmaceutical | <ol style="list-style-type: none"> 2. Provide for reasonable price adjustments for pharmaceutical products. 3. Strengthen IP protection through Patent Linkage and Data Exclusivity. 4. Implement a rigorous system of Separation of Dispensing from Prescribing (SDP). 3. Protect healthcare workers through strict implementation of existing laws on the use of safety-engineered devices. | 2 | <p>changed to "in promoting safety-engineered devices, also address problems associated with exposure to blood by healthcare workers."</p> |
| Public Health | <ol style="list-style-type: none"> 3. Strengthen measures for early prevention of cervical cancer and improve the screening results. 4. Improve healthcare quality by increasing the national budget for healthcare programs. 5. Target the prevention and treatment of obesity, diabetes, and vascular diseases. 6. Improve long-term care policies and regulations. 1. Remove the limits on domestic commercial real-estate investment by insurance companies and allow them to strategically allocate their assets. 2. Amend environmental impact assessment requirements to accelerate development and create a diversified cityscape. 3. Ease the limitations on Chinese corporate investments and real estate acquisitions in Taiwan. 4. Amend the regulations prohibiting the promotion and advertising in Taiwan of Chinese properties. 1. Accept reasonable revisions to the draft amendment of the Consumer Protection Act. 2. Remove unnecessary labeling requirements that add no value. 3. Maintain the classifications of non-medicated toothpaste and mouthwash as general products. 4. Reform the regulatory framework for cosmetics products. 5. Construct a sound mechanism to manage dietary supplements. 6. Liberalize the requirement for bank reserves for standardized contracts related to gift coupons. 7. Further liberalize China-import restrictions. | 2 | <p>changed to "Remove the minimum rental-return requirement on domestic commercial real-estate investment by insurance companies."</p> |
| Real Estate | <ol style="list-style-type: none"> 1. Continue to expand the new Green Mark policy by including all tissue products certified by globally accepted standards for responsible forest management in its coverage. 2. Stipulate the origins and composition of products/materials on Green Mark and Green Building Material labeling. 3. Adopt an energy policy that balances economic, ecological, and societal acceptance considerations. 4. Consider a new mechanism of bidding for public construction projects. | 4 | <p>changed to "Continue to expand the Green Mark policy to additional virgin-fiber paper/tissue product categories."</p> |
| Retail | <ol style="list-style-type: none"> 1. Acknowledge the economic value and tax deductibility of goodwill and identifiable intangible assets generated through M&A activities. 2. Reduce the withholding tax rate on non-resident income from the existing 20% to a lower rate. 3. Deal with unresolved issues regarding the determination of Taiwan-sourced income. 4. Grant tax exemption to royalties paid for foreign patents and know-how. 5. Include multinational companies' R&D, training, and education expenditures in the government's revised tax credit program. 6. Amend the Commodity Tax Act to better reflect the change in societal perceptions of electric household appliances. 2. Shift the emphasis in IT spending from hardware to software and services. 3. Open up additional spectrum, such as unused TV broadcast channels, for unlicensed access. 4. Modify the terms and conditions in the Government Procurement Act and IT services model contract that now seriously restrict multinational companies' ability to directly bid as the primary contractor. 1. Provide a balanced, competitive 4G environment for the benefit of both operators and consumers. 2. Relax cross-strait investment restrictions on the telecom industry. 3. Develop effective regulations for internet content management. 4. Liberalize the NCC's regulatory system for approval and renewal of TV-channel operating licenses. 1. Remove the Power of Attorney requirement for low-value, non-durable import express shipments. 2. Set up an express cargo center at the Kaohsiung Airport. 3. Accelerate the introduction of new clean, environmentally friendly, and safe vehicles into the market. 4. Align vehicle regulations and certification with international standards. 5. Allow private jet charter services to operate in Taiwan to promote business aviation and enhance foreign direct investment opportunities. 1. Adopt long-term development strategies for the tourism industry. 2. Attract, train and retain hospitality professionals to build sustainable international service standards. 3. Raise Taiwan's profile as a destination for major world-class events. 4. Promote Taiwan as a destination for world travelers. 5. Create a sensible tax regime for the casino industry in Taiwan. 6. Clarify the government's gaming policy and commitment to the establishment of the casino gaming industry in Taiwan. 7. Develop Taiwan's travel retail industry with an open policy for downtown duty-free stores. | 3 | <p>changed to "Reduce the withholding tax rate on non-resident income to less than 20%."</p> |
| Sustainable Development | <ol style="list-style-type: none"> 1. Acknowledge the economic value and tax deductibility of goodwill and identifiable intangible assets generated through M&A activities. 2. Reduce the withholding tax rate on non-resident income from the existing 20% to a lower rate. 3. Deal with unresolved issues regarding the determination of Taiwan-sourced income. 4. Grant tax exemption to royalties paid for foreign patents and know-how. 5. Include multinational companies' R&D, training, and education expenditures in the government's revised tax credit program. 6. Amend the Commodity Tax Act to better reflect the change in societal perceptions of electric household appliances. 2. Shift the emphasis in IT spending from hardware to software and services. 3. Open up additional spectrum, such as unused TV broadcast channels, for unlicensed access. 4. Modify the terms and conditions in the Government Procurement Act and IT services model contract that now seriously restrict multinational companies' ability to directly bid as the primary contractor. 1. Provide a balanced, competitive 4G environment for the benefit of both operators and consumers. 2. Relax cross-strait investment restrictions on the telecom industry. 3. Develop effective regulations for internet content management. 4. Liberalize the NCC's regulatory system for approval and renewal of TV-channel operating licenses. 1. Remove the Power of Attorney requirement for low-value, non-durable import express shipments. 2. Set up an express cargo center at the Kaohsiung Airport. 3. Accelerate the introduction of new clean, environmentally friendly, and safe vehicles into the market. 4. Align vehicle regulations and certification with international standards. 5. Allow private jet charter services to operate in Taiwan to promote business aviation and enhance foreign direct investment opportunities. 1. Adopt long-term development strategies for the tourism industry. 2. Attract, train and retain hospitality professionals to build sustainable international service standards. 3. Raise Taiwan's profile as a destination for major world-class events. 4. Promote Taiwan as a destination for world travelers. 5. Create a sensible tax regime for the casino industry in Taiwan. 6. Clarify the government's gaming policy and commitment to the establishment of the casino gaming industry in Taiwan. 7. Develop Taiwan's travel retail industry with an open policy for downtown duty-free stores. | 2 | <p>changed to "Reduce the withholding tax rate on non-resident income to less than 20%."</p> |
| Tax | <ol style="list-style-type: none"> 1. Acknowledge the economic value and tax deductibility of goodwill and identifiable intangible assets generated through M&A activities. 2. Reduce the withholding tax rate on non-resident income from the existing 20% to a lower rate. 3. Deal with unresolved issues regarding the determination of Taiwan-sourced income. 4. Grant tax exemption to royalties paid for foreign patents and know-how. 5. Include multinational companies' R&D, training, and education expenditures in the government's revised tax credit program. 6. Amend the Commodity Tax Act to better reflect the change in societal perceptions of electric household appliances. 2. Shift the emphasis in IT spending from hardware to software and services. 3. Open up additional spectrum, such as unused TV broadcast channels, for unlicensed access. 4. Modify the terms and conditions in the Government Procurement Act and IT services model contract that now seriously restrict multinational companies' ability to directly bid as the primary contractor. 1. Provide a balanced, competitive 4G environment for the benefit of both operators and consumers. 2. Relax cross-strait investment restrictions on the telecom industry. 3. Develop effective regulations for internet content management. 4. Liberalize the NCC's regulatory system for approval and renewal of TV-channel operating licenses. 1. Remove the Power of Attorney requirement for low-value, non-durable import express shipments. 2. Set up an express cargo center at the Kaohsiung Airport. 3. Accelerate the introduction of new clean, environmentally friendly, and safe vehicles into the market. 4. Align vehicle regulations and certification with international standards. 5. Allow private jet charter services to operate in Taiwan to promote business aviation and enhance foreign direct investment opportunities. 1. Adopt long-term development strategies for the tourism industry. 2. Attract, train and retain hospitality professionals to build sustainable international service standards. 3. Raise Taiwan's profile as a destination for major world-class events. 4. Promote Taiwan as a destination for world travelers. 5. Create a sensible tax regime for the casino industry in Taiwan. 6. Clarify the government's gaming policy and commitment to the establishment of the casino gaming industry in Taiwan. 7. Develop Taiwan's travel retail industry with an open policy for downtown duty-free stores. | 4 | <p>changed to "Reduce the withholding tax rate on non-resident income to less than 20%."</p> |
| Technology | <ol style="list-style-type: none"> 1. Provide a balanced, competitive 4G environment for the benefit of both operators and consumers. 2. Relax cross-strait investment restrictions on the telecom industry. 3. Develop effective regulations for internet content management. 4. Liberalize the NCC's regulatory system for approval and renewal of TV-channel operating licenses. 1. Remove the Power of Attorney requirement for low-value, non-durable import express shipments. 2. Set up an express cargo center at the Kaohsiung Airport. 3. Accelerate the introduction of new clean, environmentally friendly, and safe vehicles into the market. 4. Align vehicle regulations and certification with international standards. 5. Allow private jet charter services to operate in Taiwan to promote business aviation and enhance foreign direct investment opportunities. 1. Adopt long-term development strategies for the tourism industry. 2. Attract, train and retain hospitality professionals to build sustainable international service standards. 3. Raise Taiwan's profile as a destination for major world-class events. 4. Promote Taiwan as a destination for world travelers. 5. Create a sensible tax regime for the casino industry in Taiwan. 6. Clarify the government's gaming policy and commitment to the establishment of the casino gaming industry in Taiwan. 7. Develop Taiwan's travel retail industry with an open policy for downtown duty-free stores. | 5 | <p>changed to "Create a regulatory environment conducive to nurturing tech-sector startups."</p> |
| Telecommunications & Media | <ol style="list-style-type: none"> 1. Provide a balanced, competitive 4G environment for the benefit of both operators and consumers. 2. Relax cross-strait investment restrictions on the telecom industry. 3. Develop effective regulations for internet content management. 4. Liberalize the NCC's regulatory system for approval and renewal of TV-channel operating licenses. 1. Remove the Power of Attorney requirement for low-value, non-durable import express shipments. 2. Set up an express cargo center at the Kaohsiung Airport. 3. Accelerate the introduction of new clean, environmentally friendly, and safe vehicles into the market. 4. Align vehicle regulations and certification with international standards. 5. Allow private jet charter services to operate in Taiwan to promote business aviation and enhance foreign direct investment opportunities. 1. Adopt long-term development strategies for the tourism industry. 2. Attract, train and retain hospitality professionals to build sustainable international service standards. 3. Raise Taiwan's profile as a destination for major world-class events. 4. Promote Taiwan as a destination for world travelers. 5. Create a sensible tax regime for the casino industry in Taiwan. 6. Clarify the government's gaming policy and commitment to the establishment of the casino gaming industry in Taiwan. 7. Develop Taiwan's travel retail industry with an open policy for downtown duty-free stores. | 2 | <p>changed to "Allow dynamic spectrum access to frequency bands such as unused TV broadcast channels, so as to increase spectrum utilization and efficiency."</p> |
| Transportation | <ol style="list-style-type: none"> 1. Provide a balanced, competitive 4G environment for the benefit of both operators and consumers. 2. Relax cross-strait investment restrictions on the telecom industry. 3. Develop effective regulations for internet content management. 4. Liberalize the NCC's regulatory system for approval and renewal of TV-channel operating licenses. 1. Remove the Power of Attorney requirement for low-value, non-durable import express shipments. 2. Set up an express cargo center at the Kaohsiung Airport. 3. Accelerate the introduction of new clean, environmentally friendly, and safe vehicles into the market. 4. Align vehicle regulations and certification with international standards. 5. Allow private jet charter services to operate in Taiwan to promote business aviation and enhance foreign direct investment opportunities. 1. Adopt long-term development strategies for the tourism industry. 2. Attract, train and retain hospitality professionals to build sustainable international service standards. 3. Raise Taiwan's profile as a destination for major world-class events. 4. Promote Taiwan as a destination for world travelers. 5. Create a sensible tax regime for the casino industry in Taiwan. 6. Clarify the government's gaming policy and commitment to the establishment of the casino gaming industry in Taiwan. 7. Develop Taiwan's travel retail industry with an open policy for downtown duty-free stores. | 4 | <p>changed to "Defer Price Tiering until copyright owners are better protected against infringing internet content."</p> |
| Travel & Tourism | <ol style="list-style-type: none"> 1. Provide a balanced, competitive 4G environment for the benefit of both operators and consumers. 2. Relax cross-strait investment restrictions on the telecom industry. 3. Develop effective regulations for internet content management. 4. Liberalize the NCC's regulatory system for approval and renewal of TV-channel operating licenses. 1. Remove the Power of Attorney requirement for low-value, non-durable import express shipments. 2. Set up an express cargo center at the Kaohsiung Airport. 3. Accelerate the introduction of new clean, environmentally friendly, and safe vehicles into the market. 4. Align vehicle regulations and certification with international standards. 5. Allow private jet charter services to operate in Taiwan to promote business aviation and enhance foreign direct investment opportunities. 1. Adopt long-term development strategies for the tourism industry. 2. Attract, train and retain hospitality professionals to build sustainable international service standards. 3. Raise Taiwan's profile as a destination for major world-class events. 4. Promote Taiwan as a destination for world travelers. 5. Create a sensible tax regime for the casino industry in Taiwan. 6. Clarify the government's gaming policy and commitment to the establishment of the casino gaming industry in Taiwan. 7. Develop Taiwan's travel retail industry with an open policy for downtown duty-free stores. | 3 | <p>changed to "Restrategize and reposition Taiwan's tourism promotion efforts."</p> |

Note: * indicates the issue has been raised again in 2014 White Paper By Erica Lai
Last Updated: May 29, 2014

以下為《2013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、透明的執行續效。換言之，所提的議題已不再是問題。
 2—有具體進展：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。

《2013台灣白皮書》所提出103項議題，其中6項已解決，21項處理中，37項觀察中，30項擱置中，9項已刪除。

| 委員會 | 2013白皮書議題 | 進度 | 2014白皮書 | 2014年白皮書備註 |
|----------|--|----|---------|---|
| 農化 | 1.新農藥登記制度應簡明有效 | 4 | * | 今年改為：藉由簡化新農藥登記制度並加速核准程序，以利推廣環境友善產品和提升食品安全。 |
| | 1.修改退休金計劃，採取自行投資之確定提撥模式 | 2 | | |
| | 2.允許引進人民幣計價的境外產品 | 4 | * | 今年改為：人民幣計價產品的開放，提供多元化的人民幣投資管道 |
| 資產管理 | 3.與美國政府協商 FATCA 議題，並研擬國內金融法令相關因應措施 | 2 | | |
| | 1.允許銀行兼營證券業務，提供固定收益商品予投資人 | 2 | | |
| | 2.檢視單一投資限額之合理性 | 3 | * | 今年改為：協助台灣本土企業策略性專案融資之資金需求 |
| 銀行 | 3.建立一個具有競爭力之寶島債市場 | 2 | | |
| | 1.提供多元化商品服務，強化台灣資本市場之深度與廣度 | 4 | | |
| | 2.強化證券市場基礎設施提升市場效率 | 4 | * | 今年改為：增進市場效能並降低投資作業成本 |
| | 3.釐清有關《個人資料保護法》之問題 | 1 | | |
| 資本市場 | 4.持續強化有價證券借貸市場 | 4 | | |
| | 5.致力創造適合台灣市場為一效率化與競爭性之投資環境立足亞太地區 | 2 | * | 今年改為：進一步開放台灣資本市場以鼓勵市場成長與增加國際能見度 |
| | 6.制訂具彈性之承銷法規 | 5 | | |
| | 1.允許高科技產業在科學園區內使用 ISO 供應模式之易燃性特殊化學品 | 5 | | |
| 化學製造商 | 2.改善溫室氣體排放之相關規範 | 3 | * | |
| | 1.建立留遊學業經許可認證制度 | 3 | * | |
| | 2.鼓勵學子更積極參與出國留遊學，而非專注於打工度假 | 4 | | |
| | 3.鼓勵台灣大學院校與國外大學建立夥伴關係，使台灣高等教育更具國際競爭力 | 2 | | |
| 教育與訓練 | 1.重新考務基法修正草案關於勞動派遣部分，以平衡勞工保護及對商業之衝擊 | 3 | * | 今年改為：重新考量派遣勞工保護法建議草案，以平衡勞工保護及對商業之衝擊 |
| | 2.考慮修正勞基法允許退休員工可分期領取「退休金舊制」之退休金現行立法架構下，有兩種平行運作之法退退休金機制；一為勞基法下之舊制；一為勞基法外之新制（於2005年7月生 | 4 | | |
| | 3.修訂勞基法，對就業禁止條款之可執行性提供明確規範 | 3 | * | |
| | 4.豁免一定層級以上之高階或高薪員工就延長工時及加班費規範之適用現行勞基法就延長工時及加班費設有嚴格限制 | 4 | * | |
| 人力資源 | 5.取消外籍專業人士來台工作的兩年工作經驗限制 | 2 | * | |
| | 1.吸取電價漲價教訓，重新評估能源政策 | 4 | | |
| | 2.因應核四公投，提供平衡報導 | 3 | | |
| | 3.檢討可能影響外資的政策 | 4 | | |
| 基礎建設 | 4.改善能源基礎建設規劃過程，並考慮由美國進口廉價之液化天然氣 | 3 | * | 今年改為：重新考量液化天然氣採購策略 |
| | 5.在台灣設置基礎建設的專業諮詢 | 4 | * | |
| | 6.近一步為外商公司擴大政府採購的機會 | 4 | * | |
| | 2.增加保費列舉扣除額，並廢止財政部2009年11月6日台財稅字第09800542850號函令 | 3 | * | 今年改為：加強消費者投保保障型保險之便利性與容易性 |
| 保險 | 3.建置一個新的勞工退休金投資平台 | 4 | | |
| | 1.為使修正後的營業秘密法能有效執行，建議修訂相關法律 | 2 | * | 今年改為：非除「自願」提繳退休金適用最低保證利率的要求 |
| | 2.加強智慧財產法院功能，提升一般地方法院法官審理智慧財產刑事案件之專業能力 | 2 | * | 今年改為：改善保衛業之財務能力 |
| | 3.進行著作權法必要的修正 | 3 | * | 今年改為：引進證據發現程序以有效執行營業秘密保護 |
| 智慧財產權與授權 | 4.改善法律環境以提高著作權集體管理團體的效率 | 4 | * | 今年改為：強化智慧財產法院運作 |
| | 5.落實打擊網路侵權的有效措施 | 4 | * | 今年改為：著作權法必要的修正 |
| | 6.修正智慧財產案件審理法，讓予被告實質答辯義務 | 1 | | 今年改為：落實有效管制網路侵權行為 |
| | 1.改善供電服務品質與決策透明度 | 1 | | |
| 製造 | 2.逐步強化透明度及公司治理，以提升供應鏈夥伴之信心 | 5 | | |
| | 1.調和國內醫療器材法規與國際法規接軌 | 3 | * | 今年改為：加速並簡化醫療器材審查機制 |
| | 3.提升醫療器材產品品質與效率 | 3 | * | |
| 醫療器材 | 4.簡化醫療器材優良流通準則(GDP)的實施方式 | 4 | | |
| | 5.調整藥物廣告管理之規範 | 1 | | |
| | 6.提升體外診斷器材列管審核的審查效率 | 2 | | |
| | 7.開放及加速大陸醫療器材進口審核 | 5 | | |
| 醫療器材 | 8.建立醫療器材合理的健保給付制度與管理 | 2 | * | 今年於以下第一、二及三建議中分開討論： -對於新核發許可證的醫療器材給予二至三年的寬限期，暫不強制申請健保給付，以免阻礙新科技之引進 -合理公平地管理差額負擔之病患自付價格 -修正健保給付價格調整機制 |

| | | | | |
|-----------------|--|---|---|--|
| 其他 - 菸品 | <p>1. 建議政府在制定菸品管理政策時，應徵詢產業意見並依循正當法律程序</p> <p>2. 以合理、漸進、可預期的菸品稅捐政策，避免菸品非法交易及走私問題日益惡化</p> | 3 | * | 今年改為：重新思考菸品稅捐政策，以降低市場波動並保障合法菸品產業之權益 |
| 其他 - 骨神經醫學 | <p>1. 提供骨神經醫學之法律基礎（立法或行政命令）以及提供在國外訓練的骨神經醫師在台灣執業之合法性</p> | 3 | * | 今年改為：設立新的一類醫療專業，可以讓持有外國執照的骨神經醫師們在合適的位置下執行骨神經專業 |
| 製藥 | <p>1. 改革相關流程以加速病人對新藥的可近性</p> <p>2. 合理的藥價調控方案</p> <p>3. 藉由專利連結和資料專屬權加強智慧財產權保護</p> <p>4. 落實醫藥分類 (SDP)</p> | 3 | * | 今年改為：安全針具除預防針扎之外，應加強重視血液曝曬問題，以保障醫護人員權益 |
| 公共衛生 | <p>1. 減少並控制院內感染以提升病患與醫護人員的安全，以及醫療照護的效果</p> <p>2. 藉由嚴格落實現行醫療法有關使用安全針具的規範以保障醫護人員權益</p> <p>3. 提升子宮頸癌前預防與篩檢成效</p> <p>4. 政府提高醫療支出預算促進醫療品質提升</p> <p>5. 預防與治療肥胖、糖尿病、以及心血管病</p> <p>6. 改善長期照護政策及法規</p> | 3 | * | 今年改為：降低對保險業投資商用不動產最低租金投報率，使其得以策略性分配資產，達到獲利及充分避險的目的 |
| 不動產 | <p>1. 解除保險業投資商用不動產禁令，使其得以策略性分配資產，達到獲利及充分避險的目的</p> <p>2. 修正環境影響評估法中要求開發高樓建築須實施環境影響評估之規定，以增加建築設計彈性及都會風貌的多樣化</p> <p>3. 放寬大陸企業或個人來台投資及購置不動產</p> <p>4. 修正有關限制大陸地區不動產開發及交易在臺灣地區從事廣告或行銷之規定</p> | 2 | * | 今年改為：將非居住者取得中華民國來源所得適用之扣繳稅率降至低於20% |
| 零售 | <p>1. 就消費者保護法修正草案接受合理的修改建議</p> <p>2. 廢除不必要且無益處的標示規定</p> <p>3. 維持牙膏為一般商品之項狀產品分類</p> <p>4. 改革化妝品相關之規章制度</p> <p>5. 建立妥適機制管理膳食補充劑</p> <p>6. 放寬要求證券定型化契約之履約保證金</p> | 2 | * | 今年改為：持續將新修正的再生紙環面紙環保標準，延伸至更廣泛地家庭用紙產品領域 |
| 永續發展 | <p>1. 將新修正的面紙類別原生紙漿綠色環保標準，全面延伸至已獲得國際負責森林驗證標章的家庭用紙產品</p> <p>2. 於環保標章及綠建材標章中註明原料產地及材料組成成份</p> <p>3. 採用新的能源政策以平衡經濟、生態和社會接受度之考量</p> <p>4. 考慮一個新的公共建設計畫招標機制</p> | 3 | * | 今年改為：持續將新修正的再生紙環面紙環保標準，延伸至更廣泛地家庭用紙產品領域 |
| 稅務 | <p>1. 建議徵收機關對於因併購所產生之商譽及無形資產，得予承認其價值並認列</p> <p>2. 將非居住者取得中華民國來源所得適用之扣繳稅率，從20%降至更低</p> <p>3. 處理中華民國來源所得認定原則尚未解決的議題</p> <p>4. 准許支付外國專利及設計生產know-how的權力金免稅</p> <p>5. 對外國跨國企業研發及創新人才培訓的支出提供投資抵減辦法</p> <p>6. 修正貨物稅條例，使之更符合台灣前社會對家電用品之認知</p> | 2 | * | 今年改為：創造一個適合創新事業發展的法規環境 |
| 科技 | <p>1. 加速施行鼓勵科技創新創業之政策與計畫</p> <p>2. 將IT的主要支出從硬體轉移至軟體與服務</p> <p>3. 鼓勵開放額外的頻譜，例如開放使用閒置的電頻頻道</p> <p>4. 建議政府主管部會修正政府資訊服務採購之法規及實施準則，並修正目前阻礙外商直接投標之不公平契約條款</p> | 4 | * | 今年改為：修正政府資訊服務採購規範，營造有利創新之公平環境 |
| 電信及媒體 | <p>1. 為營運商與消費者兩者的共同福利，提供一個均衡而競爭的4G環境</p> <p>2. 放寬對電信產業兩岸相互投資之限制</p> <p>3. 建立有效的網路內容管理規範</p> <p>4. 建議NCC放寬電視頻道營運執照的審查、換照規定</p> | 1 | * | 今年改為：於提供著作權人免於網路侵權前暫緩實施分組付費 |
| 交通運輸委員會 - 快速貨物業 | <p>1. 免除進口快速低價免稅貨物委任書規定</p> <p>2. 在高雄機場建立快遞營運中心，提升台灣競爭力</p> <p>3. 加速清潔、環保暨安全車輛導入台灣市場</p> | 3 | * | 製造委員會2014年白皮書議題 |
| 交通運輸委員會 - 汽車業 | <p>1. 促進台灣車輛法規及認證制度與國際接軌</p> <p>2. 允許私人包機服務在臺灣全面運作，促進商務航空產業發展，增加海外來台投資的商機</p> | 3 | * | 今年改為：重新規劃及重點定位推廣台灣觀光 |
| 交通運輸委員會 - 航運業 | <p>1. 以長期策略規劃發展觀光</p> <p>2. 吸引、培訓與聘僱優質觀光旅遊專業人才，以建立並長期維繫國際化的服務水準</p> <p>3. 提升台灣形象，吸引大型世界級活動在臺灣舉行</p> | 3 | * | 今年改為：儘速完成《觀光賭場管理條例》的立法程序，以吸引國際知名博奕業者來台投資 |
| 旅遊與觀光 | <p>4. 積極推廣台灣作為世界旅客之目的地</p> <p>5. 為台灣的觀光開拓發展方向並展現發展決心、設立博奕管理專責獨立機構並提供單一窗口服務</p> <p>6. 應請博奕專事發展方向並展現發展決心、設立博奕管理專責獨立機構並提供單一窗口服務</p> <p>7. 開放市區免稅商店，促進臺灣觀光消費產業發展</p> | 3 | * | 今年改為：博奕法通過後，儘速設立博奕管理專責機構 |

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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 aggressive implementation of the Joint Investigation of Illegal Pesticides Project begun on January 1, 2013. Through cooperation with CropLife Taiwan, the Committee will continue to intensively monitor the manufacture and sale of such unregistered and untested products. So far, however, surveys conducted on our behalf by two university professors and based on the examination of farmers' waste containers have not shown any marked reduction in the level of illegal pesticides. Recognizing that more time may be needed to see significant results, the Committee will continue to commission surveys and share the results with the COA. In addition, we wish to commend both BAPHIQ and the Taiwan Agricultural Chemicals and Toxic Substances Research Institute (TACTRI) for their continuing efforts to improve the new registration system and crop-grouping regulations. Due to the complexity of the system, however, specific registration processes have not yet been set up for new products and related activities. As a result, companies have encountered great difficulty in their attempts to introduce more innovative and more environmentally friendly products. In the four years that have passed since the new system was adopted, only one new Active Ingredient (AI) has received approval. The Committee finds this outcome extremely disappointing.

Considering the unsatisfactory progress, the Committee would like to reiterate the importance of the issue and raise it again in the 2014 *White Paper*.

Suggestion. Simplify the new pesticide registration system and accelerate the approval process for the sake of promoting environmentally friendly products and food safety.

Although the Agro-Chemical Committee favors the overall direction of adopting crop grouping, only one new AI has been approved since the implementation of the new registration system in 2009. That in itself is a clear indication that a major problem exists in the system. Despite several discussions between Committee representatives and the relevant authorities, it appears that the difficulties with the new system are still not fully understood by the authorities, nor have the proposals submitted by industry received adequate consideration. The system has severely obstructed the introduction of new, technologically innovative, and environmentally friendly products to Taiwan, significantly slowed the phase-out of old products, and retarded Taiwan's

opportunity to take effective steps to help protect the environment and safeguard food safety. The Committee therefore makes the following specific recommendations:

- 1). Revise field-trial specifications and reporting standards, and shorten the governmental review time to enhance effectiveness. To expedite the review process, we urge a change in the regulations to allow trial data with clear minimum criteria, collected by the manufacturer either domestically or outside Taiwan, to replace the existing requests for bio-efficacy and phytotoxicity field trials. Such an approach would not only ease the authorities' tremendous workload in reviewing trial protocols and the progress of the field trials, but would also relieve the authorities of any potential risk and responsibility from appearing to endorse the product. The manufacturers would assume full responsibility for their products.
- 2). Reduce the number of required residue trials and expand the number and capacity of institutions qualified to handle them. Since Taiwan's land area is comparatively small, the significance of regional trials as carried out by larger countries like Japan and the United States is negligible. Instead of the three residue trials currently required, just one trial would be sufficient to set up the Maximum Residue Level (MRL) standard for non-export crops. Further, only the Toxic Substances Research Institute (TACTRI) is currently qualified to conduct residue trials on new AIs. The duty of carrying out three trials from different locations in Taiwan on top of its routine business has created a huge workload for TACTRI that far exceeds its capacity, causing serious delays. Besides reducing the number of required residue trials from three to one, the Committee therefore strongly suggests providing TACTRI with the resources to expand its capacity, while also certifying additional institutes as qualified to handle the residue trials. Accelerating the new-compound registration in this way will help provide farmers with better and more environmentally friendly choices of agro-chemical products.

In sum, the Committee urges the relevant authorities to review and revise the new registration system to simplify, clarify, and accelerate the administrative review procedures. The goal is to enable farmers nationwide to share the innovative, technological, and environmentally friendly products in use elsewhere in the world, maximizing the benefits for both consumers and farmers.

ASSET MANAGEMENT >>

The Committee notes with appreciation some significant changes and relaxation made by the Financial Supervisory Commission (FSC) in the financial regulatory regime in the past year. These include efforts to enable Taiwan to become an offshore RMB investment center, relaxation of RMB insurance products, and relaxation of rules regarding the investment business of offshore banking units (OBUs) and offshore securities units (OSUs). In particular, in March this year the FSC permitted high-yield bonds to be invested in up to a certain percentage by the bond funds and balanced funds of Securities Investment Trust Enterprises (SITEs). At the same time, the FSC permitted Securities Investment Consulting Enterprises (SICEs) and SITEs to participate in the OBU/OSU business, which shows the determination of the FSC to engage in reform and regulatory relaxation. The Committee hopes that the FSC continues to move in the direction of financial regulatory relaxation and innovation, so as to improve the overall development of the asset management industry.

Finally, given that the United States' Foreign Account Tax Compliance Act (FATCA) will soon be implemented, the Committee urges the FSC to assist Taiwan financial institutions to complete the relevant registration, identification of customers, and reporting and other operational procedures with the U.S. tax authority as soon as possible. We also ask the Taiwan authorities to provide an explanation regarding the applicability of the Taiwan Personal Data Protection Law to the fulfillment of the relevant FATCA requirements.

Suggestion. Foster the development of RMB-denominated financial products.

Since the cross-strait Currency Liquidator Mechanism was launched in February 2013, 46 Domestic Banking Units (DBUs) and OBUs have introduced various types of RMB business. According to Central Bank data, total RMB deposits in Taiwan reached RMB214.5 billion as of December 2013, an approximately 550% increase since February of that year. The Central Bank data further shows that the amount of RMB deposits in Taiwan's DBUs, mostly from retail investors, also rose significantly to reach RMB165.8 billion by December last year. Some financial institutions even estimate that total RMB deposits will amount to RMB250-300 billion in two to three years.

As long as Taiwan investors are increasing their RMB holdings, the investment demand will drive the development of RMB-denominated financial products, just as USD and AUD financial products began to proliferate after Taiwan investors began holding substantial amounts of U.S. Dollars and Australian dollars. Those financial products could provide higher returns and better meet the demands of investors with different risk preferences. So

far, RMB-denominated funds, insurance policies, Formosa Bonds, and many other RMB-derivative products have been introduced in Taiwan. Although the size of the market is not yet very large, the pace of development in Taiwan of these various products has still been quite fast in comparison with the experience in Hong Kong, which took several years to reach the same stage. This rapid growth gives Taiwan a competitive advantage toward becoming an offshore RMB center.

In order to take advantage of this business opportunity and to enable Taiwan to become the second RMB offshore center, Taiwan should provide more RMB financial products while a condition of excess liquidity continues to exist. Offering a greater diversity of investment choices will also support the FSC's goal of developing the asset management platform in Taiwan.

Although the FSC has allowed SITEs to launch RMB-denominated SITE funds, RMB-denominated securities should constitute the majority of the portfolio of RMB-denominated funds. In addition, issuing RMB share classes is not allowed when the majority of a SITE fund's portfolio consists of non-RMB-denominated securities. Therefore, the Committee urges the FSC (1) to allow master agents to register RMB-denominated funds or share classes in Taiwan, and (2) allow SITEs to launch RMB-denominated SITE funds or RMB share classes for existing SITE funds that do not invest most of their funds' assets in RMB-denominated securities.

BANKING >>

The Committee wishes to commend the Financial Supervisory Commission (FSC) for promoting the Taiwan financial services industry through timely regulatory review and appropriate deregulation. Since publication of AmCham's 2013 *Taiwan White Paper*, major progress has been made on the relaxation of restrictions on Offshore Banking Unit (OBU) businesses and development of the Formosa bond market. In addition, establishment of an agency model has made it possible for banks to provide fixed-income products to onshore institutional investors.

The Committee also commends the FSC's efforts to promote cross-strait financial activity, bringing many business opportunities to the Taiwan financial-services industry. As of the end of April 2014, the volume of RMB deposits collected by banks in Taiwan has reached RMB287.5 billion. The establishment of an RMB flow-back mechanism will enable Taiwan to be well-positioned as an offshore RMB center.

The FSC has adopted a series of measures to help develop Taiwan as an important financial market in the Asia-Pacific region. To attract more business for the Taiwan market, the Committee recommends that the regulators permit a

wider range of products to be accessed by various types of customers, so as to attract more business opportunities and enable more professional talent to be retained in Taiwan. To support Taiwan enterprises' demand for funding and to enhance Taiwan's international competitiveness, the Committee continues to urge liberalization of the single-lending limit that currently restricts banks' ability to provide timely engagement in event-driven lending projects.

We note that the FSC is aiming to promote the development of Taiwan banks into genuinely international financial institutions. The first step in that effort should be to embrace operational and regulatory standards that have been adopted internationally, and to avoid the excessive use of Taiwan-only standards.

The Committee has focused our attention on four main issues that we hope could be resolved during the coming year.

Suggestion 1. Further relax regulations on financial services to boost Taiwan's competitiveness.

In line with its aim to promote Taiwan as an international financial center, the Taiwan government has announced a relaxation of regulations governing financial derivatives, foreign exchanges, and trust businesses conducted by OBUs. This development is a significant step, enabling Taiwanese banks to compete more effectively with counterparts based in more advanced financial centers such as Singapore and Hong Kong.

To help bring Taiwan even closer to achieving international financial-center status, the Committee urges the authorities to consider allowing the OBUs to provide family and business trust services. In Hong Kong and Singapore, family and business trusts are major wealth-planning tools for family security, estate-tax planning, establishing a legacy, key-person and business planning, succession planning, and estate equalization.

A family and business trust is a simplified trust arrangement designed for core and affluent clients looking for cost-efficient financial planning solutions. The family and business trust helps the client:

- Consolidate multinational assets and provide for the financial security of future generations.
- Set fixed or flexible parameters for wealth to be transferred to loved ones or charities.
- Protect wealth from illegitimate claims.
- Avoid lengthy and expensive probate proceedings.
- Protect and provide for beneficiaries who may by themselves be unable to execute an inheritance, such as the young, elderly, disabled or financially immature.

In addition, the ability of the family and business trusts to own international insurance policies forms part of the holistic solution for the client's succession planning.

Adding these financial services to the OBU product shelf would bring Taiwan's competitive position closer to parity

with Hong Kong and Singapore.

Suggestion 2. Support Taiwan enterprises' need for strategic funding for project finance.

Project financing is usually provided in support of the financial demands of a merger and acquisition or strategic large-scale corporate financing project. Since project financing usually involves cross-border activity and complicated underlying transactions, foreign banks with international expertise and global networks have been active lenders in this market.

Normally project financing is of a highly confidential nature, which means that the arranger may not be able to syndicate out or sell down the financing amount to other banks at the initial stage. As a result, the borrower usually depends on a single bank to solely provide bridge financing or prefunding before the project is publicly announced. However, the amount of financing required for such projects is often substantial, exceeding the single-lending limit of an individual bank (even for most local banks).

Under the current rule, foreign bank branches face a stringent lending restriction on NT dollar loans (including a NT\$7 billion cap for single lending limit). This lending limit precludes foreign bank branches from supporting certain strategic large-scale projects and often makes it difficult for Taiwan enterprises to obtain sufficient domestic financing in a timely manner. If the Taiwan enterprises are unable to obtain funding locally, they have no choice but to seek it overseas, which inevitably increases their operating costs and lowers their international competitiveness.

Given the increased demand from Taiwan enterprises for financing to support their strategic projects and international growth, we recommend that the Taiwan authorities revisit the current lending limit (in particular the lending restrictions for foreign bank branches) and consider providing an exception for project financing. In that way, foreign banks could continue to support Taiwan enterprises' strategic funding requirements and international competitiveness.

Suggestion 3. Further broaden opportunities for offshore product development and distribution.

The Taiwan government has recently taken steps to help Taiwan financial institutions better compete at the international level in offering offshore products. For example, banks are now allowed to conduct offshore bond business by using the agency model. To maintain this positive momentum, the Committee recommends that the government further relax the rules relating to offshore products, incorporating a uniform regulatory framework for the development and distribution of offshore products.

Recommendations:

3.1 In the short-term, broaden the scope for offshore bond

business. As noted above, the FSC recently announced that banks are now allowed to conduct offshore bond business via the agency model, which is positive news for the industry. However, the product scope is limited to cash bonds. In order to allow a wider and more flexible product platform, the Committee recommends that the authorities expand the product scope to include securitized and structured products.

3.2 In the short- to medium-term, liberalize the rules on the issuance of Offshore Structured Products (OSPs). The issuance of OSPs in Taiwan is still more strictly regulated than in neighboring countries and other international markets. For example, issuers in Taiwan offering OSPs to non-professional investors are required to have AA- credit ratings. By comparison, the Hong Kong government requires the net assets of the issuer to be no less than HK\$2 billion and the credit ratings to be above A-. The United States, European Union, United Kingdom, Singapore, and Japan have no credit-rating requirements. To put Taiwan on a level playing field, we recommend that the credit-rating requirement for issuing OSPs to non-professional investors be reduced to the same level as Hong Kong's (A-). In addition, Taiwan can adopt capital adequacy requirements such as Basel III standards or equivalent.

To improve information and risk disclosure so as to help customers protect their interests, Taiwan could also adopt a three-tier-based risk-warning system similar to the recent provision adopted by the Life Insurance Association of the ROC as applied to investment in OSPs through unit-linked insurance policies. This initiative would cover four risk factors, including credit rating, median price of five-year credit default swaps, quarterly earnings, and capital adequacy ratios.

Suggestion 4. Provide banks with greater operational flexibility in line with international best practices.

Taiwan financial institutions compete with the world in delivering products and services to their customers. It is important that Taiwan's financial industry adopt best practices as a developed market in financial services to ensure that it stays competitive against other developing markets. In order to upgrade Taiwan's market status, the Committee urges the regulatory authorities to revisit current regulations to ensure that banks have the flexibility to operate in line with international best practices without prejudice to the efficiency and integrity of their businesses.

One area in which current procedures are more onerous than necessary and inconsistent with international best practices is the requirement in the "Guidelines for Security Measures of Financial Institutions for Electronic Banking Services" that banks only use digital certificates issued by a limited number of qualified local vendors for high-

value payments in the bank's electronic banking system. This requirement also deviates from international best practices by restricting banks from using other techniques, such as dynamic password tokens, for electronic banking. Considering the global trend for increased e-banking, such a restrictive requirement will make it more difficult for banks in Taiwan to develop a robust electronic banking platform. It will also cause operational difficulties for global companies in managing Taiwan bank accounts.

Another example is the requirement, pursuant to the "Guidelines Governing Financial Institutions Handling Deposit and Withdrawal for Clients," that banks obtain copies of debit instructions post-transaction by fax. Banks often receive feedback from corporate clients with whom they have had long-term relationships that this requirement is redundant and an extra burden that they are reluctant to comply with. The Committee understands that maintenance of an audit trail and prevention of fraud are key rationales for such a requirement. These objectives can be met, however, through the adoption of other forms of authentication control, such as call-back verifications combined with written agreements from the client regarding fax transactions or other internal control mechanisms as considered appropriate by the banks.

The Committee recognizes that the goal of banking regulations is to ensure a safe and sound business model and banking platform. Nevertheless, in order to bring the operation of the Taiwan banking industry to international standards as befits a fully developed country, the Committee recommends that the regulatory authorities review the regulations governing banking operations and platforms. This will allow banks to embrace technological innovation and develop their own operational models using alternative internal controls in the provision of services.

CAPITAL MARKETS >>

The Committee recognizes the regulators' continuing efforts to enhance Taiwan's capital markets. We note with appreciation their various efforts to respond to the Committee's suggestions, such as the liberalization of regulations on cross-registration of personnel within the same group, and the clarification of questions regarding the Personal Information Protection Act. The Committee applauds these achievements and thanks the Financial Supervisory Commission (FSC) for listening to the Committee's concerns on an on-going basis.

Because global capital markets are highly intertwined, Taiwan's capital markets need to adopt practices that are in line with international standards – particularly at a time when Taiwan is looking to join the Trans-Pacific Partnership (TPP). In this regard, we would like to raise

some issues that continue to be roadblocks to Taiwan's continued progress, and to present suggestions on how to create a vibrant financial market for the benefit of both local and international participants, create additional job opportunities, and increase the financial industry's share of GDP. As always, the Committee stands ready to assist the Taiwan government in its endeavors to ensure an efficient and competitive capital market.

Suggestion 1. Allow wider participation in Taiwan's capital market to foster market growth and international visibility.

1.1 Review the restriction on FINI investment in Taiwan government bonds so as to attract foreign capital and expand Taiwan's fixed-income market. The Committee appreciates the efforts of the Taiwan authorities to stabilize capital inflow and New Taiwan Dollar exchange rates. However, the 30% cap on investments in Taiwan government bonds by Foreign Institutional Investors (FINIs) undermines the efficiency and attractiveness of the Taiwan-government bond market. Fixed-income foreign investors, including real-money fund managers and Exchange-Traded Fund (ETF) providers, view this rule as a major barrier to entry to the market, and consequently often request the removal of Taiwan government bonds from global/regional indices that are widely used by foreign institutions. These index funds are all genuine bond-fund investors, not foreign-exchange speculators. The 30% cap has made the market less efficient, less attractive, and less competitive. Currently foreign investors account for only 1-2% of total Taiwan-government bonds outstanding.

As a vital part of the Taiwan financial industry for many years, members of this Committee look forward to liberalization of this restriction in the interest of building a prosperous fixed-income market and attracting more foreign investors to the Taiwan market. The government could consider setting up a special category of government bonds that are longer term and/or designed with a lock-in period, and exempt those bonds from the 30% cap on international investment. With Taiwan's bond market's strong credit ratings, such deregulation potentially would enable Taiwan to develop into a leading capital market in Asia.

1.2 Allow unsponsored and Level-1 ADRs representing the stock of Taiwan-listed companies. FINI-qualified foreign investors currently play an important role in the Taiwan stock market, on average contributing more than a 20% share of the daily trading volume. However, there are additional foreign investors who would like to access the Taiwan market but are currently restricted from doing so as a result of not having FINI status.

For these non-FINI-qualified foreign investors, Depository Receipts (DRs) are the only avenue available to them to access the Taiwan stock market. Of the 1,502 companies currently

listed in Taiwan, however, only 68 currently have a sponsored DR program. We therefore recommend that non-FINI-qualified foreign investors be allowed to use unsponsored and Level-1 American Depository Receipts (ADRs) to access listed Taiwan companies without sponsored DR programs.

Unsponsored and Level-1 ADRs can help Taiwan-listed companies reach an additional investor base, which would be beneficial in terms of diversification, stability of the shareholder structure, and even stock-price valuation. Based on the experience of other countries, outstanding unsponsored or Level-1 ADRs represent only a small percentage of the total outstanding shares, and so should not undercut the interest of existing shareholders. In fact it should benefit them due to the additional liquidity being brought in. There is no record of unsponsored or Level-1 ADRs being involved in insider trading or other criminal activity, and exchange-rate speculation should not be a concern as an investor is allowed to exchange foreign currency for Taiwan Dollars only after completion of the underlying share-purchase transaction.

For the above reasons and considering the successful experience of other Asian areas including Japan, Singapore, and Hong Kong, we recommend amendment of the rules on overseas securities offerings and local securities transaction to allow the use of unsponsored and Level-1 ADRs.

1.3 Promote institutional investors' engagement in futures trading. To further promote institutional investors' participation in listed derivatives on the Taiwan Futures Exchange (TAIFEX), the Committee recommends removing the mandatory pre-margin requirement and instead instituting a "give-up" trade mechanism. Only a few exchanges in the world still require pre-margin deposits. Among Asian exchanges, Singapore and Hong Kong do not require collection of margin prior to trading. In Korea, the exchange has exempted qualified institutional clients from pre-margin deposits. Removing the mandatory pre-margin requirement for professional institutional investors – such as banks, brokerage dealers, and other licensed financial institutions that have mature and sophisticated risk-control mechanisms – will create no additional risk while improving trading efficiency and bringing Taiwan into greater alignment with global practice. In addition, adopting the "give-up" trade mechanism would provide professional institutional investors with more flexibility and options in trading futures across different futures commission merchants (FCMs). Institutional investors usually give their listed derivatives orders to many brokers for reasons of order confidentiality, but prefer to centralize their settlements with one clearinghouse to minimize the funding requirement as well as to reduce counterparty risk. Providing this option would encourage institutional investors to place more orders in Taiwan. Post-margin

payment and a give-up mechanism must work in tandem.

Suggestion 2. Relax the establishment qualification for OSUs.

On February 18 this year, the FSC announced a new set of rules governing the establishment of Offshore Securities Units (OSUs), allowing foreign investors access to offshore products through OSUs in Taiwan. However, the high net-worth requirement for OSU applicants (NT\$4 billion or \$10 billion, depending on the business scope) creates a hurdle for foreign securities firms. Due to the small size of foreign securities firms in Taiwan, none would reach the net-worth requirement of NT\$4 billion. For Offshore Banking Units (OBUs), by comparison, the absence of a net-worth requirement has created a booming OBU market. According to a March 31, 2014 report issued by the Central Bank of the Republic of China (Taiwan), of the 63 OBUs in Taiwan, 25 are operated by foreign banks and accounted for 14.2 % of the total OBU assets of US\$173 billion. We recommend either lowering the net-worth requirement or allowing foreign securities branches to use their parent companies' net worth to meet the qualification. In either case, we believe the change would lead to an increase in business volume for OSUs similar to what occurred for OBUs.

In addition, further relaxation of OSU establishment criteria would create job opportunities. The diversified product platforms that OSUs will acquire with the participation of foreign securities firms will help Taiwan's financial industry to both recruit and retain valuable talent, creating a win-win situation for all Taiwan market players. This change would create a fair and open financial-services environment and contribute to boosting Taiwan's economy.

Suggestion 3. Continue to enhance the Securities Borrowing and Lending (SBL) market.

Taiwan continues to be regarded by foreign investors as one of the most important markets in the Asian region for securities borrowing and lending (SBL). The Committee appreciates the collective efforts of the Taiwan Stock Exchange (TWSE), Ministry of Finance, and FSC in supporting the development of this market in recent years. However, the unique features of Taiwan's SBL market means that further reform is still needed. Over the long run, we believe that an SBL system that is aligned with global practice will attract more investor participation, yet we are also fully aware of the challenge – given Taiwan's existing market infrastructure – of totally overhauling the current system. Following are recommendations that could help resolve some of the near-term SBL issues:

- 3.1 *Expand the scope of eligible cash collateral* to include, in addition to US Dollars, other major currencies to offer more flexibility to borrowers.
- 3.2 *Remove onward lending restrictions* so that lenders can

lend to counterparties with whom they have established credits. In turn those counterparties can lend to a wider group of borrowers, and create a larger source of stocks with which borrowers can cover trading, hedging, settlement, or recall needs.

3.3 *Lower the collateral ratio requirement for the SBL business to 105%*. The existing collateral ratio of 140% is higher than that of other Asian markets. Korea, Singapore, and Japan, for example, impose a ratio of only 105%. As a result, Taiwan has been put in a less competitive position. The Committee suggests reducing the collateral ratio to 105% to attract more institutional investors to the market.

3.4 *Relax the current daily cap on short-selling of borrowed securities*. The Committee appreciates that some of the short-selling rules imposed in September 2008 after the global financial crisis have already been relaxed. But maintenance of the rule limiting the daily short selling of borrowed stocks to a maximum of 20% of the average trading volume per stock in the previous 30 trading days has created trading inefficiencies and investment risk, as investors are unable to fully hedge their downside risk.

While regulators around the world normally impose short-selling restrictions during a crisis, these are generally temporary measures to prevent systemic problems, tend to be limited in scope, and are lifted when market conditions return to normal. In response to the 2008 financial crisis, the United States and Canada imposed bans for only 19 days on covering the short-sell of financial stocks. Most European countries and Japan imposed bans on naked short-sells only, and Korea lifted its ban on covering the short-sell of non-financial stocks in 2009 and on financial stocks in 2013.

Short selling is a common trading technique in the international market. Given the longer time span involved, it is considered to have a neutral impact on the securities market as the borrowers of stocks buy back from the market to cover the short positions. Financial regulators generally view that covered short-selling helps improve the price discovery mechanism and adds liquidity to the market.

In line with the Taiwan government's goal of accelerating the internationalization of the securities market, the Committee proposes removing the daily limit on the short-selling of borrowed stocks. Alternatively, the FSC could consider returning to the policy in place prior to the 2008 financial crisis, when the daily short-selling of borrowed stocks was limited to no more than 3% of the listed shares per stock. The risk of market fluctuation would still be mitigated by the maximum aggregated limits per stock, while market liquidity and volume would be increased.

Suggestion 4. Enhance market efficiency and reduce the cost of investment and operations.

4.1 *Allow net settlement between brokers and custodians.*

Securities settlement systems are a major component of the financial sector infrastructure to ensure that the critical needs for safety, soundness, certainty, and efficiency are achieved at a level of cost acceptable to all market participants. For international investors' trade settlements, payments between custodian banks and securities firms are currently conducted by gross settlement unless the custodian bank is a contractual settlement bank of the securities firm. The gross settlement process is based on each FINI account level, which is time-consuming and may create risks due to tight settlement cut-offs. To improve process efficiency and achieve cost savings on fund remittances, the Committee proposes that trade settlement be permitted on a net basis. From a settlement risk-control perspective, although securities firms are settling with custodian banks on a net basis, records can be kept at a client-account level to clearly identify each client's settlement details, eliminating any potential concerns.

4.2 Reduce the regulatory reporting requirements. Currently, for each FINI account the local agents/custodians must submit monthly reports to the regulators, including balance sheet, income statement, securities inventory, and fund remittance reports. The submission of local balance sheets and income statements is not required by regulators in other countries. In fact, the FINIs themselves do not maintain such records, as foreign institutional investors diversify and hedge risks across markets and financial products. The balance sheets and the income statements for the assets held under the local custodian banks in Taiwan do not reflect their overall global or even Taiwan portfolio performance, which includes not only securities under the local custodians but also other hedging/investment activities in onshore and offshore exchange-traded derivatives, DRs, Euro Convertible Bonds, ETFs, fixed-income products, or other securities products with underlying Taiwan assets.

The recording of daily accounting entries, month-end accruals, adjustments, reconciliations, etc. for the generation of monthly balance sheets and income statements is unique to Taiwan and requires additional systems and manual effort. This requirement gives rise to inefficiency and additional costs to the custodians as well as to the foreign investors, with little value to the foreign investors or local regulators, who get only a partial and potentially skewed view of the FINI's actual balance sheet and income information.

The Committee suggests that the regulators continue to require the monthly securities inventory and fund remittance reports to supervise the activities of each FINI, but drop the requirement for the monthly balance sheet and income statement for each FINI account. The result would be to enhance market efficiency and reduce the cost of operations and investment in Taiwan.

4.3 Enhance the predictability and transparency of interpretations and their application with regard to securities regulations. The Committee applauds the great progress made by the FSC in addressing various issues raised by the Chamber with respect to foreign private-equity investments in Taiwan. In anticipation of new large-scale foreign investments in listed companies, the Committee believes that the FSC should clarify its interpretation of the current Regulations Governing Tender Offers for Purchase of the Securities of a Public Company. According to the Regulations, any person, individually or jointly with other persons, who intends to acquire, within a 50-day period, 20% or more of the total issued and outstanding shares of a public company must do so through a tender offer. The rules, however, fail to provide clear guidance as to whether an "acquisition" shall be deemed to have occurred upon the signing of a share purchase agreement or only upon the actual closing of the purchase. In particular, it is unclear whether or not a series of closings, each of which is more than 50 days after the previous closing, would trigger the mandatory tender offer requirement if the amount to be acquired over the course of the entire series of closings is more than 20% of the outstanding shares of the company. A predictable and transparent interpretation and enforcement policy for these Regulations and other rules is extremely important to Taiwan's efforts to create a favorable and desirable investment climate for foreign investors.

4.4 Simplify the process for FINIs to open accounts with brokers. Institutional investors generally maintain a large number of brokerage accounts for diversification purposes. The current account-opening process involves affixing the FINI's chop onto a multiple-page master agreement with each broker, requiring inordinate time and effort by industry to maintain and control tens of thousands of hard-copy agreements and physical chops, as well as verifying the validity of the chops against lengthy lists of similar fund names. As the TWSE registration details already clearly indicate a FINI's local agent and custodian in Taiwan, the Committee suggests that the current process be simplified by requiring only that the local agents' authorized and designated account-opening chops be affixed on a one-page agreement that refers to the terms and conditions of the standard master brokerage agreement.

4.5 Develop electronic tax statements on FINIs' income. Currently tax statements on FINIs' income are still paper-based, requiring excessive time and effort by the local tax guarantors and agents/custodians for reconciliation, maintenance, and audit, as well as delay in the ability of FINIs to repatriate earnings. The Committee urges the government to develop electronic tax statements on FINIs'

income, and allow the appointed tax guarantors to obtain direct access to the FINIs' e-tax statements. These steps would simplify and shorten the processing and auditing time by the local tax guarantors and agents, facilitate FINIs' repatriation needs, reduce the workload for issuers and company registrars in handling tax statements, and help protect the environment by decreasing paper usage.

4.6 Remove the fund-injection timelines for Chinese QDII investment quotas. Chinese QDIIs (Qualified Domestic Institutional Investors) who have obtained quota for investment in Taiwan's securities market currently must complete the fund injection for all approved quota within a month of quota approval. Investment funds being repatriated must be remitted back within six months, at which time the remaining quota will lapse. As funds injected into Taiwan are made for securities investments that depend on market conditions which change from time to time, and as investors are not encouraged to maintain funds in cash on a long-term basis, the above timelines present an inconvenience for the investors, as well as an unnecessary monitoring and processing burden for TWSE, the QDIIs, and local agents/custodians. The Committee suggests the removal of such timelines, treating these investments the same as for other FINIs.

Suggestion 5. Allow brokers to conduct third-party clearing.

A worldwide drop in trading volumes, revenues, and margins has forced broker-dealers to improve their efficiencies if they want to grow. Building an in-house post-trade operation requires significant investment in technology and infrastructure in each market in which a company operates. These fixed costs are becoming a competitive drag on brokers and are harder to rationalize in a period of volatile costs. The global market trend is for brokers to manage the ever-increasing technology and operational costs via outsourcing.

Radical market changes have paved the way for outsourcing services to represent a real and viable opportunity for broker-dealers in Asia. Brokers who outsource are more flexible and better placed to take advantage of opportunities in Asia's turbulent markets, while saving costs when volumes are thin.

Asian exchanges are fully aware that they need to attract new liquidity and promote competition. In order to achieve those gains, they need changes in regulations to enable them to provide more flexibility to their member firms, specifically with regard to post-trade options. In response, a number of major Asian markets have introduced new clearing and settlement options, especially Third Party Clearing (TPC). Some Asian emerging-market clearinghouses/depositories have also started working on these concepts.

TPC allows brokers to give up their clearinghouse/

depository memberships while allowing their exchange trades to be novated, cleared, and settled by their TPC clearers. TPC outsourcing benefits the securities market as follows:

- More efficient use of capital and market participation. Broker-dealers are able to free up some capital, replace their fixed cost with variable costs, and pay for the transactions as they grow. They can focus on their areas of expertise in research, dealing, brokerage, and execution, which will in turn attract more investors to the market.
- Higher netting efficiency in the market, as many brokers' trades are cleared under a few TPC clearers.
- Lower settlement risks in the clearing system. Institutions that provide TPC have higher paid-up share capital, resulting in overall risk improvements in clearing and settlement.

Exchanges and capital markets around the world compete for growth in volume and investment funds. The Committee suggests that the regulators provide flexibility in post-trade clearing and settlement, including allowing TPC, to enable Taiwan to maintain competitiveness in its infrastructure against other markets, and to support the growth of broker-dealers, which will enhance market growth, improve risk management, and benefit investors as a whole.

CHEMICAL MANUFACTURERS >>

Revised versions of both the Occupational Safety and Health Act (OSHA) and the Toxic Chemical Substance Control Act (TCSCA) were enacted and promulgated in 2013, but their detailed enforcement regulations are still under preparation and are expected to be finalized later this year. Although the two laws come under two different authorities – the Ministry of Labor (MOL) and the Environmental Protection Administration (EPA) respectively – they contain similar requirements for chemical registration. Through a dedicated Working Group set up under the Chemical Manufacturers Committee, which has solicited input from our member companies, we have been paying close attention to the development and proposed implementation of the enforcement rules and chemical-registration work processes for these two pieces of legislation. Our goal is to help make the enforcement rules reasonable and workable for industry to comply with. Below we provide our recommendations for the reference of the MOL and EPA on how the regulations could be made as effective as possible for the benefit of the public, the government regulatory bodies, and industry.

Suggestion 1. Take industry's input into consideration when devising the enforcement regulations for the recent chemical-registration legislation.

- 1). ***Provide adequate time and opportunity for communication.*** Before the holding of formal large-scale public hearings, which often are not conducive to meaningful two-way communication, we suggest that MOL and EPA convene pre-meetings with representatives from the domestically and foreign-invested chemical industries in Taiwan. These sessions would give the chemical industry the opportunity to provide thorough feedback on detailed implementation requirements, and with those nuts and bolts issues already discussed, the subsequent public hearings can be conducted more effectively and efficiently. Compared to the planning process for implementing the similar REACH (Act on the Registration and Evaluation of Chemicals) program in Korea, which took more than a year, the planning process in Taiwan has been much shorter. We hope that the authorities will provide sufficient time, as well as fuller information about the content and implementation schedule of the new requirements, to enable industry to prepare well for the formal roll-out.
- 2). ***Ensure that Confidential Business Information (CBI) receives adequate protection.*** One of industry's chief concerns is the risk that in the course of registration of chemical products, manufacturers' proprietary information may not be duly safeguarded. The Committee urges the government to provide clear and specific guidelines on how chemical companies can apply for effective CBI-protection approval – balancing the needs for trade-secret and intellectual-property protection with the public's right to know, and doing so in a way that is aligned with globally accepted procedures. It is especially important that substances under trade-secret protection in other countries receive the same protection in Taiwan (a secret is not a secret unless it is covered in all markets). In addition, we hope the authorities will adopt a more streamlined CBI application process, referencing what is done in such other economies as the United States and Canada.
- 3). ***Hold another round of supplemental nominations before the end of 2014.*** The deadline for currently registered chemical substances was January 1, 2012, but many new items have been launched in this market since that time. We suggest that the authorities provide an opportunity for those items to be registered before the new substance registration system takes effect, presumably on January 1, 2015, so as to give industry a headstart and avoid a later logjam. Offering that new round of nominations would enable all substances manufactured, imported, handled, used, or sold in Taiwan for the first time between January 1, 2012 and January 1, 2015 to be established as existing substances when the new system begins. If the implementation of supplemental nominations is not possible, we suggest that substances being registered

under the new chemical substance registration process be automatically added to the existing national inventory list.

- 4). ***Develop a clear and detailed definition of “polymers of low concern” (PLC).*** We recommend that the government align its policy for excluding less hazardous substances from the registration system with the PLC criteria of the United States, Canada, and Australia, which uses molecular weight as the basis. We further suggest that for PLC usage below 1 ton/year, the verification can be done by industry. In addition, we notice that no definition has been announced for the “active functional groups” mentioned in previous TCSCA-related seminars as expected to still require registration. The Committee requests that an exact definition of “active functional group” be communicated with industry as soon as possible to add clarity to its preparations.
- 5). ***Provide a sufficient grace period for data submission.*** To facilitate industry's ability to comply with the new chemical registration requirements, the government should allow a grace period to be used for critical data preparation, especially toxicological and eco-toxicological reports that depend on long-term accumulated data. If final test results are not yet available, industry could be asked to submit toxicity test plans or alternative test reports as the basis for the government to approve the registration application. Recommended alternative tests include in-vitro methods, computational measurements, and read-across and chemical categories (allowing interpolation and extrapolation).

CUSTOMS & INTERNATIONAL TRADE >>

The Committee appreciates the regulators' continuous efforts to improve Taiwan's environment for international trade and to enhance the efficiency and effectiveness of Taiwan Customs. In this our first year to appear in the *White Paper*, we choose to focus on four issues that have drawn the most attention from our members. Some of these topics have been addressed in previous editions of the *White Paper*; others are related to more recent developments in the regulatory regime and policies governing international trade. The Committee believes that these issues reflect its members' expectations for increased trade liberalization in Taiwan.

Suggestion 1. Exempt drop shipments in bonded industrial zones from income tax.

As a common business practice, foreign manufacturers frequently arrange for goods to be shipped to their customers inside and outside of Taiwan directly from their subcontractors or from distribution hubs located in Taiwan's bonded industrial zones. Taiwan has set up such zones

(both at Taoyuan International Airport and at the free trade zones at the major ports) specifically to encourage this type of business as part of the government's vision to develop Taiwan as a regional logistics center. A similar concept has also been adopted in the initiative to establish Free Economic Pilot Zones.

According to current legislation, goods procured from Taiwan and distributed from the free trade zones shall be exempt from Taiwan income tax. Taking an extreme interpretation of the relevant tax regulations, however, the tax authority has insisted that any value added by subcontractors prior to shipment into the free trade zones shall be subject to Taiwan income tax. We are concerned that such a narrow view of tax exemption could hinder the development of Taiwan as a regional logistics center.

Taking the semiconductor industry as an example, many foreign fabless semiconductor companies outsource their entire integrated-circuit (IC) production in Taiwan – including fabrication by a foundry, wafer sorting and cutting, packaging, and final testing – before the finished chips are brought into the distribution hub inside the free trade zones. The ICs are then delivered from there to customers both inside and outside of Taiwan. If the tax authority were to rule that the value added by various subcontractors is not taxable, it would encourage high-tech companies to make greater use of Taiwan as a regional logistics hub, engaging downstream service providers to deliver their services. The result would be a boost for the domestic economy.

Suggestion 2. Reduce or waive penalties for exporters who voluntarily disclose violations of export-control regulations.

Under Taiwan's Foreign Trade Act, the export of strategic high-tech commodities to a non-restricted area without prior approval is punishable by fines of up to NT\$300,000, suspension of export and import licenses for up to one year, or even revocation of the company's exporter/importer registration. If strategic high-tech commodities are exported to a restricted area without approval, the exporter will be subject to criminal liabilities of up to five years' imprisonment, detention, and/or a fine up to US\$1.5 million, in addition to suspension of export and import licenses. The current laws and regulations do not allow for exceptions that would enable someone who has violated the applicable export-control regulation to voluntarily disclose the violation in exchange for a reduction or waiver of the criminal and administrative penalties.

The Committee understands that the aim of these penalties is to deter any future violation of the export controls. But the absence of incentives for voluntary disclosure discourages exporters from coming forward with relevant information, adversely affecting the ability of the responsible government agency to enforce the export-control regulations effectively.

Since effective export control for high-tech commodities inevitably relies to a great extent on information provided by the exporters themselves, giving incentives to exporters to comply with the export-control regime and make available relevant information should be as important as deterring violations – especially for exporters who inadvertently failed to obtain prior export-control approval without the intent to circumvent the export-control laws and regulations. For exporters, a voluntary disclosure program could also save time and expense in dealing with the matter before it reaches the stage of the competent authority starting an investigation. A similar philosophy is used in Taiwan's tax system, as reflected in Article 48-1 of the Tax Collection Act. And many countries – including the United States, United Kingdom, Japan, Australia, and Singapore, to name just a few – have adopted voluntary self-disclosure programs for export-control violations. We therefore urge the amendment of Chapter 4 of the Foreign Trade Act to incorporate a voluntary self-disclosure mechanism that waives or reduces penalties.

Suggestion 3. Harmonize Customs practices with those of major trading partners while achieving internal domestic consistency.

The committee is concerned about inconsistencies in Taiwan's Customs practices on tariff classifications both with foreign trading partners and internally among different Customs offices. We are aware of several instances in which imported goods containing novel functions or technologies were classified under completely different tariff codes from those used by the Customs authorities of Taiwan's major trading partners. We have also noticed cases in which identical goods are classified quite differently by various Customs offices within Taiwan. Such incorrect or inconsistent tariff classifications not only deviate from the international best practices for customs classification utilized by Taiwan's major trading partners, but may also be in conflict with the harmonized system of customs classifications of the World Customs Organization.

Consequently, we suggest that Taiwan's Customs authorities refer to the classification methodologies adopted by the World Customs Organization, including the various directives and interpretation rules it publishes periodically, as well as reference the classifications made by the Customs authorities of the major trading partners. In addition, we expect that Taiwan Customs should be able to harmonize the classification rulings among its various offices in real time. Proper communication internally will prevent inconsistent interpretations, significantly reducing the time and expense incurred by importers.

Suggestion 4. Adopt stronger enforcement programs to crack down on smuggling.

As an island state and given its geographic location,

Taiwan is vulnerable to use by smugglers as a hub for the illicit transport of goods to and from Southeast Asia and other regions. Effective enforcement by Customs and the Coast Guard Administration is therefore critical for bolstering national security, enhancing the investment environment, and reducing the loss of government tax and tariff revenue.

The illicit trade in tobacco products accounts for a particularly large amount of the lost revenue, as the high proportion of tax in the pricing structure of tobacco products provides lucrative opportunities for smugglers. Premier Jiang Yi-Huah recently cautioned that the nation's ports must strictly guard against the influx of contraband tobacco, especially at a time when tobacco smuggling is becoming more organized through a division of labor across borders.

According to the *Asia-11 Illicit Tobacco Indicator 2012* published by the International Tax and Investment Center and Oxford Economics, some 3 billion illegal cigarettes were consumed in Taiwan in 2012, accounting for 7.7% of the market. The contraband, known as "illicit whites," is usually concealed among small quantities of lawful imports, which increases the difficulty of enforcement. Given the significant share of illegal consumption in the domestic tobacco market sector, it is noteworthy that only 1% of the revenue from the tobacco health surtax is earmarked for combating the illicit tobacco trade.

We therefore urge the allocation of more resources to enforcement to restrict the illicit trade. It would also be advisable to increase the penalties for violations of the Tobacco and Alcohol Administration Act involving illicit trade in tobacco.

EDUCATION & TRAINING COMMITTEE >>

The Education and Training Committee wishes to recognize the contribution of the Ministry of Education in preparing Taiwan's citizens and companies to compete in today's global business environment. This year, as in previous years, AmCham Taipei's Business Climate Survey rates Taiwan's professionals as "extremely well-educated."

Without adequately prepared "human capital," all other efforts to secure a meaningful place for Taiwan in today's knowledge-based economy will fall short. Competition is becoming increasingly globalized, which means that Taiwan citizens and companies now need to compete head to head not only with such regional neighbors as South Korea, Singapore, Hong Kong, and China, but also internationally with innovation powerhouses like the United States, Germany, and the United Kingdom.

In short, Taiwan needs a work force that is not only extremely well-educated but also creative and up to world-

class standards. Year after year, however, the same AmCham survey that ranks Taiwan's population as highly educated also rates Taiwan's human capital as below world-class standard and unacceptably low in creativity and initiative-taking.

Given that background, we were pleased to learn that the authorities plan to permit foreign universities and other educational institutions to establish academic programs registered in Taiwan's Free Economic Pilot Zones (FEPZs). This development is highly commendable. For years this Committee's White Paper position paper has urged the Taiwan government to open the door to foreign educational institutions, and we are gratified that the inauguration of the FEPZs will provide an opportunity to do so. As a result of this policy, Taiwan's education sector should be able to start catching up with regional neighbors such as Hong Kong and Singapore who are now at least a decade ahead in providing foreign-based education in their domestic markets. The new policy will also help fulfill the government's ambition of attracting more foreign students to study in Taiwan, as well as enabling outstanding professors from local and foreign universities to share their professional knowledge in Taiwan.

The Education & Training Committee looks forward to working with the Taiwan authorities, as well as the American Institute in Taiwan (AIT), to begin welcoming the establishment in Taiwan of international, professional degree and non-degree programs to help students here become more creative, proactive, and internationally minded.

HUMAN RESOURCES >>

The Committee appreciates that the government has taken into consideration and accepted some of our suggestions from last year's *White Paper*, for example elimination of the work-experience requirement for foreign professionals in certain cases, including those working for companies registered in the Free Economic Pilot Zones. The government's National Development Council (NDC) also initiated a productive meeting, with participation from the HR Committee and the Ministry of Labor (MOL), as part of its effort to address significant, outstanding *White Paper* issues. The discussion provided an effective means of communication between the government authorities and industry representatives, and addressed some of the business sector's main concerns. The Committee looks forward to further developments in establishing a well-balanced employment-law regime that protects the interests of employees while taking the commercial needs of the employer into due consideration.

This year, the Committee is presenting four issues that represent its members' key areas of concern. The issues reflect the shared desire of the Committee's members to see greater flexibility and predictability in Taiwan's

employment laws.

Currently, the most important issue for the Committee is the proposed regulation of the use of labor dispatch by introducing a new Dispatch Labor Protection Law. We also hope to see clearer regulations on the enforceability of non-competition covenants, the total elimination of the two-year working experience criteria in work-permit applications, and the exemption of certain employees with higher positions or higher salary from the provisions regulating overtime pay.

Suggestion 1. Reconsider the proposed draft of the Dispatch Labor Protection Law so as to balance labor protection and the impact on business.

A draft of the proposed Dispatch Labor Protection Law (Dispatch Law) was forwarded by the MOL to the Executive Yuan for review in February this year. Since some businesses rely on the use of dispatch employees to cope with temporary increases in the volume of their workload, our members continue to stress the importance of achieving a balance in the new law between employment protection and employers' flexibility in managing human resources. The Committee urges the MOL to avoiding over-regulation of the use of labor dispatch. Following are our members' specific primary concerns:

Definition of Dispatching and Outsourcing

“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 Dispatch Law seeks to establish the regulatory framework for this activity in Taiwan. Even though the draft includes a definition of “labor dispatch,” the distinction between “labor dispatch” and “outsourcing” remains vague. When a company outsources its call-center services or customer-complaint handling services, for example, will that company be deemed to be engaging in labor-dispatch activity and therefore be subject to the restrictions contained in the draft Dispatch Law? The Committee recommends drawing a clear distinction in the draft law between labor dispatch and the outsourcing of human resources and other business services.

Limitation on the Percentage of Dispatched Workers

Article 24 of the draft Dispatch Law caps the engagement of dispatch workers at 3% of a company's total workforce. The Committee continues to oppose this limitation because a blanket cap does not take into account the different human-resources needs of companies in different industries.

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 labor and a larger unemployed population. In addition, multinational companies often face headcount restrictions. If hiring flexibility in Taiwan is reduced, the companies may move job opportunities to other countries. The Committee urges the government to lift the limitation on the percentage of dispatched workers or else provide different thresholds for different industries, taking their differing human-resource needs into account.

Further, the draft article's second paragraph requires a company requesting to use dispatched labor to first publish such details as the number of dispatched workers being sought, the period of dispatch, and the relevant job descriptions. The rationale for this requirement is unclear. Such requirement is more likely to compromise a company's business strategy and spur labor disputes than to serve any positive purpose. The Committee recommends deleting this requirement.

Restrictions on Requesting Specific Dispatched Employees

Article 7 of the draft Dispatch Law stipulates that a requesting company may not “interview” dispatched workers or “ask for” specific dispatched workers before the dispatch agency engages the workers. We understand from our various communications with the government authorities (including the NDC) that the draft aims to prevent companies from circumventing their responsibilities as an employer by hiring employees through dispatch agencies. As the requesting company will be the recipient of the services provided, however, it should have the right to choose which dispatched workers it wishes to use. This article should be amended or supplemented by some additional explanation to clarify the meaning to prevent future misunderstandings.

Fixed-term Contract vs. Labor Dispatch

Fixed-term contracts and labor dispatch are popular practices in Taiwan because the current Labor Standards Law (LSL) imposes excessive constraints on employers regarding the severance or termination of employment, thus depriving employers of the HR management flexibility needed to survive in today's competitive markets. The Committee considers that the use of labor dispatch and fixed-term contracts work hand in hand. The Committee's member companies have indicated that the use of labor dispatch is sometimes driven by the stringent and inflexible requirements governing fixed-term contracts under the current LSL. The Committee suggests that if the new law proposes to tighten the use of labor dispatch, then regulations on fixed-term contracts should simultaneously be relaxed. In particular, the current law only allows fixed-term contracts if they fit into one of four categories stipulated under the LSL. The Committee suggests that the draft article be revised to enable an employer to use fixed-term contracts as long it has a

“temporary need for additional human resources.”

Dispatched Workers become Direct-hired Employees

Article 8 of the draft Dispatch Law provides that if the term of the dispatch exceeds one year, the dispatched workers will have a right to demand by written notice that the company hire him/her as a direct-hired employee. If the company does not object in writing within 10 days of receipt of such a demand, an employment relationship between the company and the dispatched workers would be deemed to have been established. However, the draft fails to explain the consequences if the dispatched worker's demand is turned down by the company. To avoid confusion, we suggest that the law or its enforcement rules expressly provide that when a dispatched worker who requests to become a direct-hired employee is turned down by the company, the worker may remain as a dispatched worker at the company. The dispatched relationship would not be terminated due to the rejection of the request. This arrangement would be beneficial for both the company and its dispatched workers.

Suggestion 2. Amend the LSL to provide clearer regulations on the enforceability of non-competition covenants.

In order to secure the confidentiality of their trade secrets, many companies enter into non-competition covenants with employees who have access to their trade secrets, restricting the activities the employees are allowed to engage in if they leave the original employer. Under the current legislative framework, the scope of enforceability of the non-competition covenants (with regard to geographic area and length and type of restricted activities) is not defined, and it is also unclear what constitutes the “reasonable” compensation that an employer needs to pay to enforce the non-competition covenant. The enforceability of a non-competition covenant and the amount of reasonable compensation are left to the courts.

In the absence of a coherent view from the courts and the lack of express statutory provisions on this issue, the Committee submits that the employer should be allowed to design a suitable non-competition agreement to cope with their particular business needs. The appropriate length of time covered by the non-competition covenant varies with circumstances. In addition, the employer should not be compelled to pay for the enforcement of the non-competition covenant.

The Committee also submits that if the employer and employee have agreed on a non-competition covenant at the time the employment agreement is signed, the employer and the employee should be able to agree on the compensation that can be factored into the employee's remuneration for the non-competition covenant – for example, the amount of stock options obtained during the employment. Further,

the amount of reasonable compensation during the post-employment, non-competition period might range between 25% and 75% of monthly salary for each month of non-competition. If additional compensation is required, the amount should be negotiated and agreed upon by the employer and employee.

Suggestion 3. Exempt employees with higher positions or a monthly salary above a certain level from the provisions on extended working hours and overtime pay.

The current LSL sets very strict limitations on extended working hours and overtime pay. 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 law. The LSL should therefore reserve space to allow employers and their senior professional employees to determine the working hours and leaves for such employees. For example, if a senior executive needs to have a phone call or video conference with overseas customers or headquarters in different time zones, it is impractical to require the senior executive to clock in at 9 a.m., clock out at 5 p.m., and regard any work conducted outside of these hours as overtime – a requirement that would hinder Taiwan from becoming an operations center for global companies. Strict limitations on extended working hours would also cause difficulties for companies in implementing systems for employees to work from home, as it is not easy to measure employees' extended working hours when they telecommute.

To permit greater flexibility, the Committee suggests revising the draft to exempt employees with higher positions or a monthly salary exceeding a certain level (such as NT\$200,000) from the provisions regarding extended working hours and overtime pay.

Suggestion 4. Eliminate the two-year work experience requirement for foreign professionals.

Currently some exemptions allow certain foreign professional personnel to work in Taiwan without meeting the two-year work experience requirement. These include employees engaged in technology-related industries, those assigned to Taiwan after working for cross-border companies for at least a year, and those working for companies registered in the Free Economic Pilot Zones. However, current regulations still require foreign professional personnel to have earned a university bachelor's degree and – aside from the exemptions mentioned above – to have at least two years of related work experience in order to be hired to work in Taiwan. Although the authorities have somewhat relaxed the two-year working experience requirement for foreign students who have completed their university education in Taiwan, this requirement remains in place for other foreigners, including the children of resident expatriates who grew up in Taiwan

but obtained their university education overseas.

The Committee continues to submit that the requirement for two years of related working experience should be eliminated. The selection of the right candidate for a position should be determined by the employer based on market conditions, not legal requirements. The Committee does not believe that this change would have a negative effect on the labor market in Taiwan. In fact, it would attract more international talent to diversify the labor force in Taiwan, which would in turn help familiarize local employees with international practices and make Taiwan companies more competitive.

INFRASTRUCTURE >>

This year the Infrastructure Committee would like to bring up five issues for the Taiwan government's consideration. The first is energy-related. We recommend that the government avoid becoming locked into a long-term procurement policy for liquefied natural gas (LNG) in order to leave flexibility for future reconsideration of whether to extend the life cycles of the existing nuclear power plants.

The second relates to the government bidding process. We believe the "most favorable bid" is not suitable for turnkey projects, and instead recommend that the government adopt the "Selective Tendering Procedure" for those types of projects. The third issue stresses the importance of creating a dedicated government agency to oversee government procurement, the fourth calls for expanding the opportunities in government procurement for foreign companies, and the fifth concerns attracting more foreign companies to participate in BOT projects in Taiwan.

Some of these issues are carry-overs from previous *White Papers*. We hope this year to receive a positive response from the Taiwan government.

Suggestion 1. Rethink the procurement policy for LNG.

AmCham has consistently reminded the government that energy cost is of vital importance to Taiwan's competitiveness and its ability to attract foreign direct investment (FDI). But the government's position on energy has been very confusing, as it includes two components that will contribute to making future energy costs astronomically high. One of those policies is the decision to shut down the existing nuclear power plants when they reach 40 years of service instead of granting a 20-year life extension as many other countries have done. The second is to "maximize power generated from natural gas," a policy which numerous government documents have stated is for the purpose of combating climate change.

The cost of power generation (per kWh) from the existing nuclear power plants is only one-fifth that from natural-gas-powered plants. As the abovementioned two policies would

replace the existing nuclear power units with natural-gas-fired plants, the result will be to increase power costs by more than NT\$100 billion (US\$3.3 billion) annually. Since the current government is reluctant to change its policy and grant life extension to the existing nuclear power plants, we strongly recommend that the government at least leave this option open for the next government to decide.

Considering that the first of the existing six nuclear power units is scheduled to be retired just four years from now – with the rest to follow before 2025 – the Taiwan Power Company (TPC) must plan how to fill the 20% power-supply gap that would be created. Because any new power development project will take eight to 10 years to complete, TPC has already proceeded with many new gas-fired power projects to fill the gap. It will be up to the CPC Corp., Taiwan to plan for the supply of natural gas to these new gas-fired power plants.

Fuel costs represent 80% of the cost of power generation from a gas-fired power plant. Currently, the majority of the LNG procured by CPC is by long-term contract, with very little purchased from the spot market. We recommend that the government instruct CPC to shift its procurement to the spot market for the next 10 years, as long-term fuel contracts always include a "take or pay" clause that would deprive CPC of any flexibility in its LNG procurement for the coming two to three decades.

If CPC starts to procure LNG for the prospective new plants through long-term contracts, the next government would be unable to adopt a nuclear power plant life-extension policy, as TPC/CPC – bound by the "take or pay" clause – will be committed to going forward with the gas-fired power plants, with no possible alternatives.

We still strongly recommend that the government adopt the "life-extension" policy. If the government is unable to change its policy, it should leave this option open for the next government. Procurement of LNG from the spot market is the only way to ensure that the option will still be available for the next government to consider.

Suggestion 2. Award turnkey public contracts by selective bid.

The Public Construction Commission (PCC) has issued a letter instructing all government agencies to adopt the "most-favorable bid" tendering procedure in selecting contractors for turnkey projects. The intention is avoid awarding turnkey projects to the lowest bidder. Although we fully agree that turnkey projects should not be decided by "lowest bid," awarding all turnkey contracts by "most-favorable bid" is also not advisable.

Internationally, the two procedures are adopted for different types of bids – and for good reason. Bids related to engineering design services such as feasibility studies, front-end engineering, and basic design are usually more

suitable for the most-favorable-bid approach. For this kind of service, experience and creativity are the most vital factors contributing to the success of the overall project (including both the construction and operation stages), and the service fee amounts to only a small percentage of the total construction cost. Use of the lowest-bid practice for engineering design services is therefore not recommended.

During the construction stage, however, the major costs are the equipment and bulk materials such as concrete, steel, piping, cable, etc. Since it is difficult to differentiate among bidders as long as the deliverables meet the specifications, bids for construction-stage activity are usually decided by the lowest bid.

For more complicated construction projects, where experience and management skill are also crucial to the success of the project, the pre-qualification (PQ) process plays a very important role. All bidders that are pre-qualified are considered to have the technical and managerial skills necessary to successfully execute the project and are allowed to proceed to submit proposals/quotations for the construction bid – which will eventually be awarded to the lowest bid from among the pre-qualified bidders.

Since turnkey projects usually are quite complicated and, as with construction projects, the contract value tends to be high, the aforementioned two-stage award procedure should also be adopted for them instead of the most-favorable-bid procedure. In the procurement law, the two-stage tendering process is referred to as “selective tendering procedure.”

Using a most-favorable-bid procedure for turnkey projects could easily lead to abuse, considering the large sums of money involved and the fact that the decision-making would be more subjective. Legislators, city councilmen, or others might seek to pressure the officer in charge to influence the outcome.

For the above reasons, we urge the authorities to adopt the selective tendering procedure for turnkey public contracts.

Suggestion 3. Designate a dedicated agency to be responsible for government procurement implementation.

In the current government organizational structure, we cannot identify any agency assigned to take direct overall responsibility for government procurement. Although the state-owned Bank of Taiwan is currently overseeing the joint tendering program for government procurement, this service is not within the scope of the Bank's professional core competence. Neither is it among the interests and responsibilities of the Bank's main shareholder, the Ministry of Finance, or its regulator, the Financial Supervisory Commission. Currently, the Public Construction Commission (PCC) is in charge of government procurement policy and administering the Government Procurement Law, but PCC has no direct jurisdiction over the Bank of Taiwan. Under the government's ongoing reorganization plan, moreover, the

PCC will soon be dissolved, with its functions divided among three other government ministries.

The current arrangement is detrimental to both government and industry. Serious delays have occurred in the government procurement schedule, with software procurement as the prime example. In addition, the Bank has no motivation to consider any policy agenda in implementing the tenders except to push for the lowest price. This direction is not only harmful to Taiwan industry's long-term growth, but is also contrary to the government's stated objectives of promoting innovation and increased added value to help drive Taiwan's economic development.

Maintenance of a joint government procurement platform can bring many benefits to both government and suppliers through greater efficiency and lower costs in managing the bidding process. But for the system to work properly it must be overseen by an agency that can devote the necessary attention and resources to the process. The Committee therefore recommends that the government appoint an existing government body, or create a new dedicated agency, to be responsible for government procurement implementation for all ministries and government departments.

Suggestion 4. Further expand government-procurement opportunities for foreign companies.

Last year, the Committee recommended further broadening government-procurement opportunities to add New Taipei City, Taichung, and Tainan – newly created special municipalities directly under the Executive Yuan – to the list of jurisdictions covered by Taiwan's participation in the Government Procurement Agreement (GPA) under the WTO. Besides those three cities, Taoyuan City, which will soon receive special-municipality status, should now also be considered for addition to the list. Further, the list could also be expanded to include some additional central government branches (such as the Control Yuan, Examination Yuan, Judicial Yuan, and Legislative Yuan).

The answer we received from the government, however, is that no expansion of the WTO/GPA is being considered. We understand that this is a treaty-related issue and that the government may face limitations in changing the treaty unilaterally. But we still regard the further opening of the government procurement market as an important step as part of the government push to join the Trans-Pacific Partnership and other multilateral free-trade-related alliances. Such initiatives could be launched independently of the GPA obligation.

In addition, the Committee strongly recommends that all government procurement under the new Free Economic Pilot Zones (FEPZs) be opened to foreign companies. Along with broadening the government procurement jurisdictions to more municipalities and government branches, extending the program to the FEPZs would send a clear message that the

Taiwanese government is sincere about opening its market as a step toward becoming more internationalized.

Suggestion 5. Adhere to best practices to attract foreign companies for private participation in public infrastructure projects.

Every year the Taiwanese government holds a conference to try to attract private companies to participate in public infrastructure projects, for example through Build/Operate/Transfer (BOT) mechanisms. While many large important projects such as Taipei 101 and the High Speed Rail, to name a few, come under this Public-Private Partnership (PPP) law, foreign participation in this area is minimal.

To date, 13 years after enactment of the PPP law, it appears that the single substantial foreign participation is by a Japanese company, Mitsui Fudosan, which plans to build and operate an outlet mall in New Taipei City. The Committee recommends that the government consider the following steps to promote PPP to foreign companies more effectively:

- Provide English versions of all documents and information related to the tenders. Currently they are all only available in Chinese.
- Apply well-tested business models for project financing as used by other developed economies, for example in the cross-harbor tunnel project in Hong Kong.
- Streamline, simplify, and standardize the process. The government should hire a qualified international consultant to conduct a thorough study on what needs to be done to make Taiwan a more welcoming environment for Private-Public Partnership.
- Increase the incentives by heightening the basic return on investment (ROI). Don't place an unofficial ceiling on the potential investment returns. We suggest that the authorities study and adopt some basic ROI standards accepted by other Asian Pacific countries.

Ultimately, the driving force needs to be a change in mentality. Unless the PPP system is truly perceived to be open, equitable, and transparent, the necessary investment funding will not be forthcoming in Taiwan to undertake the many worthwhile projects that need to be carried out.

INSURANCE >>

The Insurance Committee has adjusted its theme this year from “Protect the Customer” to “Protect and Promote.” The genesis of this shift has been the sense that while the Insurance Bureau (IB) and the Ministry of Finance (MOF) continue to make efforts to increase consumer protection and enhance financial stability, which certainly are positive objectives, some of these initiatives have had the unintended consequence of making it overly difficult for many customers to acquire insurance in an easy and efficient way as is

increasingly expected by consumers in the new digital and Internet-based era. In this year's paper, the Committee highlights proposed changes we view as important in enabling insurers to more effectively promote needed protection products to Taiwanese consumers.

Suggestion 1. Increase the convenience and ease for consumers to obtain protection insurance.

The Committee fully supports the IB's policy of encouraging increased emphasis by the insurance industry in selling protection-related as opposed to investment policies. However, six key regulatory problems currently make this approach extremely difficult to carry out:

1. Taiwan's “Insurance E-Commerce Operation Self-Regulation” and “Internal Control Self-Regulation for Insurance E-Commerce Record Maintenance” present significant barriers for Taiwan consumers to access insurance service and protection via e-commerce. The present e-commerce regulation requires customers to use “digital signatures” on their insurance applications, but that involves a complex and cumbersome registration and authentication process. The result has been to deter customers from using this channel to obtain insurance protection, effectively eliminating the insurance e-commerce market. Unlike the situation in Taiwan, many industrialized countries, including Hong Kong, the United States, and Japan, have adopted a more pragmatic approach to meet the needs of the younger generations by allowing customers to use an account name and password, plus the policyholder's credit card, for identity verification. Taiwan regulators should likewise make it easier for busy consumers to enter into a simple insurance contract. We recommend that the regulations for on-line insurance applications follow the “Directions for Insurance Enterprises Engaging in Telemarketing Insurance Products,” which set forth clear requirements governing the application process, procedures, risk controls, and dispute handling. This change would allow the insurer to distribute simple protection-related life insurance and general insurance products through an end-to-end electronic process, without requiring additional digital or face-to-face signatures. The customer identity would be validated using a password, credit card, or other convenient manner. Life insurance policies for which the applicant is different from the insured can be excluded from this process.

To strengthen the process of verifying customers' identity, we recommend utilizing the Policy Reporting System of the Life Insurance Association and the Non-life Insurance Association to crosscheck and verify their identity. The aim should be to allow insurers to take advantage of new technologies to reach customers, especially those who have never before carried insurance protection.

2. The extensive Know Your Customer (KYC) and disclosure requirements are frequently the source of frustration for consumers. They often ask: “Why do I have to provide so much information to insurance companies just to buy simple life, protection and general insurance policies? These are not investments!”

The KYC and disclosure requirements were put in place along with implementation of the Financial Consumer Protection Act of 2008. The intention was to protect customers against “investment” risks by making sure that the investments or purchases were genuinely in line with their personal needs. But that concern is not relevant for most protection policies. We recommend that KYC and disclosure requirements be excluded for both general insurance and life insurance contracts when a) the content and coverage are simple and b) the applicant and the insured are the same person.

3. The discrepancy between certain types of policies allowed to be sold by life and non-life insurance companies is confusing for consumers. They wonder: “Why can’t I buy a comprehensive travel policy with life and non-life features from my life insurance company when I can buy it from the non-life company?”

Under Article 138 of the Insurance Act, life insurance companies are not allowed to market products beyond the basic scope of life, accident, medical, and annuity products. But under the same Article, non-life companies are allowed to issue one-year term accident and medical products upon approval. The disparity gives non-life companies an advantage in offering robust travel insurance products. Besides the confusion to customers, the discrepancy creates an unlevel playing field between the two industries.

We urge the amendment of Article 138 to allow traditionally non-life features of travel insurance products (such as travel inconvenience protection) to be issued by life insurance companies.

4. Currently oral or digital answers obtained through the application approval or inquiry process are not accepted as the legal basis to rescind or challenge a policy.

Modern consumers are increasingly electing to complete transactions online and over the phone as a convenient option instead of face-to-face meetings. While insurers can now complete some sales over the phone (and we look forward to further expansion of the scope), they are currently not permitted to use those same recorded or digital responses as part of the full contract, thus increasing the risk/cost to the insurance company and ultimately the consumer.

However, according to Article 4 of the Electronic Signatures Act, if the information content can be presented in its entirety, with the client’s consent, an electronic record has the same legal effect as a written

document. Article 2 of the Act defines an electronic record as a record in electronic form, composed of any combination of text, sound, picture, image, symbol, or other information generated by electronic means. According to this definition, the declaration of a client’s intent through any electronic device online should be regarded as an electronic record. In addition, in the telemarketing process, recordings of clients’ answers to inquiries about their health condition are also considered to be an electronic record, in line with the definition in Article 2. Our conclusion is that either online or telemarketing transaction records can be treated as the equivalent of written documents and are thus covered by Paragraph 1, Article 64 of the Insurance Act.

We urge amendment of the “Directions for Insurance Enterprises Engaging in Telemarketing Insurance Products” and regulations related to conducting insurance e-commerce to recognize that “electronic and recorded oral inquiry” and “electronic and recorded oral answers” indeed have the same legal effect as signed written documents.

5. Executing policy renewals and other basic functions for simple general insurance contracts is made unnecessarily complicated by requiring signatures from the applicants for technical and administrative purposes, placing an undue burden on both insurers and consumers. Following the example of the European Union Insurance Mediation Directive passed by the European Parliament and European Council in September 2002 would permit some simple products and services to be excluded from requiring a written acknowledgement.

We suggest waiving the signature requirements on general insurance product, small-amount travel insurance, and accident and health policies when the applicant and the insured are the same person. In addition, we propose that if an existing client of an insurance company buys other insurance policies from the company, the signature requirement should also be waived.

6. Insurers are required to file changes to insurance application forms regardless of whether there is any material change to the form, adding time and cost for insurers with no value to consumers.

We suggest that companies that have demonstrated strong quality control and good compliance be excluded from the requirement for filing the revised application form as long as the content 1) contains all the compulsory information and 2) provides the exact terms and conditions of the policy for which the insured/applicant applied. This change would make the selling of protection insurance more efficient and effective by permitting the applications to be more accessible and adaptable to the needs of different distribution channels.

Suggestion 2. Follow global best practice in addressing brokerage clients' insurance needs.

The Committee understands that the proposed revision of Article 28 of the “Regulation Governing Insurance Brokers” (restricting a broker company from simultaneously transacting both insurance brokering business and reinsurance brokering business under the same insurance contract) was designed to eliminate conflicts of interest arising from insurance brokering and reinsurance brokering transactions. However, the proposed amendment is contrary to international practice. Global best practice suggests that there are better ways to address this concern without hampering the efficiency of brokers in meeting customer needs.

For risk management purposes, sizable or multinational companies usually request an insurance broker to arrange both insurance and reinsurance in the same insurance contract. Requiring such companies to engage at least two different brokering companies to handle both the insurance and related reinsurance brokerage will cause inconvenience to customers, higher overall costs due to the need to engage and coordinate with at least two different brokering companies, and exposure to mismatches and coverage gaps between the insurance and reinsurance contracts.

We suggest referencing the brokering insurance and reinsurance practices of the United States, United Kingdom, Australia, Japan, Hong Kong, Singapore, and Korea. These countries do not prohibit a broker from providing both insurance and reinsurance services concurrently to fulfill the customer's needs, though they do require that certain disclosure and ethical walls be established to manage any possible conflicts of interest arising from the insurance and reinsurance transactions. To ensure that Taiwan companies can continue to enjoy efficient brokering services (keeping costs down and maintaining international competitiveness), we suggest reconsideration of the proposed revision. In its place we recommend the promotion of self-regulatory rules among insurance brokers under a framework that effectively addresses the conflict-of-interest issue, meets customer needs, and conforms to international practice.

Suggestion 3. Avoid the serious unintended consequences that an increase in the business tax rate for insurance companies would bring.

The insurance industry plays a unique role in society by providing long-term (in fact life-long) protection of consumers' life, health and retirement needs. As such, insurance companies take on very long-term liabilities and investments in an effort to maintain strong reserves and contingencies for unexpected events and market changes. Indeed, the industry has been coping with a very challenging low-interest-rate environment for over a decade. While most insurers have been able to maintain adequate capital to meet the minimum RBC (Risk-based Capital) requirements, many of them are still

facing the problem of a substantial negative spread.

Under these circumstances, it is an inappropriate time to add to the financial strain on the industry by increasing the business tax from 2% to 5%, as was enacted into law last month by the Legislative Yuan. We hope that some ways may be found to mitigate the negative impact.

In addition, we would like to note that the business tax formula particularly penalizes the sales of protection/risk-focused policies, thereby disproportionately impacting companies focused on precisely the type of insurance products that the government wishes to encourage. Ultimately the reduced profitability of protection products may lead to some products being withdrawn from the market, to the detriment of consumer choice. In addition, increasing the rate under current market conditions will severely affect the financial situation of insurers, especially impacting those companies that are already under financial strain and unable to maintain the minimum RBC ratio. Such companies may be unable to carry on normal business operations, putting their policyholders' interests at risk and damaging the reputation of Taiwan's insurance industry as a whole. In that event, the government will need to devote considerable effort and expense to resolve the problem.

The business tax increase would make Taiwan less attractive as an investment location for multinational companies and is counter to the government's stated goal of becoming a financial hub in Asia, as well as its stated policy of maintaining a stable financial sector.

From a legal perspective, implementation of the proposed increase would also pose a violation of the “Doctrine of Non-retroactivity,” as it would be applied to premiums set previously with reference to the lower tax rate. Non-retroactivity is a fundamental principle of law recognized both internationally and in Taiwan (Judicial Yuan Interpretation No. 580). With respect to the validity of a contract, in principle the old law shall apply. In other words, the validity of the contract shall be determined in accordance with the laws in force at the time when the contract was executed because the parties considered then-existing laws when signing the contract. The government may exceptionally apply the new law for the purpose of enhancing public order or the public interest, and in doing so interfere with existing contractual relationships, but only when justified by critical conditions. If application of the new law may impair the interests of the people, the legislature should adopt appropriate remedial measures or stipulate a transition period so as to mitigate the losses arising from the change in law – in line with the constitutional law principle of protecting the people's interests.

We therefore recommend the following options:

1. Delaying imposition of the increased business tax on the insurance industry or implementing the changes by stages in order to avoid seriously negative unintended

consequences.

2. Continuing to apply the 2% rate to premiums generated from policies sold from July 1, 1999 to the effective date of the increase, because the premium was fixed at the time of the issuance of the policies. The increased rate of 5% would be applied only to premiums generated from new policies underwritten after the amendment of the law, as the higher rate would have been considered when determining the pricing.
3. Amending the business tax formula to permit the deduction of claims paid and changing the tax base from premium income to policy liabilities. Claims paid include all insured event claims, maturities, dividends, and surrenders. Policy liabilities include policy reserves, IBNR reserves, and OSLR reserves.

Suggestion 4. Improve the insurance industry's financial strength.

Most experts expect the nearly global low-interest-rate environment to continue to challenge insurers' financial returns and subsequent solvency in the short to medium term (alternative scenarios might include very fast and steep increases in interest rates, which would also pose significant challenges). Within this context, we repeat our previous recommendation that insurers unable to maintain the minimum 200% RBC level for two years should be required to stop writing new business until they inject adequate capital to meet the minimum standards, thus limiting potential increases in future liabilities. While the new RBC disclosure requirements, which increase the categories for degrees of financial strength from three to five, may help some savvy consumers to recognize the risk, we believe the majority of existing or potential policyholders are unclear as to the risks they would face if the insurance company is unable to increase capital or becomes insolvent. Consumers should be educated to realize that a government-facilitated bailout similar to the one in the Kuo Hua case cannot be expected in the future, so they will understand that if their insurer were to become insolvent and enter the bankruptcy process they may receive none or only a portion of their contractual benefits. To this end, the Committee believes it is important to assure that consumers have as much information as possible on the risks they are taking and be protected from doing business with companies that have not been able to demonstrate an ability to maintain the minimum capital adequacy for an extended period of time. While this approach may accelerate some problems, it will prevent an increase in the number of affected customers and reduce the overall impact on the industry and the already strained stabilization fund.

Suggestion 5. Remove the minimum guaranteed interest rate requirement for "voluntary" pension contributions.

The committee recognizes that the Labor Pension Act was

put in place to assure that employees are putting aside at least a minimum amount of savings towards their retirement savings and that it is important for these investments to be handled prudently. At the same time, we believe it makes sense for many employees – particularly younger ones with a long investment horizon – to be able to further diversify their pension savings by including some investments with potentially higher returns. In most markets, including Hong Kong, Singapore, the United States, and the European Union, the pension rules allow employees to apply at least some of the funds to non-guaranteed investment options that have a risk-return profile more closely aligned with the employees' needs. We therefore continue to recommend that as a practical first step, the Ministry of Labor consider giving employees the freedom to choose to invest the "voluntary" portion of their pension contribution into investment options that do not provide the currently mandated minimum guaranteed return equal to the two-year term deposit rate.

INTELLECTUAL PROPERTY & LICENSING >>

Strong intellectual property rights protection benefits Taiwan by encouraging investment and fostering the development of knowledge-based industries that are key to maintaining Taiwan's competitive position in the regional and global economies. The Committee appreciates the government's ongoing efforts to bring the regulatory environment in line with international standards that reflect the importance of intellectual property protection; these efforts benefit all the stakeholders in Taiwan. The Committee also recognizes the continued leadership that the Taiwan Intellectual Property Office (TIPO) has shown in soliciting input from all stakeholders and then coordinating proposals for further legislative and regulatory improvements of Taiwan's IPR regime. Recent positive legislative changes have included amendments to the Trade Secrets Act in 2013. We also commend TIPO for its announced goal of reducing the time needed for patent application approval, and look forward to steady progress toward that objective. Nevertheless, some serious problems persist, particularly in regard to copyright infringement online.

In terms of enforcement, the Committee appreciates the assurances it has received from the National Police Agency that the recent restructuring of the IPR police unit and its incorporation into the Criminal Investigation Brigade will strengthen rather than impair the special police corps' ability to effectively fight IPR infringement.

This year, the Committee reiterates concerns over unresolved issues and recommends action on several fronts. In particular, we recommend that the Taiwan government amend laws necessary for the effective enforcement of the

new Trade Secrets Act and adopt discovery mechanisms to ensure adequate and efficient redress for victims of trade secret theft. We also strongly urge the implementation of concrete and effective measures to address the real harm caused by online piracy.

Suggestion 1. Introduce the discovery system and related supporting measures to enhance execution of trade secrets protection.

The Committee highly appreciates the support of the executive and legislative branches of the Taiwan government in last month's enactment of an amendment to the Intellectual Property Case Adjudication Act (IPCAA). The amended IPCAA compels a defendant in a trade-secrets case to make a substantive defense, rather than merely denying the allegations, when the plaintiff has specified the conditions of the alleged infringement. Although the amendment will help strengthen enforcement of the Trade Secrets Act, a number of other issues still remain regarding the enforcement mechanism. These issues include the definition of burden of proof in civil actions, whether defendants will be compelled to produce documentary evidence, the amount of damages that may be sought, the time limit on claims, and how judges and prosecutors will be trained to deal with what may be new concepts for them. Now that the substance of the law has been improved, it is vital also to strengthen civil and criminal judicial procedures to enable the law to be carried out effectively. In this context, we suggest that an effective evidence discovery system and related supporting measures be introduced into our legal system to the greatest extent possible.

In comparison with ordinary civil cases or other IP cases (such as patent or trademark cases), in trade-secret cases it is particularly difficult to produce solid evidence of infringement. The current litigation system requires the plaintiff to specify the documents to be sought and facts to be proved. However, a trade secret is not always attached to a specific tangible object and may simply relate to the knowledge and experience in a person's brain. Furthermore, almost all infringing activities in a trade-secret case happen in the defendant's location, making it impossible for the victim to know the status of the infringement, much less to specify the relevant documents. Even if the court orders the defendant to cooperate, it is hard to force the defendant to produce evidence.

To assist the court in finding the truth, the evidence discovery system as practiced in the United States has much to offer, although it is difficult to align with the civil litigation system and practices in Taiwan. In this regard, the Japanese civil litigation law may serve as a more practical reference. In the first phase and to the extent appropriate, the U.S. and Japan evidence discovery systems and related supporting measures (such as expanding the scope of evidence

preservation orders) may be introduced into the IPR case adjudication law. This step would help to strengthen Taiwan's trade-secret civil-litigation system and gradually improve Taiwan's litigation practices.

Suggestion 2. Strengthen the functioning of the IP Court.

The establishment of a specialized IPR Court in July 2008 was a major milestone in Taiwan's development of a robust, effective, and predictable IPR protection regime. The Committee commends the judges and staff of the IPR Court for their continued work in this regard, and we look forward to continued improvements, especially in raising the extremely low rate of granting preservation-of-evidence orders.

It is crucial for the effective functioning of the IPR Court that it is able to fulfill its role as a finder of fact in IPR litigation. The burden of proof for each element of the plaintiff's claim is quite appropriately on the plaintiff, but it is vital that plaintiffs have the ability to collect the evidence necessary for the court to assess whether infringement has occurred and to determine appropriate remedies. During the investigation stage, it is common for defendants to broadly refuse to provide relevant evidence regarding the facts necessary to determine both infringement and the scale of the infringement.

Orders for preservation of evidence by the IPR Court are already available under the relevant procedural statutes. However, according to the IPR Court's own statistics, the approval rate for applications for preservation of evidence is only 11% (21 approvals out of 205 applications made from July 2008 through July 2012). According to a research report published by the Judicial Yuan dated December 28, 2012, the approval rate was around 17% for 100 applications made during 2010 and 2011, while research reported by Academia Sinica scholar Liu Kung-Chung in June 2013 found an approval rate of about 12.7% for 185 applications made from July 2008 through December 2013. From the above statistics from different sources, it is apparent that the IPR Court is applying a prohibitively stringent standard in reviewing applications for preservation of evidence.

Rights-holders have sometimes been criticized for taking advantage of criminal proceedings by filing criminal complaints against infringers to push for civil settlements. Given the current state of limited preservation of evidence in civil cases, however, many rights-holders find they have no alternative but to bring criminal cases for infringement, where such claims are available, as the criminal procedures allow for more effective methods of preservation of relevant evidence that may then be used by the IPR Court to make appropriate determinations of fact.

It is believed that the low approval rate can be attributed to some non-legal-related factors that judges considered

when reviewing the applications, such as (i) the impact on the reputation of the counter party; (ii) the effort and time required to enforce an approved order; or, in some extreme cases, (iii) the distance between the court and the site where the approved order will be executed. As cited by the legislators when drafting Article 18 of the Intellectual Property Case Adjudication Act, “the preservation of evidence prior to filing a lawsuit is much more necessary for IPR civil cases than other kinds of litigation.”

As Taiwan currently lacks a robust discovery system, the IPR Court should strengthen the existing procedures of evidence collection to improve the effectiveness of IPR protection. We urge the IPR Court to adopt a more appropriate standard when reviewing applications for preservation of evidence and suggest that non-legal factors should not unduly influence its consideration of applications for preservation of evidence.

Suggestion 3. Address defects in the Copyright Collective Management Organization (CCMO) Act.

Certain restrictions in the current legislation regarding remuneration to CCMOs are detrimental to rights-owners and impede the healthy development of the copyright licensing market. The Committee urges the government to remove these unreasonable and unnecessary restrictions in favor of fair and efficient free-market mechanisms. We recommend the following steps:

1). *Allow proposed copyright tariff rates to be negotiated between users and CCMOs.* Both users and CCMOs have long been dissatisfied with TIPO’s review rulings, and they must expend a substantial amount of resources seeking administrative remedies. In fact, since the 2001 amendment of Article 82 of the Copyright Act, which in effect removed the legal basis under Articles 25 and 26 of the CCMO Act for TIPO to review and revise tariff rates proposed by CCMOs, TIPO has had no basis in the law for maintaining that authority.

The Committee strongly suggests that the copyright tariff rate should be set according to free negotiation between users and CCMOs, and that any disputes regarding the tariff rate should be subject to the mediation mechanism already in place in Article 82 of the Copyright Act. For additional clarity, Articles 25 and 26 of the CCMO Act should be deleted.

2). *Remove “single-window licensing” provisions from the CCMO Act.* TIPO’s recent attempts to implement Article 30(1) of the CCMO Act through application of “single-window collection” and a “united tariff rate” for “public performance by the use of computerized karaoke machines” has failed, demonstrating the impracticality of Article 30. It proved impossible in practice for the three music-composer CMOs involved to agree on a joint royalty rate given the large disparity in the quantity of

their titles. It has also been very difficult to get agreement on a single window to collect the royalty. Given these practical problems in implementing “single-window collection,” we urge the executive and legislative branches of government to revise Article 30 as soon as possible.

Suggestion 4. Implement effective measures to deal with online infringement.

Internet piracy of copyrighted material in Taiwan remains widespread over a variety of platforms including set-top boxes, multi-media players, computer terminals, and websites, and is proliferating further via mobile devices. Current measures to combat online infringement are ineffective. Due to inadequate enforcement and remedies, piracy remains a huge threat and challenge for all rights-owners, including Taiwan-based authors.

In 2013, TIPO floated the idea of creating an administrative procedure by which local access to foreign websites known to be engaging in serious copyright infringement could be blocked. To the dismay of rights-holders, however, TIPO later withdrew the proposal. Given the scale of online piracy and the lack of effective enforcement due to loopholes in the Copyright Act and inadequate implementation of the ISP liability provisions, it is crucial that the issue remain on the agenda in order to find ways to provide immediate effective remedy.

The Committee urges the government to intensify efforts to implement border control measures to stop online piracy in Taiwan. We also urge Taiwan to amend the Copyright Act to define crimes involving material and imminent copyright infringement on the internet as public crimes that may be prosecuted without requiring the rights-owner to file a complaint.

Suggestion 5. Make needed revisions to the Copyright Act.

TIPO completed its three-year Copyright Act Reform Plan in 2013, and recently released its initial proposed amendments to the Copyright Act for public comment. Committee members look forward to participating in a robust public discussion of the proposed amendments, and hope that TIPO allows sufficient time for the myriad issues to be fully discussed before the draft amendments are submitted to the Executive Yuan and Legislative Yuan.

The Committee also urges the government to remove Article 37 of the Copyright Act, which restrains and discriminates against copyright-holders by making criminal remedies unavailable to them if they are not members of a CCMO.

MANUFACTURING >>

The Manufacturing Committee is dedicated to promoting manufacturing excellence and cultivating value-added

innovation to position the manufacturing sector as one of Taiwan's primary pillars of economic growth and prosperity. The Committee seeks to enhance the global competitiveness of Taiwan's manufacturing sector to interact with government agencies to shape consistent industrial policies and aggressive initiatives.

Suggestion 1. Continue to focus on providing a sufficient and reliable power supply to industrial customers along with more transparent and predictable power tariff adjustments.

Assurance of a sufficient and reliable supply of electrical power is a basic requirement for high-tech manufacturers. We therefore encourage the Ministry of Economic Affairs (MOEA) and the Taiwan Power Co. to undertake the necessary planning and investment to build new capacity to meet future power demand, as well as to continue to improve supply reliability by identifying the root causes of power interruptions and taking the appropriate corrective actions.

For large power users, the increases in the industrial power tariff in Taiwan in recent years have had a significant negative impact on bottom-line profitability. For the third round of electricity tariff adjustment scheduled for late 2014, MOEA and Taipower should factor in the decreases in international coal prices over the past two years. In addition, more clarity is needed on the methodology and process used in deciding power-tariff adjustments to enable large industrial power users to prepare for future tariff changes in their planning and budgeting so as to avoid disruptive surprises.

In addition, we urge MOEA and Taipower to devise a detailed plan to promote energy saving. The use of educational seminars (perhaps citing case studies of successful conservation in the manufacturing sector), financial grants, and energy audits should all be considered as part of this program.

Given the tight and rapidly changing international LNG (liquefied natural gas) market, the CPC Corp., Taiwan should also take steps to ensure a sufficient and reliable gas supply at reasonable cost. For the long term (post-2020), Asian LNG prices are expected to fall as potentially significant amounts of LNG become available from the United States, East Africa, and perhaps Canada and other new sources. We encourage CPC Corp. to develop business plans to take advantage of these longer-term opportunities.

Suggestion 2. Allow retiring employees to receive pensions in installments under the "Old Pension Scheme."

Under the current legislative framework, there are two statutory pension schemes operating in parallel, the Old Pension Scheme under the LSL and the New Pension Scheme under the Labor Pension Act (which took effect in July 2005).

Pensions paid to employees under the Old Pension Scheme are done so in a lump sum, within 30 days of the date of retirement. The Committee understands that the intent of the

lump-sum payment requirement is to ensure that employees can receive their pension soon after they retire, eliminating the possibility that employees will be deprived of their entitlements due to their former company having become insolvent.

However, lump-sum payment generally increases the recipient's income substantially in the financial year in which the employee retires, with adverse tax consequences if the recipient of the pension is pushed into a higher income-tax bracket. Receiving a single lump-sum payment also increases the financial risk to the employees in case the payment is not well-managed.

The Committee understands that government employees have the option of receiving their pension in installments, which has a number of advantages: (a) it is more tax efficient; and (b) it provides a secure source of steady income for the employee's retirement. Further, to address the concern that the company may avoid the long-term responsibility of paying the pension in installments, we suggest to deposit the pension payable to a trust account held by a third party (such as banks).

We therefore propose that the current pension regime adopt the same pension-payment mechanism as applies to government agencies, permitting the employer and employees to agree on whether the pension is to be paid in a lump sum or over an agreed-upon payment schedule. Therefore, Item 2, Article 29 of the Enforcement Rule of the LSL should include an additional provision stating that the pension payment can be made in installments upon the agreement of the employer and employees provided that the amount payable has been deposited to a trust account.

Suggestion 3. Develop a cohesive plan to promote Taiwan's auto industry.

Although Taiwan's industry-wide automotive production capacity stands at 700,000 units a year, the capacity utilization rate is still only a little over 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 also 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 CO₂ 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. As the Sustainable Development Committee paper suggests, a good place to start would be replacing the more than half of Taiwan's registered cars that are more than 10 years old with newer models with better emissions-control and safety standards. Such a policy would both benefit the environment and increase the size of the auto market.

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 and thereby reduce the cost and lead time faced by industry. While welcoming Taiwan's automotive industry policy of seeking to decrease greenhouse-gas (GHG) emissions and actively encouraging the development of carbon-reduction technology, we encourage the authorities to adopt integrated GHG emission-driven incentives for emissions reductions, basing them on performance and efficiency, and not limiting them to any particular technology.

In addition, the industry hopes to see more automotive components as well as complete vehicles included in the next round of cross-strait tariff-reduction negotiations under the Economic Cooperation Framework Agreement (ECFA). We also urge the government to enter into a free trade agreement with ASEAN, and to seek membership in the emerging TPP and RCEP multilateral trade groupings, to help the Taiwan industry enhance its regional competitiveness by eliminating tariff and other trade barriers and expanding the export of vehicles and components.

MEDICAL DEVICES >>

The Medical Devices Committee aims to foster partnership with government and other stakeholders, and promote policies that ensure sustainable access to the latest, highest quality medical technologies by healthcare professionals and their patients in Taiwan.

In the past year, we have had positive interaction with various government agencies, particularly the Taiwan Food and Drug Administration (TFDA) and the National Health Insurance Administration (NHIA), both divisions of the Ministry of Health and Welfare (MOHW). We appreciate the government's commitment to conducting regular and meaningful discussions with industry about relevant policies and procedures, and look forward to the government's continued engagement with the industry and other stakeholders in constructive ways.

The first three of our issues this year deal with reimbursement-related questions, and the fourth with the product registration system.

Suggestion 1. Provide a two- to three-year grace period for devices to have "self-paid" status before they need to apply for reimbursement.

Since the implementation of "Self-Pay Guidelines" by the National Health Insurance Administration (NHIA) in December 2012, all medical devices have been required to apply for reimbursement. The entire process, from application to approval, can take up to 18 months. While waiting for

approval, patients may pay for the device out-of-pocket, but only if NHIA has assigned a self-pay code, for which it must first consult with hospital associations and medical societies. This code-assigning process alone takes some three to 12 months, depending on:

- The type of medical device, for example whether it is implanted or consumed during surgery (such as disposables).
- Whether the category it belongs to is an existing reimbursed category or a new one.
- Whether, in the case of consumable devices, it involves a new procedure.

Medical device technology advances rapidly and includes many variations. It can be challenging for NHIA and medical professionals to properly assess the technology, which often leads to prolonged delays and even non-approvals – both causing missed opportunities for medical professionals to use and patients to benefit from the technology. Self-paid devices have no impact on NHI pricing or budget, and their safety and efficacy have already been reviewed and approved by the Taiwan Food and Drug Administration (TFDA). As this code-assigning process serves only to add another three to 12 months' time-to-market after product license approval, it creates an unnecessary market access barrier to new technology.

We recognize NHIA's continuous efforts over the past year to refine the review process. For the hundreds of cases still backlogged, we urge the NHIA to accelerate the code-assigning and review. For newly licensed medical devices, we advocate a two- to three-year grace period (during which the device can enjoy self-paid status without applying for reimbursement or the self-paid code), so that self-pay can allow early access to advanced technological medical devices by medical professionals and patients after license approval. This is a reasonable period of time for medical professionals to learn to operate the device and evaluate its clinical outcome and benefits. The professionals can then provide practical feedback to NHIA to help it in making the final reimbursement decisions. Adoption of this system would ensure the best use of reimbursement resources and help protect the public's right to access innovative medical treatments.

Suggestion 2. Manage the patient-paid portion of Balance Billing items in an equitable way.

The Second Generation National Health Insurance program allows patients to pay part of the cost of certain devices out-of-pocket under a so-called "Balance Billing" arrangement in the interest of achieving the broadest possible accessibility. The Committee is pleased to see that approval for several new devices to be included in this arrangement has taken place smoothly in the past year. NHIA has also implemented "Working Principles for Balance Billing of

Special Materials under National Health Insurance,” which calls for the annual monitoring of prices being charged under Balance Billing by different hospitals, and then – if significant disparities are occurring – setting a ceiling for the amount patients may be charged for their portion of the cost.

To make this system more workable, we urge NHIA to base the decision on whether to set Balance Billing caps on a comparison of the prices being charged in the market for categories of “efficacy-equivalent” products, rather than for categories of “functionally equivalent” products. Use of the “functionally equivalent” categorization might undermine the existing free-market mechanism by inadvertently discriminating against products of superior effectiveness. In addition, the use of “functionally equivalent” classifications is unsuitable for purposes of pricing management, since different products vary in terms of the type and quality of the material and in the techniques employed. Even when used for treatment of the same clinical indications, the clinical results may vary between devices. For these reasons, the Committee advocates the use of “efficacy-equivalent classifications” that recognize differences in materials, clinical performance, and clinical data as the basis for Balance Billing price-capping decisions. Only in this way can the therapeutic value of new medical technology be properly captured.

Medical technology is constantly improving. The Committee suggests that NHIA adopt a more progressive and open approach toward the management of Balance Billing items. In addition, to enhance the general public’s understanding of the Balance Billing system, NHIA should conduct more public education on these policies so as to prevent unnecessary disputes and concerns created by misperceptions.

Suggestion 3. Modify the Price-Volume Survey system.

The government regularly monitors the market price of medical devices, and seeks to minimize the difference between reimbursement price and the actual market price through implementing a periodic Price-Volume Survey (PVS). However, the differences always continue to exist because in practice the hospitals rely on the price differential to cover their logistic and administrative costs for handling the devices. Under the current policy, however, the PVS is followed by a reimbursement price cut based on the PVS results. This price cut affects all products within the same functional category, and causes them to be reimbursed at a fixed price calculated by pooling all their market prices and volumes (from the PVS data), without considering any difference among them with regard to quality or material. Under this methodology, better-quality and newer devices are disadvantaged, as older-generation, cheaper products in the same category will likely be selected by the hospitals.

In addition, NHIA asks manufacturers to sign a Price Volume Agreement (PVA) for devices with new functions.

Under the PVA, the usage of the device will be monitored for several years, and if the volume exceeds the agreed-upon cap, NHIA will reduce the reimbursement price. Devices covered by this arrangement are also subject to PVS price reductions.

Reimbursement by NHIA to hospitals is in the form of a floating point value, rather than a fixed monetary amount. The actual monetary value of one point in recent years has been approximately NT\$0.85, reflecting the pressure of the NHI global budget control. As a result, the PVS price reduction comes as an unwarranted double blow, and may force some high-quality devices to withdraw from the market.

Recommendations:

1. Change the frequency of post-PVS price cuts from every two years to once in four years for devices with new functions and those included in the Balance Billing system, since these newly reimbursed products require more time to complete administrative processes in the hospitals before they enter the market.
2. Since the PVS price cut duplicates other reductions in device prices, NHIA should set up guidelines to enable manufacturers to appeal for reconsideration of assigned prices based on comparisons with international reference prices.
3. During the monitoring period, devices covered by PVAs should be exempted from PVS price reductions.

Suggestion 4. Expedite and simplify the medical-device registration process.

1). *Accept ISO 13485 certification to replace the QSD requirement for manufacturers of imported medical devices.* TFDA has been successfully maintaining the highest QSD/GMP (Quality System Documentation/ Good Manufacturing Practice) standards for many years. In order to ensure that only the highest quality medical devices are used in Taiwan, TFDA also effectively oversees the quality management of manufacturing sites abroad. ISO 13485 is an internationally recognized quality-management system standard for medical device manufacturers. Considering the tendency to harmonize international regulations and the fact that Taiwan’s GMP regulations for the pharmaceutical industry are based on ISO 13485:2003, the Committee recommends that TFDA recognize the ISO 13485 certificate to replace the QSD requirement for manufacturers of medical devices imported into Taiwan.

In order to obtain ISO 13485 certification, the medical device manufacturers must be audited by a notified body, and to retain the certification they must continue to undergo those audits annually. The site audits ensure compliance with ISO 13485 requirements and validate the manufacturing-site quality system.

Annual audits should satisfy TFDA’s requirement for

manufacturing quality management. Recognition of the ISO 13485 certificate will also shorten the registration process, accelerating patients' access to the most advanced medical services and improving the quality of healthcare in Taiwan.

In addition, TFDA could place more emphasis on post-market surveillance, and if necessary request medical device manufacturers to provide relevant documents or undergo site audits to ensure that their operations meet or exceed the quality requirements and standards set forth by TFDA.

- 2). *Simplify the expedited Class II and Class III medical device registration model by basing it on marketing authorizations issued by a competent authority or notified body from either the U.S. or an EU member state.* In recent years TFDA has made an expedited registration procedure available, eliminating the need to submit pre-clinical testing and quality-control documents, for devices that have both a Certificate to Foreign Government (CFG) marketing authorization from the United States and Certificate of Free Sale (CFS) from the EU. In requiring marketing authorization from both the United States and EU, however, the current expedited registration thwarts the TFDA's good intentions in trying to simplify the process since most products are not approved simultaneously in both the U.S. and Europe.

TFDA's management of medical devices has matured and moved toward international harmonization. Further simplifying the registration model would represent additional progress in that direction and would enable companies to keep up with international product-launch schedules.

To reduce the time spent on repeated reviews and to shorten the registration process, the Committee recommends that marketing authorization from either the United States (CFG) or the EU (CFS) should suffice for eligibility for the simplified model. At the same time, TFDA could strengthen post-market surveillance to safeguard public health while ensuring the right of the public to have access to the newest, most advanced medical technologies and medical devices.

PHARMACEUTICAL >>

The Second Generation National Health Insurance (2G NHI) program launched in January 2013 introduced several new regulations that could have a serious adverse impact on the pharmaceutical market. As explained in Suggestion 1 below, the R&D-based industry is concerned about the extremely low reimbursement prices, low rate of reimbursement approvals, and the lengthy new-drug reimbursement review process. All of these factors may hinder patient access to innovative pharmaceuticals.

The 2G NHI legislation also provided for a Drug Expenditure Target (DET) program on a trial basis. The Committee appreciates the willingness of the Ministry of Health and Welfare (MOHW) and its National Health Insurance Administration (NHIA) to enter into dialogue with industry on the implementation methodology and to accept some of our suggestions. But a number of concerns still remain, as set out in Suggestion 2.

With regard to Patent Linkage and Data Exclusivity, issues that have appeared in this position paper for more than a decade without significant progress, we are highly encouraged that the Taiwan Food & Drug Administration (TFDA) has now promised to move forward on Patent Linkage, build up a patent database, and evaluate the practice of Data Exclusivity.

Finally, we believe that implementing a proper system of Separation of Prescribing from Dispensing (SDP) will be the key to creating a sound healthcare system in the long-term, as it will remove the profit motive from decisions on drug management.

The R&D-based industry will continue to work closely with the Taiwan government in support of healthcare-policy reform and to help ensure the continued availability of effective medical care for all the people of Taiwan.

Suggestion 1. Reform the new-drug reimbursement process and pricing mechanism to accelerate patient access.

Since implementation of the 2G NHI program a year and a half ago, NHIA has sought to improve the new two-stage review process for new-drug reimbursement. The first stage has become a consultative "expert panel" whose suggestions are sent for the second stage to a meeting of the Pharmaceutical Benefit Reimbursement Scheme (PBRS) committee for final decision. Industry appreciates that some significant progress has been made, such as uploading a recording of the entire PBRS meeting onto the NHIA website to enhance the transparency of the process.

On the other hand, the rate of approval of reimbursement prices under the new system has been extremely low, especially for innovative products. Taking cancer drugs as an example, over the past seven PBRS meetings (April 2013-April 2014), only one drug was approved from a total of eight submissions. According to industry analysis, the overall approval rate last year was approximately 62%, with the approved cases mainly for "me-too" products – indications already covered by currently reimbursed products. For innovative products and indications providing extra benefit to patients but requiring additional budget, the approval ratings were much lower. In addition, not all of the 62% approved cases will translate into product launches, as the pharmaceutical companies may not necessarily accept the granted prices.

Currently, the average granted reimbursement price is only about 51% of the median price for A10 countries (a basket

of 10 benchmarked developed markets), which may delay the launch of many innovative products in Taiwan. One reason for the low granted price is that 86% of new drug pricing is based on the prices of local comparators (similar drugs already on the market), which are already extremely low after having gone through several rounds of NHIA-mandated price cuts. As a result of the low granted price and low approval rate, many cases are appealed, further delaying patient access to innovation. From last year, the total time needed for a product to be approved is now about 475 calendar days, up from the previous average of about 360 days. Even after a reimbursement price is granted, it still takes two to three years to get the product listed on individual hospitals' formularies. In Japan, by contrast, the time needed is just a few months.

Another area of concern is that the PBRs membership is dominated by representatives of hospital management, and the PBRs meeting record shows that some new drugs have been rejected because of the incremental impact the new drugs would have on the hospital budget – a situation that both raises conflict-of-interest concerns and is a potential barrier to patient access to the latest treatment.

Recommendations:

- 1. Reward innovation.** The reference for new-drug pricing should be the A10 level rather than local comparators. For products that have gone through local clinical trials or pharmaco-economic (PE) studies, the mark-up mechanism already theoretically in place should be fully implemented.
- 2. Implement Payer Partnership Programs.** The alternative pricing practice (a risk-sharing mechanism similar to the patient access scheme in the United Kingdom), which has been blocked since the new review process was adopted, should be put into practice.
- 3. Increase the frequency of PBRs meetings** for pharmaceutical products from bimonthly to monthly to accelerate the review process.
- 4. Rebalance the PBRs committee membership.** We suggest reducing the current proportion of hospital management representatives and increasing the number of clinical experts to lessen conflict-of-interest concerns and to separate budget impact from the consideration of patient needs.
- 5. Provide a bigger voice to patient representatives.** Currently, no patient groups have been invited to join the reimbursement review process, where they could express their concerns regarding barriers to access to innovative drugs. Further, to bridge the knowledge gap between healthcare professionals/hospital administrators and payer-group representatives, NHIA should provide more training and orientation to all PBRs committee members regarding Health Technology Assessments (HTA), budget impact, and reimbursement methodology.
- 6. Adopt a comprehensive tracking system** for all

reimbursement application cases, including new indications and appeal cases. A simplified tracking system was used for a short period during the previous review process. We urge NHIA to reintroduce a more complete version, so that companies can trace the application status online in the interest of transparency and efficiency.

- 7. Delist the reimbursement of Over-the-Counter (OTC) drugs** to allocate more budget for new drugs. Based on Article 51 of the NHI Law, OTC drugs should not be covered by National Health Insurance.

Suggestion 2. Provide a reasonable price-adjustment mechanism for pharmaceutical products.

When MOHW last year implemented a two-year pilot Drug Expenditure Target (DET) system, the Committee's 2013 *White Paper* position paper urged the government to enter into discussion with the industry to develop a transparent, predictable, and reasonable model for price adjustments under DET. We also expressed our expectation that DET would replace the previous practice of Price-Volume Survey (PVS)-based price adjustments in order to reduce market disruptions for both medical-care providers and the pharmaceutical industry.

The DET implementation guidelines announced last October, however, left us both disappointed and worried about the state of future patient care. According to the guidelines for Article 46, a drug will be regarded as off-patent and subject to price adjustment once its compound patent expires, even it still holds other types of valid patents recognized by the Taiwan Intellectual Property Office (TIPO). In addition, drugs that have been reimbursed within the past 15 years and whose compound patent has expired for five years will undergo a price cut without the usual "Reasonable Zone" (R-Zone), and the price received will be the same as for generic products deemed to have the same ingredients and to be of the same quality, and which have been reimbursed for more than 15 years. One drug could thus face three price cuts within a single year: a negotiated Price Volume Agreement (PVA) price cut at the beginning of the year, a DET price adjustment in April, and another decrease due to the patent-off provisions of Article 46. Such policies are likely to make R&D-based pharmaceutical companies hesitant about putting further investment into Taiwan, causing the launch of new products in this market to be postponed.

Further, from the second year of DET the annual target is no longer being based on a set growth rate over the previous year's actual expenditure, but rather on the amount of growth over the previous year's target. This method of calculation is different from what industry proposed and will cause the amount subject to price cutting to widen further, putting additional pressure on the industry.

The global R&D-based pharmaceutical industry continues to invest heavily in developing new drugs to provide the best

treatment of disease and promote good health. But in recent years, it has become increasingly difficult for the industry to recoup any part of that investment in Taiwan as a result of the prolonged new-drug review process, low approval rate, low reimbursement price, restrictive reimbursement guidelines, and the PVA mechanism. Under the current system, in addition, the R&D-based pharmaceutical industry has been forced into a role of subsidizing the operation of hospitals, which demand discounts from the drug manufacturers and then pockets the full reimbursement from the NHI (which later seeks to close the gap by cutting the reimbursement prices). These barriers, plus the relatively small size of the market and concern that low prices here will be benchmarked by other Asian countries, have given Taiwan a reputation as an unfavorable environment for investment on new-drug launches.

For this second year of the pilot DET program, we urge the government to listen to industry's concerns and fine-tune the DET guidelines. A way forward must be found to foster a win-win-win solution providing top-quality medical care for the people, assistance to the government in controlling costs, and a sustainable business presence for the industry.

Recommendations:

1. ***Maintain actual expenditure as the basis of calculation.*** Return to the first-year practice under DET of basing the target for the following year on the actual expenditure on medication in the previous year plus a reasonable growth rate.
2. ***Adopt a broader patent definition:*** Drugs that (1) have effective patents recognized by TIPO (not just compound patents but patents of all kinds), (2) that are receiving administrative protection against generic competition by virtue of having conducted local clinical trials, or (3) that still fall within the new-drug monitoring period should be excluded from the periodic price adjustment.
3. ***Provide a fair R-Zone and create a reasonable price-adjustment scheme for new drugs*** to ensure that patient needs can be met. Set a maximum range of price adjustment (the R-Zone) for off-patent drugs reimbursed less than 15 years to prevent an adverse impact on new-drug pricing (and a potential barrier to patient access to innovative drugs) when older drugs are used as comparators.
4. ***Increase the frequency of quality checks*** to ensure the quality levels of off-patent drugs reimbursed for more than 15 years and their generic versions. To further promote drug quality, limit the amount of discount hospitals may demand to a reasonable level to encourage competition based on quality instead of profit.

Suggestion 3. Strengthen IPR protection through Patent Linkage and Data Exclusivity.

Effective Patent Linkage and Data Exclusivity (DE) provisions 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.

The Committee greatly appreciates the recent positive engagement from the government on ways to enhance biopharmaceutical IP protection, particularly MOHW's expressed willingness to work with industry to strengthen the current patent-linkage mechanisms and data-protection regulations. Progress on these longstanding issues will undoubtedly strengthen Taiwan's candidacy when it seeks to join Trans-Pacific Partnership (TPP) negotiations.

Patent Linkage

Article 60 of the Taiwan Patent Law permits companies to conduct pre-clinical trials, clinical trials, and other registration-related activities without being considered as infringing on originators' patents. In addition, a generic can be granted product approval and reimbursement before patent expiration. This provision creates a more hostile IPR environment, increases the risk of litigation, reduces originators' willingness to introduce new drugs into the Taiwan market, and jeopardizes patients' right to have access to innovative medications.

An industry survey conducted in 2012 found that since the year 2000, a total of 65 generic drugs (based on products from 22 originators) received product approval and reimbursement prices while the original drug was still under patent. According to Taiwan IP Court statistics, the average trial period for a patent case is 225 days (more than 7 months), with about 26% of the cases lasting for more than a year. Furthermore, all these cases are subject to appeal. In addition, pharmaceutical IP disputes tend to be particularly complex, making the litigation period substantially longer than for most cases. If a patent-infringing generic has already been on the market for a year or even more, the original manufacturer will suffer heavy damage to its business even if it eventually wins the lawsuit. This situation undermines Taiwan's international reputation as a country committed to IPR protection and raises doubts as to whether it meets its obligations under Articles 28 and 41 of the TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights) under the WTO.

Currently Japan, Singapore, South Korea, and China have all adopted patent linkage or similar systems. The reason for the absence of patent linkage systems in EU countries is that a strong data-exclusivity system is in place, preventing generics from getting approval before the originator's patent has expired.

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. These problems must be remedied if Taiwan wishes to encourage R&D in new indications (the extension of a drug to additional medical conditions), new uses (e.g. new forms or dosages), and new waves of innovation in areas such as biologics.

In addition, under the current regulation (Article 40-2 of the Pharmaceutical Affairs Law), TFDA allows generics to apply for approval two years before the five-year DE has expired, and unfairly requires originators to file applications within three years of a global launch in order to be entitled to DE protection in Taiwan. These practices are not in line with international norms.

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 a “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 New Drug Application (NDA) guidelines to effectively protect innovators’ IPR.
2. Incorporate the following into the Patent Linkage system:
 - a. A strengthened Orange Book system (by which new-drug applications should be checked against existing patents). We suggest benchmarking the

comprehensive procedure recently adopted by Korea.

- b. A certification process whereby a generic applicant attests to the grounds for a claim of patent invalidity.
 - c. A requirement that the originator be notified by the generic company and MOHW when an application for product approval is filed.
 - d. An automatic stay of drug approval. In case of a dispute, the approval process should be suspended 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 is invalid.
3. Revise current regulations to provide DE for new drugs and indications as follows:
 - a. For small molecules, three years for new indications or new uses.
 - b. For new biologics, 12 years.

Suggestion 4. Implement a rigorous system of Separation of Dispensing from Prescribing (SDP).

This issue has been raised in the *Taiwan White Paper* for many years. The existing system at Taiwan hospitals requires staff physicians to prescribe medicines listed in the hospital formularies, which are selected through a process based largely on the amount of profit to be gained by the hospital. Most hospitals also have a “one-in, one-out” policy to limit the number of items in the formulary, as well as a system of grouping medications with similar functions as a way to gain more profit. This approach may jeopardize patients’ access to the most appropriate medication for their particular conditions.

For the sake of patient-centric treatment, the government should build an environment in which hospital staff doctors and pharmacists are able to make professional judgments based purely on the welfare and individual needs of the patient, without being restricted to choosing from among drugs procured for financial considerations after the items have been accepted for reimbursement by NHIA. The problem is growing more serious. Besides the potential impact on patients’ right to access optimal treatment, it may also lead many international companies to decide not to list new drugs in Taiwan in the first phase, as the discounting requirement has made the net price in Taiwan the lowest internationally.

To correct the situation, MOHW and NHIA should consider how hospitals and general practitioners can be compensated well enough so 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. A regulated margin for drug management should be made available to the pharmacies.

According to a 2011 Control Yuan investigation report

on the NHI program, implementation of SDP is crucial to improving the quality of pharmaceutical care to patients. SDP 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.

Recommendations:

1. ***Eliminate the profit from drug dispensing.*** Set a clear principle to prevent hospitals from restricting patient access to reimbursed items based on profit considerations. Hospital fees should be adjusted to eliminate the reliance on profits from drug dispensing, and the release of hospital outpatient prescriptions to community pharmacies should become mandatory.
2. ***Set concrete goals and timetables.*** 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. It should be based on the number of prescriptions released and the number of pharmacists who are actually engaged in drug dispensing.
3. ***Engage in more public communication and education.*** 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. The result would be long-term savings for the NHI budget.
4. ***Set clear policies for implementation.*** Adopt clear regulations to ensure good dispensing practices by the pharmacies and to prevent drug substitution without the doctor's consent, and set a policy of periodically publishing data on the amount of prescriptions released by individual hospitals.

PUBLIC HEALTH >>

The Public Health Committee communicated and interacted positively with the health authority in the past year as we endeavored to work together on a number of public health issues in Taiwan. We hope that by offering the experiences of member companies in different arenas and by assimilating the successful models adopted in other countries, we can help to further elevate the quality of Taiwan's healthcare.

Suggestion 1. Increase the use of safety-engineered devices

in compliance with Article 56 of the Medical Care Act.

The Legislative Yuan amended Articles 56 and 101 of the Medical Care Act at the end of 2011, requiring healthcare institutions to phase in the use of safety-engineered devices over a five-year period. The amended Article 56 stipulates that the percentage of safety-engineered devices in use at medical institutions shall increase by 20 percentage points every year, reaching 100% by the end of 2016. However, the usage rate of safety-engineered devices at medical institutions averaged a mere 3.72% in 2012 according to National Health Insurance Administration statistics, a far cry from the statutory target. The Committee offers the following suggestions for the Ministry of Health and Welfare (MOHW) on ways to increase the use of safety-engineered devices:

- A. Revise the provisions in the Hospital Accreditation Standards and Infection Control Audit Guidelines regarding safety-engineered devices to bring them in line with the spirit of Article 56 of the Medical Care Act and broaden the infection control audit to include an examination of all types of safety-engineered devices used by hospitals.
 - 1). Strengthen the section of the Guidelines requiring hospitals to increase the use of safety-engineered devices by 20 percentage points a year. Currently the Guidelines state that the "use of safety-engineered devices in emergency care, emergency rooms, intensive care units, operating rooms, renal dialysis units, AIDS wards, infectious disease wards, and on high-risk patients" should reach a certain level. However, the needles used by those units and functions account for only a small percentage of the hospital-wide total. If only those units comply with hospital accreditation and infection control audit standards on the use of safety-engineered devices, hospital-wide use is unlikely to ever increase by 20 percentage points a year as stipulated in Article 56. We therefore suggest that the relevant provisions in the Guidelines be revised, in conformity with Article 56, to specifically require an annual increase in hospitals' use of safety-engineered devices by 20 percentage points.
 - 2). Examine the use of all types of safety-engineered devices during hospital accreditation and check the percentage of safety-engineered models among all needle devices claimed by the hospital for National Health Insurance (NHI) reimbursement. According to the "2013 Hospital Accreditation Standards and Assessment Items, Consensus of Accreditation Committee Members," when committee members examine the percentage of safety-engineered devices in use, they only need to spot check the use of IV catheters and IM injection needles. In line with MOHW regulations, however, the occasions calling for the use of safety-engineered devices are not limited

to injections. Blood collection is also considered a high-risk medical procedure, and blood collection needles have been included in the MOHW Safety Needle Product List. Thus blood collection devices should be included as an audit item and in calculation of the safety-engineered device usage rate.

On the other hand, usage rate data based only on spot checks will not reflect the actual use of such devices. Committee members have discovered that some hospitals make false representations and use safety-engineered devices only during the accreditation period. Checking the percentage of safety-engineered models among all needle devices claimed by the hospital for NHI reimbursement can help prevent this type of fraud.

- B. In line with Article 101 of the Medical Care Act, MOHW should fine medical institutions that fail to meet the usage-rate requirement. Despite the seriously low average 3.72% usage rate for safety needles in 2012, so far no hospital has been sanctioned for non-compliance. MOHW needs to step up enforcement.
- C. MOHW should assign safety-engineered device codes to safety blood-collection devices.
 - 1). Safety-engineered devices used in blood collection are included in the examination fee, instead of being treated as an independent NHI payment. As such, hospitals must absorb the cost of safety-engineered devices used for blood collection, which reduces the incentive to switch to the more expensive safety-engineered devices. Furthermore, because blood-collection needles are not treated as a special material item for NHI reimbursement claims, needle usage is difficult to tally during hospital accreditation and infection-control audits.
 - 2). The assignment of safety-engineered device codes to safety blood-collection devices would enable hospitals to file separate NHI payment claims for those devices. It would also allow assessors to verify the usage rate of safety-engineered devices during hospital accreditation and infection-control audits by tallying the number of claims filed under the safety-engineered device codes.
- D. MOHW should annually set aside a dedicated fund on top of the global budget to subsidize hospitals' use of safety-engineered devices. In the 2013 hospital global budget, 100 million points were designated for safety-engineered devices. But this dedicated fund was reduced to 99.4 million points in 2014. The Medical Care Act requires that hospitals annually increase the use of safety-engineered devices, but the budget for the devices will not cover hospitals' costs in using such devices. Thus, an apparent contradiction exists between MOHW's budgeting and the regulatory requirements. We suggest

that MOHW increase the dedicated fund for safety-engineered devices every year and keep it independent of the global budget.

- E. MOHW should make available data on nationwide NHI claims for general needle devices and safety-engineered devices in 2012 and 2013, based on the product types itemized in its Safety Needle Product List, and publish the data on its website on a quarterly basis to facilitate supervision of the regulatory implementation by the public.
- F. The MOHW definition of safety-engineered devices should be brought in line with international standards. The current definition is merely "Specially-designed needles, syringes and other medical appliances for injection or blood collection to reduce the risk of exposure to pathogens and bloodborne infectious diseases for healthcare workers." This definition narrowly confines safety-engineered devices to injection and blood collection needles and syringes, but needlestick injuries occur in other situations that also call for the use of safety-engineered devices. The narrow definition of safety-engineered device by MOHW confines the range of policy implementation and limits the amount of protection for healthcare workers.

We suggest that MOHW refer to the successful experiences of countries with legislation on safety-engineered devices. The U.S. Occupational Safety and Health Administration (OSHA), for example, does not specify product types in its definition of safety-engineered medical sharp device: "Sharps with engineered sharps injury protections means a non-needle sharp or a needle device used for withdrawing body fluids, accessing a vein or artery, or administering medications or other fluids, with a built-in safety feature or mechanism that effectively reduces the risk of an exposure incident."

In addition, the wording "specially designed" in the MOHW definition is overly vague. The U.S. Food and Drug Administration (FDA) in its "2005 Medical Devices with Sharp Injury Prevention Features" makes specific recommendations for the "design" of this type of product by taking functions and human engineering into consideration. This approach could serve as reference for Taiwan.

The Committee suggests that:

- 1. MOHW bring its definition of safety-engineered device in line with international standards to broaden policy implementation and provide healthcare workers with greater protection.
- 2. The definition of which safety-engineered devices to include in the Safety Needle Product List should be broadened to include not only devices that are directly invasive into the human body, but all devices that can prevent risk of exposure to bloodborne pathogens.

Suggestion 2. In promoting safety-engineered devices, also address problems associated with exposure to blood by healthcare workers.

As specified in the MOHW definition of safety-engineered devices cited above in Suggestion 1, such devices must be able to prevent both needlestick injuries and blood exposure by healthcare workers. Taking the insertion and removal of IV catheters as an example, the use of safety IV catheters can sharply reduce the incidence of needlestick injury from 6.6 times per 100,000 insertions to 0.7 times. The rate of blood exposure, however, is often underestimated and neglected. A U.S. Centers for Disease Control (CDC) study estimates that as many as 19.2 incidents of blood exposure occur per 100,000 insertions. For instance, when using an IV catheter to collect blood specimens, healthcare workers often draw blood with a syringe directly from the needle holder or open the cap of the blood collection tube and allow the blood to drip out from the catheter. In addition, for fear of needlesticks, it is not uncommon for healthcare workers to remove the needle from a syringe filled with collected blood, and pour the patient's blood into the open-cap blood collection tube. These actions often cause a patient's blood to splash onto the blood collector's or patient's skin or mucosa. They may even contaminate the environment, causing exposure to bloodborne pathogens.

In promoting the use of safety-engineered devices, the health authorities should also take into account whether those devices come with the function of preventing blood exposure, so as to truly protect healthcare workers from the risk of exposure to pathogens and bloodborne infectious diseases.

The current clinical blood collection practices pose considerable infection risks and are highly likely to expose patients' blood to the air. The H3A6 Standard of the Clinical and Laboratory Standards Institute (CLSI) also recommends collecting blood in a closed system to effectively avoid needlestick injuries, blood exposure, inadequate blood volume, and rejection due to hemolysis. Collecting blood in a closed system means the blood is never exposed to air during the process of drawing blood from the patient's body and retaining it in the tube.

For the above reasons, we suggest the following measures:

1. A CDC requirement that all medical institutions establish a standard operating procedure of collecting blood in a closed system to avoid the risk of infection associated with blood exposure and other problems. Blood specimens obtained through dangerous blood-collection practices should be rejected.
2. Issuance by the CDC of clear and safe blood-collection audit guidelines and a standard process for infection-control audits. This step will help reduce blood exposure incidents and decrease the risk by healthcare workers of contracting diseases.

Suggestion 3. Reduce bloodstream infections to ensure patient safety.

Bloodstream infections (BSIs) are the most common form of healthcare-associated infection (HAI) and have become the most frequent source of infected sites in Taiwan since 2003. According to a TNIS (Taiwan Nosocomial Infections Surveillance System) analysis report in 2012, BSIs accounted for 41.4% of the infections in medical center ICUs and 31.5% in regional hospital ICUs.

BSI risk factors are complex, including patient conditions, medical process, catheter maintenance, length of stay, infusion element, etc. BSIs can be prevented through public policies that require and incentivize healthcare facilities to implement comprehensive infection prevention and control practices. We would like to address two aspects of this issue:

A. Improve the quality of catheter maintenance. Nursing staff will flush catheters constantly to make sure they are not blocked. But in the care process for indwelling catheters, patients could become infected and the catheter may become blocked, endangering the lives of patients.

Traditionally, for catheter flushing the nurse manually fills a syringe with normal saline, which is then flushed into the catheter from its connector. Pathogens may propagate and travel down the catheter into the blood to cause BSI. In addition, if no positive pressure is applied when closing the catheter in the conventional flushing process, the resulting backflow of blood may lead to thrombosis, which in turn may cause catheter blockage and complications, seriously affecting treatment efficacy.

In 2000, a U.S. clinic reported a serious case of cross-infection of hepatitis C caused by using saline solution extracted from the same normal saline bag as used for flushing catheters. The cross-infection resulted in 99 patients contracting hepatitis C. To reduce problems associated with catheter care and maintenance (or flushing), the U.S. CDC recommends the use of single-use flushing systems (e.g. single-dose vials and prefilled syringes). The Infusion Nursing Society (INS) makes the same recommendation in its 2011 Infusion Nursing Standards of Practice. The INS also suggests the use of positive pressure techniques for flushing to prevent the backflow of blood, or using single-use syringe that can prevent the backflow of blood to achieve better flushing results.

Currently hospitals in Taiwan lack rigorous procedures for catheter flushing. To reduce all possible risks, we suggest the following steps:

- 1). Establish standard operating procedures for catheter care and maintenance, emphasizing these aspects:
 - Recommended timing for catheter flushing.
 - Recommended frequency for catheter flushing.
 - Use of prefilled syringes to avoid risks associated with manual preparation.

- Maintenance of positive pressure when closing the catheter to prevent the backflow of blood.

2). Include the catheter care and maintenance standards recommended by the U.S. CDC and INS in the audit items for infection control audits.

B. Provide incentives to encourage the adoption of closed infusion systems to reduce BSIs. Various studies have shown that switching from an open to a closed infusion container results in a major reduction of catheter-associated bacteria because the soft and fully collapsible design does not require external venting and is not exposed to external air.

Recommendations:

1. Increase awareness about the impact of BSIs and conduct relevant education to healthcare professionals.
2. Provide incentives to encourage the adoption of closed infusion systems, such as closed infusion containers or closed catheter access systems to improve and reduce BSIs.
3. Encourage medical institutions to enhance medical outcome and reduce BSIs.

Suggestion 4. Improve the procedure for sterility monitoring of medical devices.

To ensure that patients receive properly sterile medical devices, TFDA conducts a Sterility Monitoring Project by sampling medical devices from the field. However, this project lacks transparency in its procedures, objectives, and sampling and testing methodology. Before the test results have been validated, the information is made publicly available, which can lead to unnecessary concern by both hospitals and the general public. The Committee suggests that TFDA re-assess its procedures in light of the following:

- 1). Carrying out a Test for Sterility on finished products is an inadequate method to determine product sterility. Since 1984, various competent authorities including the U.S. FDA and European Pharmacopeia have formally recognized the limitation of end-product sterility testing. The entire body of international sterilization standards is based on assuring sterility using process validation. The current testing methodology in Taiwan to assure sterility is therefore at odds with standard international practice.
- 2). The monitoring process should be transparent to the party involved, while maintaining the confidentiality of unvalidated information. When test results have been properly validated to confirm the findings and rule out false positives, the test report should be released to the party involved so that it can take corrective action and preventive action (CAPA). The current practice of not releasing the test report but only notifying the party by letter violates Article 46 of the Administrative Procedure Act and hinders the development of CAPA. Before the test

results have been properly validated, it is important that they should be kept confidential to prevent unnecessary panic by the general public and disturbance to fair market competition.

- 3). The respective roles and responsibilities of TFDA and city/county health authorities need to be better defined. Since the Sterility Monitoring Project is a program of the central government's TFDA, the TFDA should take the lead in outlining the proper course of action if proper validation leads to the conclusion that product sterility is a concern. Hospitals, city/county healthcare authorities, and suppliers can then follow identical instructions from the TFDA. The current practice of releasing unvalidated results to local health authorities has caused serious problems. Different local health authorities may make different decisions, patients in different cities and counties receive different levels of protection, and hospitals and suppliers are confused by the variance in decisions and actions among the different authorities.

Due to the potential procedural pitfalls and inadequate testing methodology, the Committee suggests that TFDA re-assess the feasibility of the Sterility Monitoring Project. Once any problems with the procedures are rectified, TFDA should notify hospitals and suppliers about the new regulations. The goal is to ensure that the project can be executed smoothly, bringing adequate protection to patients.

REAL ESTATE >>

Several major real estate policies implemented in the past two years have substantially influenced the real estate market. Policies such as mortgage controls, real estate transaction declarations, and investment restrictions on insurers have caused the transaction volume to plunge and capital values to fluctuate in both commercial and residential markets. However, the Real Estate Committee commends the efforts that the government has made to increase property-price transparency and to pre-empt potential asset bubbles. At the same time, the Committee has also identified potential side effects and contradictions under the current regulatory regime and the newly implemented policy decisions. Therefore, in order to continue improving and promoting Taiwan as a thriving investment destination, the Committee presents the following suggestions in hopes of stimulating discussion with the relevant governmental agencies to further improve the overall market environment.

Suggestion 1. Amend the Real Estate Appraiser Act to permit the incorporation of valuation service providers as a legal entity.

The Real Estate Appraiser Act of Taiwan requires that real estate appraisal services be rendered only by qualified

appraisers who have (1) passed the examination for real estate appraisers; (2) practiced real estate appraisal for at least two years; and (3) joined the Real Estate Appraiser Association of a municipality or a county. As a result, all real estate valuations business must be conducted either by individuals or as a partnership, and not by a separate legal entity (法人). In Taiwan, liability is unlimited and rests with the individual appraisers. Most, if not all, of the appraisers are licensed individuals who carry no insurance, and in fact it appears that no such insurance product is available in Taiwan.

We recommend amending the regulation to allow the incorporation of valuation service providers as legal entities, a category that can co-exist with the existing appraisal partnerships and licensed individuals. Such a system would be in line with other countries. Germany, for example, generally has no restrictions preventing companies from performing valuations.

In Japan, the Real Estate Appraisal Act states that only real property appraisal firms registered with the Ministry of Land, Infrastructure, Transport and Tourism or a prefectural government may engage in real property appraisal. In addition, only Licensed Real Property Appraisers (including Licensed Real Property Appraiser Candidates) registered with the Ministry may appraise real property in the ordinary course of business conducted by the registered real property appraisal firms. “Real estate appraisal firm” is defined under the Real Estate Appraisal Act as a person or entity registered under Article 24 of the Act.

The main benefits of allowing legal entities to be valuation service providers are:

- 1). Reputable companies are better covered by insurance and hence provide better protection to customers.
- 2). Reputable companies have better internal and external standard operating procedures and audit and compliance procedures to ensure the quality and the independence of the valuation reports.
- 3). The change would allow local valuation firms to join forces with larger international platforms and to perform services in line with international best practices.

Suggestion 2. Remove the minimum rental-return requirement on domestic commercial real-estate investment by insurance companies.

In late 2012, the Financial Supervisory Commission (FSC) issued a series of orders to insurance companies aimed at avoiding overheating in the commercial property market and slowing the rapid rise in property prices. The orders state that insurers may invest in commercial properties only when the buildings are already under construction, have commitments from lessees to occupy at least 60% of the space, and will generate a minimum yield of 2.875% in rental income. Additionally, re-sales are prohibited within five years for domestic office buildings. For land acquisitions,

construction work must commence within nine months and be completed within five years. Re-sales are prohibited for a period of 10 years.

Although the limits on investments by insurers were alleviated by new regulations in late 2013, the required minimum yield remains at 2.875%. Since real estate values vary tremendously across different municipalities, however, imposing one standardized minimum yield requirement may create problems for investors. Taking Taipei City as an example, since real estate prices there are high, it is difficult to obtain the required yield. Considering that insurers receive premiums from policyholders in addition to their investment profits, they must maintain substantial reserves to ensure their ability to repay policyholders upon maturity of the policies. Thus it is vital for them to obtain stable rental incomes, as well as to manage their risk by diversifying asset portfolios.

Because leasing demand in major metropolitan areas like Taipei City is higher and more stable than in second-tier cities, it generates more stable and secure incomes. The Committee urges the relevant governmental authorities to adjust the required minimum yield to a range of 2%-2.5%, which would enable insurers to flexibly and strategically allocate their investment resources. However, the recommended range for minimum rental returns shall not be treated as the maximum value of returns. In other words, if an insurer can obtain rental yield higher than 2.5%, the investment would receive approval provided that all other requirements set by the FSC are met.

RETAIL >>

The Retail Committee recognizes the government’s recent initiatives to identify and act on deregulation opportunities as part of its review of how Taiwan can best prepare for negotiations to enter the Trans-Pacific Partnership (TPP). As TPP membership will serve the best interests of Taiwanese consumers, we urge the government to remain steadfast in this effort despite inevitable headwinds.

At the same time, the Committee has been troubled about the manner in which some new laws and regulations were recently enacted. When concerns arose about the safety of certain consumer products – as in cases regarding labeling requirements for both food additives and cosmetics preservatives – the response by some legislators and regulators was the hasty drafting of new rules without due consideration of their implications. The obvious flaws in the drafts necessitated reassessments and revisions, but the process strained the resources of both government departments and responsible companies while provoking criticism of government efficiency. We urge the government to rely on sound scientific knowledge and proven international practices as the basis for such policymaking, which is also the best

way to prepare Taiwan for participation in TPP and other international agreements.

The Committee is also pleased that the subject of industry self-regulation has been receiving increased attention. In major markets such as the United States, the European Union (EU), and Japan, responsible industry standards regarding products, services, and advertising are often set and managed by the private sector, leaving government to focus its resources on the most critical issues facing it. In the interest of promoting corporate responsibility and government efficiency, we encourage the Taiwan government to support such sectors as the food and cosmetics industries in taking steps in this direction.

The Committee also appreciates the positive feedback it has received from the Taiwan Food and Drug Administration (TFDA) on its suggestions in previous *White Papers* about ways to improve the mechanism for regulating advertising claims for food items. Although TFDA published a draft proposal in May 2013 under which new claims would be allowed if backed by scientific evidence, we have not yet seen a formal announcement of that regulation. We hope the new mechanism can be implemented as soon as possible.

The three themes of deregulation, international harmonization, and industry responsibility and self-regulation recur through the following suggestions. They may provide some relevant signposts and milestones along the pathway to TPP membership.

Suggestion 1. Avoid unnecessary and impractical regulations in implementing Article 28 of the Food Sanitation Act.

The intent of Article 28 of the Food Sanitation Act, “Governing the Advertisement and Promotion of Foods Not Suitable for Consumption by Children over a Long Period of Time,” is to promote a balanced diet for children and safeguard their health. We fully support that objective.

But the draft enforcement regulations for Article 28, which would restrict advertising and marketing activity aimed at children for certain foods, represent a significant departure from established international best practice. They are not based on scientific evidence of actual health benefits, are too restrictive of consumer choice, and are questionable as to their enforceability in practice – all of which could severely damage Taiwan’s international competitiveness and aspirations for greater integration into the regional and global economies. The Committee urges the Ministry of Health and Welfare (MOHW) to revise the draft regulations for implementing Article 28 for the following reasons:

- 1). The draft’s definition of “foods not suitable for consumption by children over a long period of time” is unworkable. It defines such foods as those with a) fats accounting for more than 30% of the total caloric value; b) saturated fats accounting for more than

10% of the total caloric value; c) more than 0.3g of trans fats per 100g of a solid or per 100ml of a liquid; d) more than 1mg of sodium per kcal; or e) sugars exceeding 10% of the total caloric value.

These guidelines are broadly consistent with World Health Organization (WHO) recommendations for daily diets as a whole. But they are neither logical nor practical when applied to individual food items. The one-criteria-fits-all approach does not account for how and when foods are consumed, serving sizes, and consumption frequency. The exclusion of foods outside the criteria would in fact make it impossible to maintain a quality, balanced diet in line with the Food Pyramid.

Under MOHW’s proposed criteria, a number of foods that contribute to children’s health and development – for example milk (including low fat milk), apples, and bananas – will be considered unsuitable if not explicitly excluded through Clause 4 of the regulations. Rice, a staple part of the Taiwanese diet, and even water would also fail to pass the criteria, as would sandwiches, salads, cold noodles, and dumplings.

Based on this unprecedented and impractical standard, certain health foods approved by MOHW – for instance, Oligo Tomato Drink, Super Functional Tea Drink, and Gyokuro Green Tea – should also be classified as “Foods Not Suitable for Consumption by Children over a Long Period of Time.”

Major difficulties will be encountered when enforcing the regulations, as they neglect to consider Taiwanese daily eating habits and the local market environment.

- 2). The draft’s restrictions on advertising and marketing activities aimed at children unnecessarily limit free trade, and are a marked departure from the approaches taken by other countries.

Clause 3 of the draft prohibits any promotional activities to children for the above-mentioned food products, including advertising as well as the giveaway or sale of toys with the purchase of products, including gifts or sales through the loyalty-point collection programs of convenience stores or other retailers. There is no scientific research demonstrating that such restrictions on promotional activities benefit children’s health. Nevertheless, the draft would limit consumer choice and market competition, and hamper the long-term development of industries that account for a large source of employment in the service sector.

The scope of the proposed regulation goes beyond what any other advanced economies have adopted. For instance, the United Kingdom, Canada, South Korea, and Malaysia have enacted legislation similar

to Article 28, but these laws regulate only advertising targeted at children and not other marketing activities. The Committee recommends that MOHW adopt the internationally accepted approach of regulating advertising on children's channels, but without additional restrictions on other marketing activities.

- 3). Better outcomes could be achieved through industry self-regulation. The Committee appreciates that government and statutory regulation has historically played a strong role in Taiwan in benefiting consumers. In other economies such as the United States and EU, however, self-regulation has for many years been growing in importance as a successful model for ensuring win-win-win results for consumers, government, and industry. As further explained in Suggestion 4 below, we believe that the time is ripe for Taiwan to also consider adoption of self-regulation mechanisms. We propose that an ideal place to start would be the area of advertising to children.

Suggestion 2. Align the regulation of genetically modified food (GMO) with that of major trading partners.

Taiwan has enforced regulations on genetically modified food since 2011, and in February this year the amended Act Governing Food Safety and Sanitation added pre-market approval of food ingredients from genetically modified origins.

In this effort, it is vital that Taiwan's regulations should be harmonized with those of its major trading partners. Establishing a more restrictive regulatory environment than its trading partners would narrow the flexibility of supply from different countries and regions of the world, reduce the variety of food available to the Taiwan consumer, and increase food costs.

Because of the impossibility of totally preventing cross-contamination between GMO and non-GMO foods during harvest, storage, and transportation, a reasonable threshold – such as 5% – is often set for such unintentional mixing. Recently the TFDA announced a direction to decrease the threshold value from 5% to 3%, which would be lower than that of many countries in Asia, including Japan and Hong Kong. The United States, a major supplier of agricultural items to Taiwan, has no such requirement.

Tightening the threshold would have a potentially negative impact on the availability of food from various trading partners. Before taking that step, we suggest that Taiwan undertake a comprehensive impact assessment to understand the possible ramifications for food supply and food costs.

Suggestion 3. Review the repetitive batch-by-batch approval process for organic food imports.

Since 2009, TFDA and the Council of Agriculture (COA) have reviewed each batch of imported organic foods. TFDA regulates food importation with regard to food sanitation and labeling requirements, while COA ensures that any claims or references to “organic” meet Taiwan's standards. While the Committee recognizes the importance of label credibility, it encourages the authorities to adopt a simplified approach to replace the tedious current three-week-long procedure that deters the free flow of trade. The existing procedure is repetitive and also prone to human error, as it requires original documents with exact weight and code-date information.

Many exporting countries that supply organic foods to Taiwan already have thorough and stringent regulations governing whether a product can be sold, labeled, and represented as “organic.” For example, the National Organic Program (NOP) under the U.S. Department of Agriculture employs approximately 100 organic certifying agents stationed throughout the United States and around the world. They review organic practices, conduct on-site inspections, and verify compliance for each organic operation. The agents are certified for five-year periods, and the NOP also conducts on-site assessments every two to three years to ensure that they still comply with all requirements. Similar review processes in the EU and Japan verify that organic foods comply with regulations. Taiwan should take advantage of the pre-export work already being done by these countries.

The Committee urges the Taiwan authorities to recognize and accept the professional certification process in advanced countries and consider revising the current application and review process, which is clearly too time-consuming and labor-intensive. Our suggestion is to implement a product certification program similar to that of the Bureau of Standards, Metrology and Inspection. When BSMI approves a commodity after putting it through a series of tests and a documentary review, it issues a certificate that remains valid for five years. Adopting a similar procedure would not only shorten the import clearance time in the interest of trade facilitation, but would also enable the government to reduce the burden on its personnel from conducting batch-by-batch inspections. Should traceability be a concern, creating a database similar to what TFDA is now requiring of food additives would be a feasible solution that importers would be pleased to cooperate with.

Suggestion 4. Encourage industry self-regulation in advertising in line with international best practices.

The Committee applauds the endorsement last year of self-regulation for cosmetics advertising by the head of TFDA's Drug & Cosmetics Section. However, advertising self-regulation is equally applicable to a wide range of industries. In addressing the recent issue concerning food advertising to children, for example, we urge TFDA to take it as an

opportunity to examine existing practices around the world, and then allow the food industry to establish and self-enforce responsible advertising standards.

Although the principle of advertising self-regulation is much broader than the current issue of the advertising and marketing of food products to children, that issue – discussed in Suggestion 1 above – serves as an apt example for which Taiwan should consider the experience of the EU. According to research by the European Commission’s Directorate General for Education and Culture, self-regulation has been particularly effective in regulating advertising behavior targeting children. In these countries, industry groups have drawn up rigorous self-regulating measures overseen by external, non-industry experts and government officials. Industry self-discipline enables the government to reduce regulatory costs, and the process is more flexible and responsive to societal needs compared with the more time-consuming legislative process.

The “EU Pledge on Nutrition White Paper” (EU Pledge), launched in 2007 and signed by over 20 international companies accounting for over 80% of EU food and beverage advertising, is one such self-regulation program that has already brought positive health results. A similar self-regulatory pledge in the United States signed by 16 companies in 2007 also demonstrates how government can make a larger positive impact on health and nutrition by partnering with industry, rather than through a statutory approach. By establishing scientifically tested and practical nutritional guidelines, followed up through participating companies’ voluntary efforts to encourage healthy eating, the total caloric value of the products sold by the 16 signatory companies in 2012 came to 54 trillion – a reduction of 11% or 75 calories per person per day compared to 2007. Likewise, between 2004 and 2012, the proportion of obesity among children aged 2 to 5 dropped from 14% to 8%.

The Committee encourages MOHW to leverage the principle of advertising self-regulation, as other advanced economies have done, to achieve the objectives of the spirit of Article 28 of the Food Sanitation Act without damaging Taiwan’s international reputation. The Committee and our member companies would welcome the opportunity to collaborate with Taiwanese companies and the relevant authorities in developing an appropriate self-regulatory mechanism based on the experience of other developed economies. Initially, this initiative would focus on advertising to children to achieve the ultimate objectives of Article 28 of the Food Sanitation Act, but eventually it could be expanded to other product categories or even advertising in general.

Suggestion 5. Adopt reasonable revisions to the Consumer Protection Act.

A bill submitted to the Legislative Yuan to amend the Consumer Protection Act would give the relevant

administrative body the authority to mandate the terms in standard contracts with consumers and to stipulate the types of businesses that must follow these conditions. Because the definition of “standard contract” in this context includes all types of communication with consumers, including posters and outdoor displays, the bill would grant extremely broad administrative power over private contracts and advertising. In addition, administrative officials would be given police powers to enter and inspect businesses that use a “standard contract,” without the officials needing to specify the purpose or scope of the visit. These measures are totally inappropriate for a society that professes to respect the rule of law and a free market economy.

A second issue with the proposed law is a clause enabling consumers to cancel any type of transaction without cause within seven days of purchase. This procedure is wholly impractical for certain types of products and services, including intangibles such as software, as well as services that are rendered quickly. Although the proposed amendment technically reserves room for exceptions, given the recent environment of consumer populism in Taiwan, the business community is concerned that the government may not be able to establish such necessary exceptions. The Committee urges the government to explicitly incorporate exceptions existing in the laws of major markets such as the EU and Japan into the proposed amendment.

A third issue is that when a consumer cancels a purchase made on-line or through mail order or a sales visit, the proposed law would give the merchant only 15 days to make the refund. This limitation ignores the practical difficulty of many businesses to execute refunds in just 15 days. For example, many companies rely on treasury services provided by their banks, and the processing timing may often exceed the 15-day period. And with the expected increase in requests for refunds, businesses and the financial-service sector may have to scramble to meet the demand with even a 30-day period.

The Committee is disappointed that the Executive Yuan failed to consider the above-mentioned issues before submitting the draft amendment to the Legislative Yuan. We hope the legislators will make up for that lapse by undertaking a serious review of the draft amendment.

Suggestion 6: Reform the regulatory framework for cosmetics products.

The Committee continues to urge the TFDA to harmonize its regulations with international practices and to avoid technical barriers to trade that may become impediments to Taiwan’s acceptability for TPP membership. We provide the following recommendations:

- 1). *Ensure coherence when adopting international regulatory models.* TFDA has recently looked primarily to the EU when drafting new rules. But instead of comprehensively adopting EU standards, it also adds regulations from

different countries. The result is often an eclectic mix of rules rather than a cohesive policy. Some examples:

- **Banned or restricted ingredients** – In the EU, about 1,500 ingredients are either banned or restricted to a low use level in cosmetics. If the ingredients are later proven safe, however, they are removed from the banned list or receive a higher use level. In Taiwan, some 300 ingredients are either banned or restricted in the amount that may be used. But the TFDA has no system to allow changes, and therefore continues to prohibit many ingredients that have already been relaxed in the EU. In contrast, only about 30 ingredients are regulated in the United States and Japan. If the TFDA adopts the full EU list for bans and use levels but maintains its current no-change policy, it could open Taiwan to charges of erecting a serious technical barrier to trade.
- **Product Information Files (PIF)** – TFDA is planning to implement a PIF system requiring companies to prepare complex technical dossiers for all cosmetic products. By combining EU, ASEAN, and TFDA's own additional requirements, it would create the world's most restrictive regulation. Furthermore, many of the TFDA documentary requirements lack clarity and are subject to regulators' arbitrary decrees, placing cosmetic companies at high risk of non-compliance and serious penalties. Another complication is that the United States and Japan do not utilize PIFs. Because Taiwan's market size often does not justify the production of special technical documents, many companies that import products or ingredients would be unable to comply with the PIF requirement, creating another technical barrier to trade.
- **Mandatory Taiwan Cosmetic GMP** – TFDA adopted ISO 22716 as a Voluntary Taiwan Cosmetic Good Manufacturing Practice (GMP) and plans to make it mandatory. In the United States and Japan, GMP is voluntary. Although GMP is mandatory in the EU and ASEAN, both of those systems also accept other countries' GMP standards. TFDA intends to maintain a single standard, however, which would create a significant technical barrier to trade when businesses import products from markets other than the EU and ASEAN.

In summary, we strongly recommend that the TFDA avoid creating "Taiwan-unique" rules that make it difficult for international companies to serve this market and potentially pose a barrier to Taiwan's entry into multinational free trade agreements.

2.) **Specify the scope of Product Off-Shelf for cosmetics advertisements.** The Committee greatly appreciates TFDA's removal of the "corrective advertisement" proposal from the draft amendment of the Cosmetic

Hygiene Control Act. Still remaining in the draft is the measure under which products could be ordered to be taken off the shelves if advertisements for the products are found to be seriously exaggerated or untrue, but we feel encouraged that the TFDA has communicated with local government health departments that this provision would be implemented only for product advertisements with the potential of causing serious harm to physical health. For the sake of clarity, we recommend inclusion of this wording in the "product off-shelf" portion of the amendment bill.

- 3.) **Simplify the registration process for medicated cosmetics.** TFDA has decided to retain the pre-market registration system for medicated cosmetics. Based on the Committee's suggestions on this topic in previous *White Papers*, we again urge the TFDA to reconsider this decision. In the meantime, TFDA should simplify the registration process for medicated cosmetics, for example a) removing the requirement for a certificate of free sale from the sourcing countries, and b) exempting the registration requirement for selected product categories with low safety risk, such as sunscreen products.
- 4.) **Consider toothpaste/mouthwash independently under the new cosmetic regulations.** The planned reclassification of toothpaste and mouthwash as cosmetics, which come under heavier regulatory restrictions, will have a hugely adverse impact on the industry. As toothpaste and mouthwash involve no safety considerations, any compliance issue would relate only to technical aspects. The Committee therefore urges TFDA to adopt the following measures to minimize the impact:
 - **Provide a longer transition period.** A grace period of at least five years should be allowed for toothpaste and mouthwash to come fully under the cosmetic law. Businesses will need to undertake substantial product labeling and possibly formula changes, which they cannot even begin to consider until the amended cosmetic law is passed and the relevant regulations announced. If the product formulation must be changed, a long lead time is necessary simply for the product stability test. The problem is most acute for multinational companies that source products worldwide and share product labeling and formulations across borders.
 - **Establish the manufacturing date as the determinant for whether products may enter the market under the new system.** It is beyond the capacity of manufacturers and importers to manage products shipped to the market before the effective date of the new regulations. The government would also find it easier to ensure compliance by using the manufacturing date as the reference.
 - **Apply international standards for toothpaste and**

mouthwash. The Committee urges TFDA to adopt internationally accepted product standards by permitting substances allowed in any one of the major developed markets such as the United States, EU, or Japan. Additionally, we suggest that TFDA reclassify product categories such as mouthwash to be consistent with international practice. For example, mouthwash containing cetylpyridinium chloride (CPC) is classified as a cosmetic in the EU, ASEAN, and China without a ceiling level, but it is currently classified in Taiwan as an Over-the-Counter drug.

- **Maintain current listed reference claims for toothpaste.** The Committee suggests that TFDA maintain its current listed reference for toothpaste advertising claims after toothpaste’s reclassification as cosmetics. We believe an official announcement to this effect would be an efficient way to avoid confusion over policy with regard to toothpaste as opposed to other types of cosmetic products.

Suggestion 7. Remove unnecessary labeling requirements.

The 2013 *White Paper* discussed various inappropriate or burdensome labeling requirements. The key concerns can be summarized as:

- 1). Unnecessary requirements remain for the disclosure of detailed manufacturer’s information for general commodities. The Taiwan government does not have the authority to audit manufacturers in foreign countries, nor are local consumers likely to call overseas to non-Chinese speakers with questions or complaints. Instead, importers should be the party fully liable for imported goods, as stated in Article 9 of the Consumer Protection Law. In addition, since many suppliers consider the manufacturer’s information to be highly confidential business information, insistence on disclosure of the information could lead to fewer products being made available for local consumers. As some product categories, such as apparel, textiles, and food items, have been excluded from the manufacturer-information requirement, we urge the Ministry of Economic Affairs to apply consistent logic to its regulation of general commodities in this regard.
- 2). The requirement that the date of manufacture appear on the label for general commodities serves no purpose in the case of non-perishable items. Some categories – such as apparel, textiles, toys, stationery and shoes – are already exempted from the manufacturing-date requirement. The Committee requests that this waiver be extended to other categories that are not time-sensitive, for example paper products, cleaning utensils, office supplies, lighting, furniture, luggage, and jewelry.
- 3). The square recycling symbol designed by the Environmental Protection Administration also remains

a unique-to-Taiwan anomaly. The Committee again asks that Taiwan accept recycling symbols that are already widely used internationally, such as the EU’s triangular symbol. Having to print additional labels for the Taiwan symbol is not only a hardship for business – it is totally inconsistent with the principle of “sustainability.”

Suggestion 8. Further liberalize restrictions on imports from China.

The Committee notes some liberalization of the import controls on certain products from China, with restrictions lifted on 11 items in the last year. However, there are still many China-sourced products – both food and non-food items – that remain banned, limiting choices for Taiwan consumers and creating complications for multinational companies with global supply chains. The following table lists the priority items identified by the Committee for the lifting of restrictions.

| | CCC Code | Completely Banned Products |
|---|-----------------|--|
| 1 | 7009.91.90.00-8 | Other glass mirror, unframed |
| 2 | 7009.92.00.00-6 | Other glass mirror, framed |
| 3 | 6302.21.00.00.8 | Other bed linen, printed, of cotton |
| 4 | 6302.22.00.00.7 | Other bed linen, printed, of man-made fibres |
| 5 | 5208.52.00.00.7 | Woven fabrics of cotton, plain weave, containing 85% or more by weight of cotton, weighing more than 100 g/square meter but not more than 200 g/square meter, printed |
| 6 | 5208.59.90.00.1 | Other woven fabrics of cotton, containing 85% or more by weight of cotton, weighing not more than 200 g/square meter, printed |
| 7 | 5209.51.00.00.7 | Woven fabrics of cotton, plain weave, containing 85% or more by weight of cotton, weighing more than 200 g/square meter, printed |
| 8 | 5210.21.00.00.1 | Woven fabrics of cotton, plain weave, containing less than 85% by weight of cotton, mixed mainly or solely with man-made fibres, weighing not more than 200 g/square meter, bleached |

| | | |
|----|-----------------|--|
| 9 | 7318.16.00.00.5 | Nuts, of iron or steel |
| 10 | 6804.30.00.00.0 | Hand sharpening or polishing stones |
| 11 | 6910.90.00.00.8 | Other ceramic sinks, wash basins, wash basin pedestals, baths, bidets, water closet pans, flushing cisterns, urinals and similar sanitary fixtures (of porcelain or china as classified in division 691010.00) |
| 12 | 1901.20.00.00.4 | Mixes and doughs for the preparation of bakers' wares of heading 19.05 |
| 13 | 0705.11.00.00.5 | Cabbage lettuce (head lettuce), fresh or chilled |
| 14 | 2103.20.00.00.8 | Tomato ketchup and other tomato sauces |
| 15 | 1905.31.00.00.7 | Sweet biscuits |
| 16 | 2004.10.11.00.7 | Potato sticks per immediate packing of 1.5 kg or more, prepared or preserved otherwise than by vinegar or acetic acid, frozen |
| 17 | 2004.10.19.00.1 | Other potatoes, prepared or preserved otherwise than by vinegar or acetic acid, frozen |
| | CCC Code | Partially Banned Products |
| 1 | 6115.95.00.00.6 | Stockings, socks and other hosiery, knitted or crocheted, of cotton |
| 2 | 6203.49.21.00.1 | Men's or boys' trousers, breeches and shorts, of artificial fibres |
| 3 | 6204.69.21.00.5 | Women's or girls' trousers, breeches and shorts, of artificial fibres |
| 4 | 6207.99.20.00.7 | Men's or boys' singlets and other vests, bathrobes, dressing gowns and similar articles, of man-made fibres |
| 5 | 6208.92.00.00.7 | Women's or girls' singlets and other vests, briefs, panties, negliges, bathrobes, dressing gowns and similar articles, of man-made fibres |
| 6 | 6208.99.90.00.1 | Women's or girls' singlets and other vests, briefs, panties, negliges, bathrobes, dressing gowns and similar articles, of other textile materials |

| | | |
|----|-----------------|--|
| 7 | 6211.49.90.00.7 | Other garments, women's or girls', of other textile materials |
| 8 | 7013.37.00.00.8 | Other drinking glasses, other than of glass-ceramics |
| 9 | 7007.19.00.00.8 | Other toughened (tempered) safety glass |
| 10 | 4811.59.00.00.1 | Other paper or paperboard coated, impregnated or covered with plastics (excluding adhesives), other than goods of the kind described in heading 48.03, 48.09 or 48.10, |
| 11 | 2530.90.99.90.9 | Other mineral substances, n.e.s. |
| 12 | 8301.40.00.00.2 | Other locks, of base metal |

SUSTAINABLE DEVELOPMENT >>

The Committee appreciates the positive response from the Taiwan government to our suggestions in the 2013 *Taiwan White Paper*. However, we regret that the pace of progress on the issues we raised regarding energy policy has been far slower. The Committee would still like to encourage the government to speed up initiatives and actions necessary for Taiwan's energy policy to meet future challenges. A great deal of expertise and experience on energy matters is available internationally. We urge Taiwan to utilize these professional global resources to help Taiwan to set and execute an energy policy that properly balances economic needs, environmental impact, and societal acceptance. We suggest increased attention to energy conservation – including steps to replace the numerous aged cars on the road with newer, more fuel-efficient models – and greater emphasis on renewable sources of energy, enabling them to account for as much of the overall energy mix as feasible.

Furthermore the Committee would like to express our disappointment regarding the stalled progress of the Environmental Protection Administration (EPA) in fulfilling its commitment to the Committee in 2013 to expand its Green Mark guidelines to at least one more category that recognizes virgin-fiber tissue products with global sustainable forest-management certifications. We urge the EPA to realize its commitment as soon as possible and to speed up the adoption in its Green Mark system of a dual-track approach, as widely accepted by developed countries, to equally recognize both virgin-fiber and recycled-fiber products that are certified by globally accepted standards for responsible forest management.

Suggestion 1. Continue to expand the Green Mark policy to additional virgin-fiber paper/tissue product categories.

In 2012, the EPA announced a new policy of granting its Green Mark to facial-tissue products made from virgin fibers certified by the Forest Stewardship Council under globally accepted standards for responsible forest management. In 2013, the EPA further committed to this Committee that this policy would be extended to napkin products, but no further action has taken place since then.

As stated in the 2013 *White Paper*, the renewability of natural resources has become crucial to both sustainable development and economic growth. At the same time, the use of recycled material is no longer regarded as the only way to reduce the environmental impact for tissue products. Product life-cycle assessments show that the carbon footprint produced by recycled-fiber products is in fact larger than that for virgin-fiber products, due to emissions during the recycling and de-inking processes. For this reason, the responsible forest-management system and “Chain of Custody” certification, which monitor sustainability from the very beginning through the very end of the product lifecycle, have been increasingly promoted across the globe.

A constant flow of virgin fiber into the fiber network is needed because wood fibers cannot be recycled indefinitely. Depending on the origin of the virgin fiber and the type of products, fiber is typically degraded and unusable after five to seven cycles. Thus, virgin fiber is constantly required to be added to the fiber network to compensate for the retirement of degraded fiber, archival storage of paper, and loss of fiber through normal use and disposal of certain paper products such as personal care and tissue products. A recent study concludes that paper supply would encounter serious problems in a matter of days if the input of fresh fiber were eliminated.

According to an industrial tracking report conducted by the Taiwan Paper Industry Association, more than 830,000 metric tons of recycled paper still need to be imported each year, even though the paper recycling rate in Taiwan has reached as high as 67.2%. From a holistic environmental viewpoint, it is least efficient to put wastepaper into tissue production, since the fiber cannot be recycled again due to hygienic concerns. On the other hand, applying the wastepaper to the production of other paper products can enable fiber usage to be recycled up to 5-7 times.

Because of Taiwan’s strict forest policy, almost 99% of the tissue fibers in Taiwan are imported. Yet there has been no regulation in place to check whether the materials came from sustainable certified forests. In that regard, Taiwan is out of step with international trends, as more and more developed countries have been implementing strict regulations to block timbers and fiber products from non-sustainable sources. Examples are the Lacey Act in United States and the Forest Law Enforcement, Governance and Trade (FLEGT) in the European Union. It is estimated that some 24% to 31% of the tissue fibers imported into Taiwan came from countries

without sustainable certified forest management, especially Malaysia, Myanmar, and Indonesia, which are considered to be in a severe state of deforestation.

If the Green Mark recognition is limited to only one or two items of tissue products, consumers will be unable to differentiate the full range of sustainable products from those made from deforestation materials.

Based on the above considerations and the fact that more and more developed countries and international organizations have taken FSC as the standard of their eco labels, we urge EPA to continuously expand the scope of its Green Mark to include all virgin-fiber tissue categories certified by globally accepted standards for responsible forest management.

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

In 2013, there were 7,367,000 cars registered in Taiwan, of which 3,804,000 units were over 10 years. In other words, more than half of the cars on the road are operating with lower fuel efficiency and higher emissions than the newer models. Due to EPA enforcement of fuel-economy regulations, the average fuel economy of passenger cars in Taiwan improved by 30% from 2000 to 2013. We therefore recommend focusing on phasing out aged vehicles (more than 10 years old) and increasing the incentives for environmentally cleaner vehicles.

At present, electric vehicles and gasoline-electric powered hybrid cars are merely 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 CO₂ grams/kilometer emissions (in line with European V emissions standards).

We strongly urge the various government ministries with a stake in this outcome – including the Ministry of Economic Affairs, Ministry of Transportation and Communications, and EPA – to align to offer an aggressive plan to replace the aged vehicles with newer energy-saving vehicles over the coming 10 years.

For example, MOTC should consider imposing an additional license fee and fuel tax on aged vehicle. In addition, the existing vehicle commodity (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-CO₂ emission vehicles. Besides integrating existing fuel tax to add up to fuel price to accelerate 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.

TAX >>

The Ministry of Finance (MOF) has announced a Financial Improvement Plan, which includes a series of amendments to increase tax revenue. Since some of these proposals could have great impact on the current tax system, it is important that the MOF's plan receive thorough review both within government and from the various sectors of society that would potentially be affected, including business. Several elements of the new plan may significantly impact the cost of doing business and therefore hinder the willingness of would-be investors to proceed with projects in Taiwan.

Below, the Committee has set out the major outstanding issues of concern to our members. We urge the MOF and other relevant government agencies to pay careful attention to these suggestions in the interest of reducing the cost of doing business in Taiwan and thereby stimulating economic growth. Tax revenue can be increased by business growth, not just by raising tax rates or tightening regulations. The Committee looks forward to productive discussions with the tax authorities on these issues in the months ahead.

Suggestion 1. Reconsider the proposed tax law change on imputed tax credit.

Under the current tax law, if a company does not distribute after-tax (the 17% Corporate Income Tax) earnings to its shareholders by the end of the following year, a 10% surtax is imposed on any undistributed earnings. The 10% surtax, together with other income tax paid by the company, is recorded in the company's imputed tax account (ICA). Corporate shareholders in the company may transfer their portion of the tax credit in the ICA to their own ICA, while individual shareholders may take a credit against their personal income-tax liability. Non-resident shareholders, however, may only use the 10% surtax payment as a tax credit against the tax withheld on dividend payments. This imputation system was designed to prevent double taxation at the corporate and shareholder levels. If the income earned by the company has been taxed, then it should not be taxed again when distributed to shareholders in the form of dividends.

Recently the Taiwan government has proposed reducing the imputed tax credit available to shareholders, including foreign shareholders, by 50%. Compared to resident shareholders, foreign investors have very limited imputed tax credit (only the 10% surtax), even under the current regulation. The new proposal will further reduce foreign investors' imputed tax credit, which is highly unfavorable for foreign investors.

In view of the impact of the proposed regulation on foreign investors who have very limited imputed tax credit, the Tax Committee urges the government to reconsider the proposed new regulation. Further, if the new regulation must be adopted, the government should take steps to ensure that

it is not applied to retained earnings incurred in previous years, as such retroactivity would be contrary to fairness and basic legal principles. The government should consider applying the new regulation only to future years' earnings to mitigate the impact.

Suggestion 2. Provide clearer guidance regarding regional service charges.

To increase their competitiveness in today's globalized business environment, multinational corporations (MNCs) usually centralize their resources on a regional basis to improve operational efficiencies. The MNC will then provide support in allocating these resources to the members within the group. Often it will enter into a management services agreement with its global affiliates (subsidiaries or branches) to provide services such as legal, accounting, financial management, risk management, information system maintenance, etc., in return for which the affiliates will pay a regional service charge.

The regional service charge often involves two tax issues: the deductibility to the local member company and the withholding tax (WHT) at the time of payment in Taiwan.

Regarding the deduction issue, the tax authority commonly disallows the entire regional service charge for one or more of the following reasons:

- There should be a "one-to-one" or direct correspondence between the services received and the remuneration paid;
- The agreement did not stipulate how the management fee was to be calculated;
- The allocation method is not appropriate – that is, not based on revenue;
- There is no supporting documentation proving that the service has benefited the local Taiwan entity.

While we agree that the tax administration has the authority to review the rationale for the service charge, the allocation method, and evidence that service was provided, in reality some cases have been disallowed with no chance for the company to offer a defense until the appeal stage, when an assessment has already been imposed. Further, it is often difficult for an MNC to prove the direct correlation between the services and the remuneration paid, and asking for such proof is against international practice, particularly when it is common for MNCs to operate regional headquarters.

We urge the Ministry of Finance (MOF) to issue clearer instructions as to what documentation would be considered acceptable evidence to prevent disputes over regional service charges. Such documentation might consist, for example, of the service agreements with a detailed calculation schedule for the expenses, invoices issued by the service provider, and documents substantiating the services provided by each function. In this way, the MNC could also ensure that a consistent approach is being taken by the group year after year.

As to the WHT issue, since most of the regional service charge is cost allocation in nature, it is doubtful whether the charge should be subject to WHT. In Article 14 of “Guidelines of the Taiwan Sourcing Rules,” only R&D-related cost allocation is mentioned as eligible for exemption from the WHT. In practice as well, only R&D-related costs are considered. But if the service charge is cost allocation and not income in nature, then the payment should be free from withholding. It is therefore puzzling why the tax exemption should be limited to R&D activities. We urge the MOF to reconsider the issue of withholding tax on regional service charges to put our tax law on a sounder basis.

Suggestion 3. Revise the current policy on taxing foreign enterprises’ drop-shipment transactions in Taiwan.

The semiconductor industry is a key driver of Taiwan’s economic growth, with Taiwan being one of the major IC manufacturers in the world. Even though Taiwan is seeking to assume a more aggressive role in the semiconductor industry by breaking loose from the current OEM/ODM role, its role as a contract manufacturer for foreign semiconductor companies still accounts for a significant part of its activities in Taiwan.

Under the contract manufacturing model, foreign companies supply components to Taiwan OEMs/ODMs for further processing, including manufacturing, testing and assembly, etc. Upon completion of the relevant process, Taiwan OEMs/ODMs are instructed by foreign companies to ship the products to the foreign companies’ customers outside of Taiwan. Such a transaction model is known as a “drop shipment.”

Even though some tax rulings have specified that no tax should be due for drop-shipment sales made to offshore customers by foreign companies who instruct Taiwan companies to deliver the products stored by them, a precondition for achieving the nil tax status is that only “storage or/and simple processing” may be performed in Taiwan. Moreover, tax exemption is granted for drop shipments only when “storage or/and simple processing” is carried out in Free Trade Zones. In practice, the typical manufacturing, testing, and assembly activities performed by Taiwan OEMs/ODMs usually involve extensive processing, which is beyond the scope of storage or/and simple processing. As such, it is difficult for foreign companies to meet the criteria for income-tax exemption.

The MOF holds a view that foreign companies incur Taiwan-sourced income if their sales transactions are completed in Taiwan under the drop-shipment model. Foreign companies are deemed to have met the criteria for “completion of sales transaction” when customers are identified and sales terms are confirmed prior to the outbound shipment of the products to foreign customers. However, based on normal industry practice, foreign

companies are unlikely to instruct Taiwan OEMs/ODMs to perform further processing before the sales terms are mutually agreed upon with their customers. As a result, contrary to international practice, most foreign semiconductor companies will be considered to have generated Taiwan-sourced income from drop-shipment activities in Taiwan.

Further, a certain portion of the income derived by foreign semiconductor companies covering manufacturing revenues earned by Taiwan OEMs/ODMs is already reported in the corporate income tax returns of the Taiwan OEMs/ODMs. In other words, if income tax is also imposed on foreign semiconductor companies’ income from drop-shipment activities, it will give rise to double taxation.

To mitigate tax exposure on drop-shipment transactions, some foreign companies may seek tax relief under applicable Double Taxation Agreements (DTAs), which provide income tax exemption for business profits derived by foreign companies from Taiwan, unless such business profits are generated by the permanent establishment (PE) of the foreign company in Taiwan. But Taiwan OEMs/ODMs are not viewed as the PE of the foreign company if they only maintain the foreign companies’ products for the purposes of storage, display, and delivery. Further, Taiwan currently has DTAs in force with only 25 countries, which do not include the United States.

To reduce tax risks and uncertainty, certain foreign semiconductor companies have (1) decreased the percentage of OEM/ODM activities in Taiwan and shifted it to other countries; or (2) routed products from Taiwan OEMs/ODMs to the foreign companies’ warehouses outside of Taiwan (typically in Hong Kong or Singapore) before the subsequent shipment to customers; or (3) limited the functions performed in Taiwan to “storage and simple processing” (by using FTZs or the provisions of DTAs).

The first option may negatively impact the Taiwan economy, while the second option creates inconvenience and additional expense for foreign companies, discouraging them from doing business in Taiwan. If the third option is adopted, the functions performed in Taiwan become labor-intensive rather than technology-intensive, and can easily be replaced by cheap labor in other Asia Pacific countries.

The semiconductor industry has been called the economic backbone of Taiwan. The current interpretation by the Taiwan tax authority may inhibit Taiwan’s economic growth and impair its competitiveness if it causes foreign semiconductor companies to shift orders to other countries. In the long run, the vision of Taiwan becoming a global business operations center (via the Free Economic Pilot Zones) is unlikely to be achieved if relevant operational and tax incentives are not adopted to provide a total solution. The Committee therefore urges the MOF to revisit the current tax treatment of the drop-shipment model.

Suggestion 4. Reduce the withholding tax rate on non-resident income to less than 20%.

In 2010, the corporate income tax rate was reduced from 25% to 17%, yet the WHT rate still remains at 20%. Unlike domestic business entities, for non-resident taxpayers the WHT is their final tax, and the effective tax rate is much higher than for domestic taxpayers since no cost and expense deductions are available. While conducting the same business, foreign entities with and without a tax presence will have very different tax burdens – 20% on gross income vs. 17% on net profit.

The table below shows the corporate and WHT tax rates of major Asia Pacific countries in 2014 (without treaty rates):

| Country | Corporate Tax Rate | Withholding Tax Rate on Non-Residents | | | | Withholding Tax Rate Lower Than or Equal to the Corporate Tax Rate (Y/N) |
|-----------|--------------------|---------------------------------------|----------|----------------|------------------------|--|
| | | Dividends | Interest | Royalties | Service Re-munerations | |
| Taiwan | 17% | 20% | 20% | 20% | 20% | N |
| Hong Kong | 16.5% | Nil | Nil | 4.95% or 16.5% | Nil | Y |
| Singapore | 17% | Nil | 15% | 10% | 17% | Y |
| Korea | 10%-22% | 20% | 20% | 20% | 20% | Y |
| China | 25% | 10% | 10% | 10% | 15% | Y |
| Japan | 25.5% | 20.42% | 20.42% | 20.42% | 20.42% | Y |
| Thailand | 20% | 10% | 15% | 15% | 15% | Y |
| Malaysia | 25% | Nil | 15% | 10% | 10% | Y |
| Myanmar | 25% | Nil | 15% | 20% | 3.5% | Y |

Taiwan's tax structure is quite different from that of other major Asia Pacific countries in that Taiwan's WHT rate is higher than its corporate tax rate. It is also higher than the WHT in other Asia Pacific countries, making Taiwan less appealing to foreign investors. In addition, in certain commercial negotiations, it is the Taiwan entity, not the foreign entity, that will bear the WHT tax burden for such payments as service or technology procurement. Even if the foreign entity will bear the WHT tax, the tax burden may be embedded in the overall payments. Under such circumstances, the Taiwan entity may need to endure higher costs as a result of the high withholding tax in Taiwan.

In its reply to the 2013 *White Paper*, the MOF said that if the WHT is reduced, Taiwan might lose bargaining power when negotiating double-taxation treaties with additional countries. But such reasoning does not apply to Hong Kong and Singapore who have lower or no WHT, yet have extensive treaty networks. The Committee appreciates the government's effort to reduce the tax burden for foreign companies by negotiating double-taxation treaties with more countries, but this should not be an excuse to refrain from

lowering the WHT rate for foreign investors.

Taiwan has long been eager to become an Asia-Pacific Regional Operations Center, but one of the major obstacles is the existence of tax policies that are contrary to standard international practice. The tax structure is also partly to blame for difficulties Taiwan has faced in maintaining global competitiveness. It is time to tackle one such important issue – the discrepancy in the WHT rate – which has been raised year after year in the *Taiwan White Paper* without resolution.

TECHNOLOGY >>

Technology products and services are a cornerstone of the Taiwan economy. For technology to remain as a key driver of its economy, Taiwan needs to deploy its skills and promote innovation to move up the technology value chain. A change in strategic focus is imperative because of a competitive landscape that is challenging Taiwan's traditional strengths in PC, consumer electronics OEM, and LCD-panel manufacturing.

Considering its broad technology ecosystem, well-educated work force, and healthy financial system, Taiwan is well positioned to take advantage of a larger segment of the value chain. Through the Ministry of Economic Affairs (MOEA) and Industrial Technology Research Institute (ITRI), the government is actively pursuing policies that focus on higher value-added activities. Critical among these is a regulatory framework that encourages investment, particularly in startups. Another opportunity is to revise regulations to facilitate multinational investment in Taiwan, for example in setting up a regional R&D headquarters or bidding for local contracts. Finally, we commend ITRI's activities to foster research in seed technology as a means of leveraging Taiwan's strengths for the development of more innovation-based and value-added products.

The Committee highlights several of these issues in this year's *White Paper* submission. We look forward to consideration of our ideas by the government, and also extend our thanks to the authorities for the progress over the past year towards developing an innovation-based economy.

Suggestion 1. Allow dynamic spectrum access to frequency bands such as unused TV broadcast channels, so as to increase spectrum utilization and efficiency.

The explosive growth of wireless data is being driven not only by consumer devices and human communications, but also by machine-to-machine communications known as the Internet of Things. Such growth has put a severe strain on radio spectrum resources underpinning all forms of wireless communications, increasing the need for more efficient ways to manage and use spectrum resources. Globally, there is a clear trend of accelerated adoption of spectrum-

sharing techniques and policies, one of which is to open up more spectrum, such as unused TV broadcast channels (the so-called “TV White Spaces” or TVWS), for unlicensed or license-exempt, shared access.

As the Ministry of Transportation and Communications (MOTC) points out in its response to our recommendation on this issue in the 2013 *Taiwan White Paper*, spectrum is indeed a scarce resource, especially under the current spectrum management model and practice, whereby spectrum resources are allocated statically for an extended period of time. This model worked well in the past when technology changes were slow and well-spaced, and the market was more predictable. However, nowadays the static method of spectrum allocation cannot keep pace with the rapid technology advancements and market changes, resulting in some spectrum bands being overcrowded while a majority is severely underutilized.

Dynamic Spectrum Access (DSA) is a policy alternative and technology innovation that allows regulators to put the idle spectrum into immediate and valuable usage, while preserving flexibility for possible future allocation or other later specific usage. Rather than “reserving” spectrum resource for “specific usage in the future,” which implies that the idle spectrum will remain idle until it is re-allocated, we suggest that the government allow dynamic access to such idle spectrum resources using such DSA techniques as white space database and cognitive radio. The overall objective of DSA is to dramatically increase spectrum utilization and efficiency, transforming spectrum from a scarce resource to an abundant one, in turn unleashing innovation and new value creation.

Besides the United States, which has enacted legislation to allow unlicensed access to TVWS, a number of other countries are actively developing regulatory frameworks to allow the same. These include the United Kingdom, Canada, and Singapore, all of which are expected to publish their respective regulatory frameworks around the end of this year. In the United Kingdom, Ofcom is currently conducting a series of trials to “dry-run” the draft regulatory framework, which was published in 2013. In Singapore, the Infocomm Development Authority (IDA) published a Public Consultation on TVWS in June 2013 and is expected to issue the consultation results later this year. In the meantime, the Singapore White Spaces Pilot Group (SWSPG) continues to expand its commercial trial projects with customers from both the public and private sectors. In addition, a number of other Asia Pacific countries are actively conducting commercial trials, including China, Japan, Korea, India, the Philippines, and Bhutan. At the recent World Telecom Development Conference (WTDC’14) in Dubai, attended by over 1,300 participants from 137 member states and 82 industry sectors, DSA was incorporated in the resulting Dubai Action Plan and WTDC’14 resolutions.

With its strong semiconductor, components, systems, and devices manufacturing segments, Taiwan already has enjoyed enormous commercial success on the back of the vigorous growth of wireless connectivity worldwide. Building on such a strong foundation, Taiwan stands to reap even greater success in the new wave of wireless innovation enabled by the White Space technologies. The government could play an instrumental role in fostering a vibrant local ecosystem that could position Taiwan as a leading market and technology supplier for DSA radios and devices worldwide. Some specific recommended actions include:

- 1). ***Provide a supportive regulatory and policy environment*** for local companies to innovate on wireless technologies using unlicensed spectrum resources. Making available more unlicensed spectrum lowers entry barriers and allows small startup companies to pursue innovative solutions without having to incur hefty upfront spectrum licensing fees. Given the transition to Digital TV and the desirable propagation characteristics of the UHF TV-band spectrum (470-790MHz), there is now a prime opportunity to open up the unused TV broadcast channels for unlicensed wireless connectivity services.
- 2). ***Direct government R&D funds and resources to DSA radio research.*** Government R&D agencies such as III and ITRI have already done significant research on white-space-related technologies such as cognitive radio. The institutes could further build their competency and potentially transfer research outputs for commercial development by private companies.
- 3). ***Grant trial licenses and supporting funds for industry to conduct commercial trials*** to explore applications for such programs as Smart City (for disaster response, for example) and Digital Inclusion (providing connectivity to rural and remote areas). The study the government has been undertaking in Fuxing Township of Taoyuan County has proven that using vacant TV-band channels for broadband access is effective and efficient for connecting remote areas. The current project has focused on proving the concept and the technology. We suggest that the next step should be to explore business models and scaled deployment with appropriate policy enablement.

Suggestion 2. Amend the IT Services Model Contract to build a favorable environment for innovation.

In this age of globalization, it is important for governments to gear their practices to international norms while actively participating in initiatives for regional economic cooperation. As we have done repeatedly in the past, the Committee again urges the relevant authorities to revise the IT Services Model Contract to better define the scope and limitation of damages and service-level penalties, as well as to determine the copyright ownership of vendor proposals based on the nature of the project. Building a

fair and innovation-friendly tendering environment will encourage the participation of higher-quality vendors in government projects, fostering healthy competition that will enhance the quality of public procurement.

Article 15 of the current (version 101.10.02) IT Services Model Contract provides that Limitation of Liability is to be capped at an amount specified by the tendering authority, or if left unspecified, the damage shall be the amount of actual damages. In general practice, the tendering authority seldom specifies a cap on damages. When the Model Contract does not set a cap at the total contract amount, there is not only no ceiling on liability in the tender, but also no upper limit specified for the service-level penalty.

The U.S. Federal Acquisition Regulations (FAR), German VOB, and relevant laws in Japan and the EU do not explicitly define the upper limit for damages in government-procurement contracts. Nevertheless, in general practice indemnity tends to be limited through other rules and regulations. According to EU property procurement rules, for example, the authorities may impose a penalty when the vendor is judged to have violated the contract after the tender award, provided that the amount of the penalty does not exceed the total contract amount. In addition, the model contracts of FIDIC (the International Federation of Consulting Engineers) stipulate that the vendor not liable for derivative losses of the contractor, and in principle – unless specified by other rules – the vendor's total liability shall not exceed the contract value or specially specified limitations. According to the Engineering Advancement Association of Japan (ENAA), the vendor is not responsible for possible derivative losses of the contractor.

Given the existing government-procurement contract practices in Taiwan and with reference to the laws and regulations of other major countries, it is not necessary to define the damages cap in the body of the law. Instead, the Committee suggests amending the IT Services Model Contract to define the limitation of liability of the vendor, with the total contract amount set as the upper limit of the damages liability and with a stipulation that the vendor's liability should not include derivative losses of the contractor. When a limitation of liability is in place, the service-level penalty cap can also be defined, as there is a logical relationship between the two. Furthermore, the IT service-level penalty is equivalent to the quality discrepancy penalty in engineering contracts. Currently the latter clearly defines the penalty ceiling, but not the former. In the interest of fairness, the information-service contract penalty cap should be defined in line with engineering contracts. The government should be expected to synchronize its rules and general practices with those of advanced countries in line with the Public Construction Committee's commitment to enhance the efficiency, effectiveness, and transparency of the government procurement process.

Article 15 of current IT Services Model Contract also provides that copyright ownership of the bidding proposal belongs, after approval, to the tendering authority. The majority of bidding proposals contain information and know-how essential to the bidder's core competitiveness and assets. Should the copyright of the bidding proposal reside with the procurement agencies, further use of that knowledge will be restricted, hindering the distribution of intellectual property and the progressive development of society. But Article 15 appears to conflict with Article 16 Item 3.6, which states that copyright ownership should be defined according to the particular conditions of each tender. The Committee suggests that procurement agencies be encouraged to apply Article 16 Item 3.6 with regard to copyright ownership.

Suggestion 3. Shift the emphasis in IT spending from hardware to software and services.

A Taiwan Research Institute study noted some significant characteristics regarding Taiwan's spending on software and computer services in 2013 compared with its peer nations. In this context, spending on software and computer services is defined as the investment in and consumption of software and computer services by both the private and government sectors. The study made the following points:

- From 2003 until 2013, the annual growth rate in IT spending in Taiwan averaged 5.89%, compared with 8.57% for the Asia-Pacific as a whole.
- Software and services take up 70.54% of worldwide IT spending, but in Taiwan the proportion is just 48.79%.
- At 6.18%, the average annual growth rate from 2003 to 2013 in IT software and services spending in Taiwan is lower than for such markets as Singapore (7.35%), South Korea (8.80%), Malaysia (10.24%), and Vietnam (12.2%).
- The level of IT spending in manufacturing and services is not only much lower than in other developed countries, but has declined sharply as a proportion of total investment in those sectors. In South Korea, IT investment in manufacturing is three times higher than in Taiwan, and in services 3.81 times higher.
- The consumption of IT software and services in Taiwan as a proportion of GDP is far lower than in other developed countries – only 0.87%, compared with 0.92% in Singapore, 1.46% in South Korea, 1.56% in the United States, and 1.63% in Japan.

As these figures show, Taiwan is putting its long-term competitiveness at risk if it fails to invest in IT on a similar scale to what other countries are doing. Taiwan cannot take full advantage of IT core values by putting most IT investment into hardware. We therefore offer the following recommendations:

- 1). Position IT as part of the national strategic infrastructure needed to support Taiwan's transformation into a

knowledge- and innovation-based economy. Incorporate ICT applications in every government project and plan.

- 2). Provide government leadership in shifting Taiwan away from a hardware-centric approach by increasing the investment ratio for software and services in every government IT project.
- 3). Set up tangible IT goals and indices using South Korea as a benchmark.

Suggestion 4. Create a regulatory environment conducive to nurturing tech-sector startups.

Taiwan could be a leader in Asia in the next generation of technology and related software, for example in mobile communications, electronic payment solutions, decentralized platforms and services, and cloud computing. To spur that development, it is important to nurture a vibrant startup community that reflects a culture of technological creativity. Currently Taiwan does not have such an environment, however, as the legal and regulatory framework for encouraging startups lags behind those of many other jurisdictions, including such nearby markets as Hong Kong and Singapore. The government has so far exercised insufficient leadership to implement measures and policies to allow Taiwan to be competitive against regional counterparts as a welcoming location for startup enterprises.

Taiwan's prestige and profitability in the tech-sector are waning. South Korean mobile phone brands overshadow the island's, and Chinese brands such as Xiaomi threaten to do the same. China and South Korea have also begun testing 5G networks that promise to transmit large amounts of data in record time, slated to be ready years before they will be in Taiwan. To regain its momentum in these fields, Taiwan must channel its energy and focus into encouraging and developing companies that will be the next generation of technological leaders. The potential sources of creativity and talent must be provided with the environment and tools with which to grow.

Startup ventures face many challenges. Entrepreneurs are hampered, for example, by difficulties in hiring and retaining outside talent who can bring international experience and expertise to the enterprise. There are also unnecessary obstacles to creating favorable investment structures.

While the Committee is pleased that the Ministry of Economic Affairs has kept the door open to considering our past recommendations, we still see too many roadblocks obstructing the formation of startups in Taiwan. So that Taiwan can meet its actual investment potential, we recommend the following steps:

- 1). ***Remove remaining hurdles in the regulatory approval process to foreign investment in startups.*** As a start, we urge the Legislative Yuan to speedily approve the government's plan to exempt projects valued at US\$5 million or less from the requirement to undergo the foreign-investment application process. Swift and nimble

government leadership is needed to put measures in place to attract startups and enable them to survive and flourish.

- 2). ***Revise current regulations to ensure that foreign managers will not lose their work permits*** if startups fail to generate a profit after two years. Shareholders in startup companies realize that it can take some time for a technology company to become profitable, and they are willing to fund the operation during this crucial initial period.
- 3). ***Make it easier to hire foreign talent.*** The current internship regulations in Taiwan make it nearly impossible for a startup to hire an intern. In addition, the work permit and alien residence processes often require too much time and paperwork for a foreign professional who may participate in a startup on a short-term basis. The offering of special "startup visas" such as those found in Canada, Chile, and Ireland would be an effective solution to enable startup companies to attract the foreign talent needed for the success and growth of the venture.

TELECOMMUNICATIONS & MEDIA >>

The Committee appreciates the efforts by the National Communications Commission (NCC) and Ministry of Transportation and Communications (MOTC) to support the development of the telecommunications and media sectors. In particular, we are pleased to see the success of the Taiwan government in auctioning and releasing the mobile broadband licenses in 2013. We believe that this step will assure ubiquitous connectivity for mobile broadband and help promote the rapid development of innovative and efficient communication technologies and services.

Below, we offer some suggestions from an industry perspective on how that forward momentum could be further enhanced. We look forward to continued interaction with the authorities on these and other issues over the coming year.

Suggestion 1. Continue to improve the 4G environment for the benefit of both operators and consumers.

The LTE (Long-term Evolution) standard for wireless data communication has become the most accepted global choice for 4G mobile networks. Currently 288 operators have commercially launched LTE in 104 countries, as reported by the Global Mobile Suppliers Association (GSA) in May 2014.

The Committee appreciates the authorities' active and efficient guidance of 4G development in Taiwan, from the discussion stage to planning and execution. For the sake of building a healthy and long-term foundation for 4G, we propose the following for the government's consideration:

- 1). ***Ensure efficient utilization of scarce spectrum resources.*** With last year's allocation of APT700

spectrum and redistribution of the GSM spectrum, Taiwan has taken a big step towards becoming a true mobile broadband society. The Committee is encouraged by the news from NCC regarding the 2.6GHz spectrum allocation for LTE, while having concerns due to the uncertainty surrounding the status and timing. Spectrum is a scarce resource and requires efficient planning for fully efficient utilization. We suggest that during 2014 NCC clarify the plans and timelines for the 2.6GHz spectrum, which will be critical in ensuring that Wireless Broadband Access (WBA) and LTE operators have a clear path forward. Additionally, the Committee recommends that NCC annually publish a spectrum plan for Taiwan, covering available spectrum and allocation timing for the following three to five years. That guidance will help the Taiwan telecom industry to make efficient utilization of allocated spectrum.

2). Assure the service quality of the network infrastructure.

Given the fast growth in user traffic, 3G has been encountering mounting consumer demand for increased bandwidth and speed. With the current roll-out of LTE, which will be followed by future expansion, Taiwanese subscribers will require even more broadband throughput than with 3G networks. As a result, the need for base stations will increase substantially. To avoid future network congestion, operators will need active government assistance and support to enable them to obtain sufficient base-station sites. In this regard, the Committee urges the NCC to accelerate and further simplify the approval processes for radio equipment importation and new site commissioning. This liberalization will be especially important in facilitating Small Cell facilities, which will be needed to build heterogeneous networks that will be critical for service providers' fast and flexible deployment of increased capacity. The recommended actions will serve to further enhance Taiwanese subscribers' Quality of Experience and accelerate the positive economic growth provided by ubiquitous mobile broadband.

Suggestion 2. Pass the draft amendment to the Satellite Broadcasting Act to remove impractical reporting requirements.

According to Article 29 of the Satellite Broadcasting Act, channel providers are required to report the number of their subscribers to the NCC every April and October, but that unreasonable requirement would be lifted under a proposed amendment to the Satellite Broadcasting Act. The draft amendment recognizes that the channel providers merely transmit their content on broadcast platforms and have no direct involvement with the collection of subscription fees or other contact with subscribers. It is more logical to require the subscriber reports to be submitted by the cable affiliates,

not the channel providers. We urge the Legislative Yuan to quickly pass the proposed amendment.

Suggestion 3. Respect channel providers' confidential business documents.

In March, the NCC asked all channel providers to submit highly confidential documents, including their channel distribution agreements with existing cable operators operating on an analog platform. The Commission based its request on Articles 32 and 42 of the Satellite Broadcasting Act. Article 32 states that "Program providers shall not treat cable radio and television system operators (including cable television program transmission systems) or service operators differently without justification." Article 42 says: "The regulatory agency may dispatch personnel with identity documents to inspect a satellite broadcasting business or the branch office or agent of a foreign satellite broadcasting business, and may ask the said party to provide reports or materials or take coordinating measure with regard to the facilities or other related matters regulated by this Act. The regulatory agency may impound materials or items which are found to be in violation of this Act. No person shall evade, obstruct, or refuse requests, inspection, or impoundment which are carried out in accordance with the preceding paragraph."

Our understanding is that these provisions were designed to authorize the request of specific documents as part of a particular, focused inquiry. But the NCC has not offered any explanation as to why the documents in question are relevant to their investigations or how they would be used as a basis for further judgment. Neither has it presented any evidence that channel providers are violating regulations under Article 32. The arbitrary and excessive requests by the Commission have elicited complaints from the regional industry association CASBAA and from all foreign channels. We urge the NCC to immediately cease requesting these confidential documents.

Suggestion 4. Defer Price Tiering until copyright owners are better protected against infringing internet content.

The NCC has issued new regulations stipulating that cable operators must regroup their channels into separate packages ("Price Tiering") in what it regards as an effort to protect the interests of consumers. Price Tiering may prevent the media industry from having a healthy and reasonable business environment, however. In fact, it may discourage channel providers and cable operators from proceeding with further investments they have been contemplating in line with the digitalization convergence process, since Price Tiering will confront them with severe challenges in terms of channel penetration, program ratings, and advertising revenue. Considering the unfair competition they are encountering from unregulated Over-the-Top (OTT) services coming into this market through the internet, Taiwan content providers

are already suffering from a difficult business environment. Before proceeding with a Price Tiering system, the NCC – in collaboration with the Taiwan Intellectual Property Office (TIPO) – should first establish a mechanism to protect the interests of copyright owners against infringing content delivered via the internet from offshore-based websites.

Suggestion 5. Bring NCC’s regulations in line with international copyright-licensing practice.

In standard copyright-licensing practice, a copyright owner licenses his work through aggregators who in turn license it to different platforms (also known as network operators), including radio, terrestrial TV, satellite TV, direct TV, cable TV, internet TV, and IPTV. In the Pay TV industry, a channel provider is one such aggregator of copyrighted content. The channel providers pay a license fee for each specific platform the content is to be displayed on. As the commercial copyright fees vary from platform to platform, the number of platforms to be licensed is one of the main determinants of the amount of the license fee.

In the Taiwan market, most channel providers deliver their content via cable-TV networks, and therefore pay copyright license fees specific to cable-TV platforms only. They do not incur additional costs to clear such rights for delivery on other platforms, such as IPTV. If the channel provider would like to deliver its channel on an IPTV platform for extra revenue, it would need to pay additional license fees accordingly.

However, the current “Rules for Engineering Technology of Cable Radio and Television System” revised by the NCC on June 25, 2012 allows cable-TV operators to operate their “cable television service” with IPTV technology on an IPTV platform. This approach is totally inconsistent with the content-licensing framework and deviates from standard international practice. Such a Taiwan-specific ruling from the NCC will inevitably result in licensing disputes among copyright owners, channel providers, and cable-TV operators. For example, if an IPTV platform operator using IPTV technology is allowed to operate as a “Cable-TV operator” under the NCC’s ruling and proceeds to broadcast channels that genuine cable-TV platform operators have been broadcasting in the past, it will most likely be delivering content that has been cleared for cable platforms only. As such, it will be infringing on the rights of the copyright owners, thus creating legal exposure for the channel providers. Both the so-called “cable-TV operator” and the channel aggregator will have infringed on the copyright of the content owner as they did not license the IPTV rights to begin with.

The NCC’s Engineering Ruling terming such operators as “cable-TV operators” does not change the reality that these operators are operating on IPTV platforms and must therefore only broadcast content that has been cleared for IPTV rights. To prevent such confusion, we ask the NCC to

revise the regulation to specify that cable-TV operators may provide their cable-TV service via cable-TV networks only.

TRAVEL AND TOURISM >>

Tourist arrivals in Taiwan exceeded 8 million in 2013, a 9.64% increase from 2012. As members of the Taiwan tourism industry, the Travel and Tourism Committee is excited to see that the Taiwan government’s efforts to develop the tourism sector continue to bring positive results. We also commend and support the government’s ambitious goal of “10 million tourist arrivals by year 2016.” Taking a closer look at the official tourist arrival statistics, however, it is noteworthy that mainland China remains the number-one source of tourists for the Taiwan market, followed by Japan, Hong Kong and Macau, Korea, and certain Southeast Asian countries. It appears that non-Asian markets such as the United States and Europe still have not been fully explored. In this year’s paper, the Committee offers its observations and recommendations on how to redefine and reposition Taiwan’s tourism promotional efforts in order to further reach customers in non-Asian markets.

Taiwan’s tourism sector continues to suffer from insufficient manpower in the industry. A serious shortage of world-class professionals with appropriate management experience and language skills is having an impact on the quality of services the industry can offer. The Committee once again urges the government to tackle this problem by further relaxing work-permit and labor restrictions and incentivizing international hospitality training institutions to set up programs in Taiwan in order to upgrade the caliber of local hospitality-industry manpower.

The Committee is pleased to note that the Tourism Casino Administration Act is being reviewed by the Legislative Yuan and that it has been prioritized for passage by the Executive Yuan. The development is a positive move toward bringing significant foreign investment into Taiwan’s offshore islands for the establishment of integrated resorts. We urge the government to facilitate the swift passage of the Act in the upcoming months, as the competition from Japan and Korea for international investment dollars has become much fiercer this year, and Taiwan may risk losing attention from reputable international casino investors if the legislative process continues drag on.

As always, the Committee looks forward to working with the government to enhance and expand the travel and tourism industry in Taiwan.

Suggestion 1. Attract, train, and retain hospitality professionals to build sustainable international service standards.

Taiwanese are acclaimed for their courtesy, warmth,

and hospitality, and Taiwan's memorable service style has impressed many visitors. The travel and tourism industry represented by this Committee greatly appreciates these qualities in their Taiwanese employees, yet we continue to be concerned with the general shortage of world-class hospitality professionals, especially those with management experience and language skills that could help prepare local staff for the world stage.

The problem exists in Taipei, and is even more acute in less-developed parts of the island. To reach its growth potential both in overall tourist volume and in high-value segments such as MICE (Meetings, Incentive, Conferences, and Exhibitions) and Western leisure travelers, Taiwan needs to bring in more foreign hospitality professionals with the expertise to help bring service levels and management up to international standards. In addition, to cater to the increasing demand for talent as its tourism volumes expand, Taiwan needs to introduce world-class training and educational opportunities in the hospitality industry, possibly through joint ventures between local and foreign hospitality schools and universities. The presence of internationally recognized hospitality/culinary institutes in Taiwan is essential to provide the young generation with an educational path to career opportunities in the hospitality and tourism sectors of the service industry. This segment of the service industry includes retail, transportation, hotels, and restaurants, and the government needs to encourage and promote the establishment of professional training opportunities in all of these areas.

If Taiwan wishes to attract more major international events and become a much bigger player in the lucrative MICE segment, it will need to build more large-scale, world-class hotels and recruit and train a substantial workforce in a very short time. We recommend following the Singapore and Macau models by granting more flexibility in the quantity of foreign labor that major new hospitality projects can hire when they open. Without adequate skilled staff, premium hospitality establishments will have difficulty succeeding, and Taiwan will be unable to build a reputation as a favorable location for large-scale hospitality-industry investment.

The Committee specifically recommends the following:

- 1). Further deregulate work-permit restrictions to attract skilled and talented foreign professionals to work in Taiwan so as to help expedite the changes the industry desperately needs to assure its growth.
- 2). Assist and incentivize local schools and universities to partner with world-class hospitality institutions to train local talent.
- 3). Reach out to international educational institutions – particularly those who specialize in hospitality and other tourism-related sectors – to encourage them to set up programs in Taiwan for the training of travel and tourism professionals to international standards.

- 4). Encourage and incentivize tourism-industry practitioners to engage in extensive English-language training (especially in areas outside of Taipei).

Suggestion 2. Restrategize and reposition Taiwan's tourism promotion efforts.

While Taiwan has seen increasing tourist numbers over the last few years, most of the observed increase has been in the number of mainland Chinese tourists, with some additional increase from other parts of Asia. The number of international tourist arrivals from outside Asia still remains stagnant, however, suggesting that potential tourists outside Asia are either not receiving Taiwan's tourism message or are not sufficiently attracted by the content of the messages conveyed. More effective ways must be found to reach non-Asian tourists with promotional messages that will resonate with them. Attracting more Western visitors will benefit Taiwan's tourism sector by bringing greater balance to offset fluctuations in other markets. It should also be considered a vital part of Taiwan's efforts at "people-to-people diplomacy."

The issue comes into greater focus when one examines the tourism taglines previously used by Taiwan. While those slogans may reflect what Taiwan means to the people who live here, they have not necessarily been successful in presenting an adequate image of Taiwan to non-Asian foreigners.

For example, Taiwan used "Touch Your Heart" as a tagline for quite a few years, with a visual identity rooted in aboriginal themes. But few potential tourists from North American or European countries would have the cultural context to recognize the images as belong to Taiwan's aboriginal population rather than the hill tribes of Thailand or Myanmar. The current positioning of Taiwan as the "Heart of Asia" is also problematic, since many people outside the region regard China, Hong Kong, or Japan as the heart of Asia.

Identifying the actual strengths of Taiwan is not difficult. It is a destination with diversity in culture, with a unique blend of Hokien, Hakka, aboriginal, mainlander, and Japanese cultures. Taiwan's attractiveness lies in its beautiful mountains, seacoasts, and other natural scenery; the friendliness of its people; delicious snacks; pandas in one of Asia's finest zoos; historic railways; incredible bikeways and hiking trails; phenomenal scuba diving; amazing temples (both old and new); and the world's largest collection of Chinese antiquities. Excellent transportation options, including the Taipei MRT, high-speed railroad, special tourist trains and buses, and extensive freeway network, also make it easy and convenient to get around. Best of all, Taiwan is free of the street crime, religious tensions, and political instability that beset some other Asian tourist destinations.

Adapting Taiwan's strengths into a key tourism message

and slogan is the main challenge it is facing in promoting its international tourism. It is a task that needs to be assigned to experienced advertising and public relations professionals, with the proposed promotional materials then tested on focus groups composed of members of the target audience among foreigners overseas. (Resident foreigners should not be chosen for the focus groups, as they are already too familiar with what Taiwan has to offer.) While this approach will undoubtedly cost more than the current process for developing tourism campaigns, the Committee is confident that any additional expenditure will be more than justified by the additional tourism and revenue that Taiwan will enjoy as a result, as well as the additional recognition Taiwan will receive as a desirable tourist destination.

We also recommend the following additional steps to make traveling in Taiwan more accessible to, and more comfortable for, non-Asian tourists:

- 1). Establish a dedicated internet portal to facilitate overseas bookings by individual travelers, including the purchase of train tickets and applications for mountain permits.
- 2). Continue efforts to improve signage and services in consistent English and other foreign languages, especially outside of Taipei, so as to make Taiwan a truly international tourist destination.

Suggestion 3. Pass a Casino Gaming Law that will attract reputable foreign investors.

The Committee is pleased to note that the Tourism Casino Administration Act (the “Gaming Act”) is currently being reviewed by the Legislative Yuan and has been prioritized for passage by the Executive Yuan, with all political parties giving serious consideration to the Act and its provisions.

The quality of the Gaming Act will determine the viability of the integrated resorts that Taiwan wishes to see established on its offshore islands. It is therefore critically important that any changes made to the Gaming Act in the Legislative Yuan be carefully considered for their potential impact on the willingness of investors to invest large sums of money in Taiwan. Potential competition for investment dollars from Japan (which is set to pass a gaming law later this year) and Korea (which just licensed its first foreign-owned casino) emphasize the need for Taiwan to create an attractive environment for reputable foreign casino operators.

In this respect, the Committee is concerned about several proposed amendments that would impair the attractiveness of Taiwan’s casino gaming industry to foreign investors:

- 1). *Shortening the license period from 30 years to 15 years.* Fifteen years is a very short period in which to recoup and realize a good return on investments of the size that Taiwan wants to see on the offshore islands. The Committee also notes that such a short license period would make Taiwan unique among

Asian gaming jurisdictions and would likely create doubts among investors as to Taiwan’s long-term commitment to the industry.

- 2). *Setting a paid-in capital requirement of NT\$60 billion* (about US\$2 billion). The Committee is unaware of any casino jurisdiction in the world that sets such a high capital requirement – a level that in fact exceeds the market capitalization of several of Taiwan’s banks. If the Legislative Yuan wants to ensure that only financially credible bidders are bidding for licenses, the goal can just as easily be achieved by raising the amount of the performance bond as a percentage of the proposed investment.
- 3). *Raising the effective tax rate to 62%.* As noted in last year’s *White Paper*, tax policy can either encourage or kill investor interest in a new gaming jurisdiction. While there is always a temptation to try to generate more revenue through higher tax rates, it is worth remembering that a very high tax rate (especially when compared to other jurisdictions) will result in no revenue at all, as investors will by-pass it in favor of jurisdictions with more reasonable conditions. The Committee notes that the proposed 62% tax rate would be the highest anywhere in Asia, and would make Taiwan unattractive as an investment environment for reputable foreign casino operators.

The Committee also notes that, under Article 24 of the draft Gaming Act, the government would have the right to shut down the entire industry without any fault on the part of any tourism casino. The Committee is concerned that the existence of such an Article in the Gaming Act may create an impression among potential foreign investors that Taiwan is not really committed to the development of a casino gaming industry, even on the offshore islands. The Committee has no issue with revoking an individual tourism casino license for cause, but allowing termination of all licenses on a non-fault basis would present an insurmountable barrier for many potential investors.

Suggestion 4. Create an independent regulator once the Gaming Act has passed.

As noted in last year’s *White Paper*, it is also very important to reputable foreign casino investors that the gaming regulator be credible and independent. The Committee therefore recommends that Taiwan’s gaming regulator be an independent bureau or agency under the Ministry of Transportation and Communications, headed by a director-general who reports directly to the Minister. In the event that the regulatory body is included within the Tourism Bureau, the regulator should be headed by its own deputy director-general who reports directly to the Minister. Otherwise, the regulator will not be sufficiently independent

of the tourism authority, which may have different priorities from that of the gaming regulator.

Moreover, before the regulatory body is set up, the government should appoint a task force to oversee both its establishment and the implementation of the casino gaming law. Such a task force should be convened by the MOTC and consist of high-level representatives of all government stakeholders.

The Committee notes with appreciation that the MOTC has been quite willing in the past to maintain a dialogue with Committee members and other industry representatives about the shape of the Gaming Act. We hope that the MOTC and the Tourism Bureau will continue to work with the Committee to discuss approaches to those provisions that remain a matter of concern to the Committee and its members. We would also welcome the opportunity to engage in a dialogue about the Gaming Act with the Legislative Yuan's Transportation Committee.

OTHERS

CHIROPRACTIC

Every year since 2007, the *Taiwan White Paper* submission of the chiropractic doctor members of AmCham Taipei has made basically the same appeal to the Taiwan government: Provide a legal basis for the chiropractic profession to exist in Taiwan. Without that legal recognition, chiropractors trained and licensed in the United States and other advanced countries are relegated to a kind of professional limbo. Ostensibly tolerated – but just as the equivalent of “folk healers” or “back soothers” – they are accorded no professional respect, are sometimes subjected to office raids or other harassment, and may be heavily fined for infractions such as merely maintaining a website.

Each year, until now, the request in the *Taiwan White Paper* was rebuffed by the health authorities with the argument that before an examination and licensing procedure for chiropractors could be considered, a Taiwan medical college would first need to establish a chiropractic department. In practice, however, that proposal was a dead end. Clearly no educational institution would be willing to invest in establishing a department whose graduates had no guarantee of legal recognition for their profession.

In recent months, however, there were signs that a breakthrough may have finally been possible. The greater flexibility on the part of the authorities can most likely be traced to Taiwan's ongoing campaign to bring its regulatory policies in line with international norms, so as to bolster its future efforts to join the Trans-Pacific Partnership or other multinational trade bodies. With regard to chiropractic, it is evident that Taiwan is flagrantly out of step with

international practice. According to the World Federation of Chiropractic, an NGO affiliated with the World Health Organization (WHO) and which supported Taiwan's efforts to gain observer status at the World Health Assembly, Taiwan is currently one of only two countries in the world – the other is South Korea – where chiropractors' status as healthcare professionals enjoys neither explicit legal recognition nor de facto acceptance.

Unfortunately, the offer that finally came from the Ministry of Health and Welfare (MOHW) – a path to being licensed, but as physical therapists – was unacceptable on several levels. For one, it would require Taiwan's Doctors of Chiropractic – a profession recognized by the WHO – to downgrade themselves into technicians in order to practice. This stance is not only offensive and insulting, but is inconsistent with the WHO's “Guidelines on Chiropractic.” In addition, it would deprive chiropractors of the right to make their own diagnosis on the basis of their specialized training, and would make them dependent on referrals from medical doctors with no such training and therefore no ability to make a chiropractic diagnosis.

However, the recent dialogue with the Taiwan authorities has also been an opportunity to clarify a number of misconceptions about chiropractic, including the following notions:

- That Taiwan's chiropractors are asking to be recognized as medical doctors (M.D.s). They are not. The degree held by chiropractors is Doctor of Chiropractic (D.C.). It is a separate healthcare discipline from M.D., just as dentistry (D.D.S.) is an independent professional category.
- That chiropractic is merely a technique rather than the comprehensive therapeutic system it is – one requiring an intricate knowledge of the human body and the physical problems it is subject to. Doctors of Chiropractic are licensed following completion of five years of intensive specialized education after having received an undergraduate degree. Chiropractic is the third largest healthcare profession in Western countries after allopathic medicine and dentistry.
- That chiropractic is not universally recognized in every U.S. state. Documents were provided to the authorities verifying that every American state has a mechanism in place for licensing doctors of chiropractic, as do most developed countries around the world.

AmCham's chiropractic members would like use this occasion to express our thanks to the Executive Yuan's National Development Council and the MOHW for taking our views into consideration in recent months. However, putting chiropractic doctors at the therapist level is not merely an insult to the chiropractic profession, but would also hinder chiropractors in doing their job. Chiropractic is a healthcare profession concerned with the diagnosis and treatment of disorders of the neuro-musculoskeletal system.

Only chiropractic doctors – and not any other healthcare providers – have the specialized training equipping them to make a chiropractic diagnosis.

Our request this year is as follows:

Suggestion: Create a new category of healthcare professional that would enable foreign-licensed doctors of chiropractic to practice their profession with appropriate status.

In formulating the new arrangement, two factors need to be kept in mind:

- 1). It is vital that the new status grants chiropractors the right to proceed with treatment after making their own diagnosis, rather than needing a referral from a medical doctor who would be unfamiliar with chiropractic procedures. In all other jurisdictions where chiropractors are recognized, they have the right to diagnose.
- 2). The new status should grant chiropractors a level of dignity and respect commensurate with their extensive education and training.

Welcoming chiropractic will only benefit the people of Taiwan and the national healthcare system. Doctors of chiropractic can help treat many of the aches and pains of an elderly population – an especially important consideration as Taiwan nears the threshold for being an “aged” or even “super-aged” population – as well as ailments arising from various forms of physical exercise as the overall population also grows more active. As a safe and cost-effective health profession, chiropractic – when added to the mix of treatment options available to Taiwan patients – could also help relieve some of the financial pressure on the national health insurance program.

In addition, it should be remembered that the still-fragile observer status Taiwan currently enjoys at the WHA was achieved, after many years of struggle, in part through the help of the World Federation of Chiropractic, as well as other friendly countries who have legal chiropractic professions. Recognition of chiropractic in Taiwan would be the proper way to show gratitude for that support.

TOBACCO

The tobacco company members of AmCham Taipei would like to thank the Customs & International Trade Committee for reinforcing our position regarding the need to crack down on the illicit trade in tobacco products.

Suggestion 1. Reevaluate the tobacco tax policy to reduce market disruption and protect the interests of the lawful tobacco industry.

The tobacco industry has always supported a transparent, reasonable, and predictable tobacco tax policy. Such a policy

would not only safeguard the lawful tobacco market from disruptions caused by illegally traded cigarettes, but would also help achieve the government’s public health and tax policy objectives. In the absence of a moderate, reasonable, and predictable tobacco tax system, it becomes more difficult to control the illicit trade in tobacco products, further undermining the investment environment for legitimate businesses.

Taiwan’s illegal tobacco market is dominated by what are known as “illicit whites,” which are smuggled tobacco products usually concealed among small quantities of lawful imports. According to a large-scale empirical study commissioned by the Tobacco Institute of the Republic of China, the illicit trade causes the national treasury to lose approximately NT\$1.6 billion (US\$53 million) a year in tax revenue.

Thanks to concerted efforts by the relevant enforcement agencies to bring the situation under better control, the volume of illicit cigarettes in the market decreased slightly in 2013. But the lucrative nature of the illicit trade and anticipation of a steep increase in the tobacco tax provide illegal importers with a strong incentive to continue smuggling. Recognizing this connection, Premier Jiang Yi-huah cautioned at the monthly National Security Council meeting this February that “after the tobacco excise tax and health surtax are raised significantly [as proposed by the Executive Yuan], it is anticipated that the incentive for tobacco smuggling will increase as well.”

In light of this prospect, we would like to make the following recommendations:

- 1). Ensure that tobacco products enjoy the same fair and equitable treatment as other lawful products. Policies impacting the tobacco industry should be developed through regular, legislative procedures that take the legitimate rights of the industry into account.
- 2). When adjusting the tobacco health surtax, consider the overall stability of the market and the potential negative impact on the level of illicit trade. When changes in the surtax rate are too sudden or too steep, experience shows that the result is to spur increased smuggling, with all the negative consequences that brings for government tax revenues and the orderliness of the market.

Suggestion 2. Adopt effective and proportional tobacco control policies in line with Taiwan’s international trade obligations.

The tobacco industry supports proportionate tobacco control policies, but the industry believes that prior to the adoption and implementation of such policies, all related stakeholders should be invited to discuss the policies’ potential impact and effectiveness, as well as the feasibility of alternative measures that would achieve the same objectives.


The government should also be mindful of whether or not any proposed policies are consistent with Taiwan's international trade obligations.

Currently, members of the Legislative Yuan have submitted bills that would prohibit retail displays of tobacco and require plain packaging for tobacco products. To date, only Australia has passed similar legislation, and there is no reliable evidence that the measure has contributed to reducing the incidence of smoking among the country's youths or the general population. Moreover, several countries, including the Dominican Republic, Honduras, Indonesia, and Ukraine have challenged Australia's plain-packaging law through the WTO's trade-dispute settlement mechanism, asserting that it is inconsistent with Australia's obligations under the WTO's TRIPS (Trade-Related Aspects of Intellectual Property Rights) and TBT (Technical Barriers to Trade) agreements. The Australian law has also been challenged by Hong Kong under its Bilateral Investment Treaty with Australia.

Members of the Legislative Yuan have also proposed a ban on additives. A similar ban on additives gave rise to international trade-related concerns in 2009 when the United States passed amendments to the Federal Food, Drug and Cosmetics Act that prohibited the sale of flavored cigarettes. Indonesia, a clove-cigarette producing country, brought an action against the United States in the WTO on the grounds

that the Act violated obligations under the TBT Agreement. The United States lost the case and had to compensate Indonesia nearly US\$200 million. It would be easy to anticipate that similar WTO actions could be brought against Taiwan in the event that a non-compliant ban on additives becomes law.

Industry's recommendations are as follows:

- 1). Consider the ramifications that unsound tobacco control policies may have on Taiwan's international trade obligations by ensuring that input from all relevant government ministries and agencies is presented to the Executive Yuan's "Task Force for Taiwan's Participation in International Economic and Trade Strategy."
- 2). Before proposals for any new tobacco control measures move to the next stage of legislative review, conduct sufficient public consultation by holding public hearings, with all relevant stakeholders invited to make submissions.
- 3). Enhance existing public awareness programs and improve enforcement of existing laws regulating access to tobacco products by minors. These steps will be more effective in tackling the issue of smoking by young people than the introduction of controversial measures such as plain packaging and a ban on the retail display of tobacco products. 

Additional copies of the *Taiwan White Paper* can be ordered by using the form on page 19.

Discount rates are available on bulk orders; contact AmCham Taipei to inquire.

農化委員會

農化委員會首先感謝行政院農委會動植物防疫檢疫局，從2013年一月一日起開始積極的查緝非法農藥。透過與『永續作物發展協會 台灣分會』的合作，委員會將持續對產品製造與這些未登記及未經試驗的成品加強監督。然而到目前為止，從本會與兩位大學教授合作的計畫及農業廢容器調查試驗中發現，非法農藥的劑量並沒有明顯降低的跡象。或許仍需要一些時間才能看到顯著的成效，而農化委員會也將持續進行相關調查，並將成果分享給農委會。

除此之外，對於防檢局與農業藥物毒物試驗所在新農藥登記系統及採用作物分群制度上所作的努力，本會也希望能對此提出些建議。由於新制度過於複雜，對於新產品及相關有效成份仍未建置登錄程序，因此在引進更創新、更環保的商品時，業界可能面臨相當大的困難。而新系統實施已經過四年，僅有一項新有效成份(Active Ingredient)通過核准，本會對此結果深感失望。

有鑒於登記程序的不盡理想，本會將於2014年白皮書中，再一次重申該議題的重要性。

建議案：藉由簡化新農藥登記制度並加速核准程序，以利推廣環境友善產品和提升食品安全。

本會肯定政府全面性的採用作物分群制度，但自2009年農藥登記新制實施至今，只有一項新有效成分(Active Ingredient)之登記案件通過核准，此清楚顯示新登記制度是問題的關鍵。雖然本會代表與政府相關單位經過數度討論，然而政府相關單位不僅未充分理解新制難行之處，對於業界提出的建議也未曾採納。此一新制已嚴重減緩新技術、及對環境友善等創新產品引入台灣的進程，更嚴重地遞延老舊產品淘汰的速度，也阻擋台灣在環保及食品安全等方面採取更有效率步驟的機會。對此，本會提出兩個建議：

1. **修訂田間試驗規範及報告標準，縮短政府審查時間以增進效益**
為了加速審查程序，我們強力建議儘速修訂法規，使其納入藥效及藥害試驗數據的最低標準，包括台灣國內、外的製造商所有的資料都可適用，以取代現存方式。此舉不僅可降低主管機關在審查試驗數據一致性時面臨的繁雜工作量，也可避免為廠商背書而承擔的潛在風險及責任，而讓廠商對產品負起所有責任。
2. **降低殘留試驗需要的樣本數，並增加具備檢驗資格的試驗機構與其能力**

相對於日本、美國等國，台灣面積相對較小，區域試驗的重要性顯得較不具意義。與需要三個殘留試驗樣本數的日本、美國相比，台灣只要一個就足以訂定非出口作物的最大殘留容許量(Maximum Residue Level)。加上目前農業藥物毒物試驗所(TACTRI)是國內唯一合格的新活性成分殘留試驗機構，在台灣執行三處不同地點試驗的工作量，竟然占該機構日常業務之首，並已遠遠超過其負荷，造成進度嚴重延誤。除了建議試驗需要樣本數從三減為一，本會也強烈建議，提供TACTRI所需資源以擴充進行試驗的能力，並增加可承做試驗的機構。如此不僅加速新成分藥劑的登記，也提供農友更多、更環保的農化產品選擇。

綜括上述，本會衷心期盼相關主管機關能重新檢視登記制度，加以簡化、釐清並加快行政審查程序。讓全國農友及消費者能與全球同步，一同享受創新科技兼具環保概念的新產品，為消費者、農友創造最大利益。

資產管理委員會

本委員會樂見金融監督管理委員會(金管會)在過去的一年，針對金融業所做的許多開放。這些措施包括爭取我國成為人民幣離岸中心、開放人民幣保單產品、以及OBU(國際金融業務分行)與OSU(國際證券業務分公司)投資業務的開放。尤其在今年的三月份，金管會更開放投信債券型基金與平衡型基金得投資一定比例之高收益債券，同時允許投信投顧業者參與OBU/OSU之業務，更是展現金管會改革開放之決心。本委員會期盼今年金管會在兼顧投資人利益保護的前提下，廢續前述金融開放之腳步與金融創新之努力，以促進資產管理業共同且全面性的成長。

最後，鑑於Foreign Account Tax Compliance Act(FATCA)實施在即，本委員會敦請金管會協助台灣金融業者能及早與美國稅務機關完成相關之金融機構註冊、客戶身分驗證、申報等作業流程，並就國內個人資料保護法適用問題予以釋疑，俾使FATCA相關要求得以落實。

建議案：人民幣計價產品的開放，提供多元化的人民幣投資管道

隨著2013年2月兩岸貨幣清算機制正式上路後，46家國內外匯指定銀行(DBUs及OBUs)即陸續推出人民幣業務，根據央行公布的數據，截至2013年12月底，國銀OBU及DBU的人民幣總存款量已達2145億人民幣，較2013年2月成長率為550%，央行資料亦顯示，以國內一般投資人為主的DBU人民幣存款，至2013年12月底更高達人民幣1658億元，增幅驚人；一些金融機構更估計，在未來的兩到三年內將達到人民幣2500億至3000億元。顯示國內投資人持有之人民幣已逐日增加，未來勢必會有投資需求，有助發展人民幣商品；一如國內投資人持有大量外幣如美元、澳幣存款後，隨之而來即衍生各項美元與澳幣計價等投資商品，以提供較存款為高之投資報酬率，滿足不同風險承受度之投資人需求。目前國內已有人民幣基金、保單、寶島債，及多種人民幣衍生性金融商品，雖然發行規模不大，但比起香港歷時多年，才走到多元化商品階段，台灣「一步到位」更具發展人民幣離岸中心的競爭優勢。

為把握此一人民幣業務商機並成為第二個人民幣離岸中心，台灣應抓住當前流動性過剩的契機，提供人民幣計價之金融產品。更多樣化投資選擇之提供同時亦可支持金管會促進臺灣財富管理平台建立之目標。

然雖金管會已於去年度開放申請募集人民幣計價之投信基金，惟仍要求主要以「人民幣計價之有價證券」為主要投資標的；另對於投信基金非以「人民幣計價之有價證券」為主要投資標的者，若欲發行人民幣計價級別者，現階段仍不予開放。因此，本委員會期盼金管會除同意總代理人引進人民幣計價的境外基金或新級別予臺灣投資人外，更期望核准發行非以「人民幣計價之有價證券」為主要投資標的之人民幣計價投信基金或就非以「人民幣計價之有價證券」為主要投資標的之投信基金發行人民幣計價級別。

銀行業委員會

銀行委員會讚揚金管會為促進台灣金融業之發展，持續審視金融相關法令且適時鬆綁法規。自2013年美國商會白皮書發布以來，在拓展OBU業務及寶島債市場等議題上有顯著之進展。此外，金管會建立之代理買賣外國債券架構使得國內銀行得藉此平台提供相關商品予機構投資人。

本委員會欣見金管會在擴大兩岸金融合作之努力，截至2014年4月底，在台之人民幣存款已達到約人民幣2,875億元。爰此，人民幣回流機制的建立將能更加強化台灣成為人民幣離岸中心之地位。

本委員會對金管會大力發展台灣金融市場躋身亞洲主要市場的作為深表認同。但為吸引更多投資人參與台灣金融市場，政府應允許各種類型之投資人取得更多樣化之商品。透過更多的開放將有利於台灣市場爭取更多的商機與人才。同時，為支持台灣企業之資金需求及國際競爭力，本委員會仍持續關注銀行單一授信上限之議題，因此項規定限制了銀行業者即時滿足客戶策略性融資之需求。

本委員會了解金管會近期對台灣成立區域性國際銀行的期盼與努力。為達成此目標，本委員會謹建議政府可參採國際間銀行業之營運慣例與規範，且避免過多台灣獨有之規定。

美國商會2014年白皮書銀行業部分謹提出4項議題供主管機關參考，並期盼能於本年度內可獲得解決。

建議一：進一步開放服務範疇以提升金融產業競爭力

為打造台灣成為區域境外金融中心，台灣當局業已大幅開放國際金融業務分行(OBU)於從事外匯、衍生性金融商品、及信託業務法規面之限制。此開放極有助於推動台灣金融環境之國際化與自由化。惟為達成台灣成為亞太金融中心之願景，本委員會建議政府可進一步開放金融業之服務範疇，以有效提升台灣金融業之競爭力。

在香港和新加坡，家族及企業信託是主要的財富規劃工具，用於家庭財產保護、遺產繼承規劃，進而建立一個家庭資產統籌管理、分配的機制與平台。家族及企業信託的優點在於：

- 對家庭資產提供保障並保護資產不受侵害，例如資產不會落入揮霍無度的後嗣手中，或家族發生爭奪財產狀況等。
- 在法律許可的情況下，成立信託可保障財產安全隔離。
- 整合跨國資產並妥當統籌管理，將委託人/受益人資產歸納在信託管理平台。
- 預先安排資產分配給家庭成員、親友、慈善團體及其他機構。尤其在有繼承限制的國家，信託可彈性安排資產繼承，免除財富受到複雜的遺囑認證程序影響，使指定的受益人能盡快繼承應得財產。
- 信託契約可保有適度的彈性，保護無法自主的受益人，如年幼、年老、殘疾者，以確保受益人得到最佳福利

此外，結合家族及企業信託的保險(國際保單)亦為重要資產傳承之財富管理工具。

綜上，本委員會認為，於OBU開放前述金融商品及服務，將有助於提升金融產業競爭力，俾使台灣金融業得與香港/新加坡等區域金融中心金融產業並駕齊驅。

建議二：協助台灣本土企業策略性專案融資之資金需求

專案融資通常係因應企業併購或策略性大規模融資計畫之需求。由於專案融資通常涉及跨境活動且架構複雜，故一向由具國際專業經驗和全球網絡的外銀在此市場扮演著活躍的貸款者角色。

專案融資通常具有高度機密性質，主辦行可能無法於前階段找尋其他銀行為聯合授信或賣出融資金額。因此，於該專案公開前，借款人通常依賴單一銀行單獨提供過渡性融資。然而，此類專案融資的往往金額甚鉅，超出單一銀行（甚至超出大多數本地銀行）之單一授信限額。

依現行法規，外銀分行面臨嚴格的新台幣授信限制(包括對同一法人、同一關係人或同一關係企業之新臺幣授信限額新台幣七十億的上限)，此授信限額阻礙外銀分行提供策略性大規模專案計畫，並常導致台灣本土企業難以及時從國內獲得充足的資金。若台灣本土企業未能於國內獲得資金，將別無選擇地向海外籌資，此將無可避免地增加其貸款成本，並降低國際競爭力。

鑒於台灣本土企業為協助其策略性計畫及國際成長而對資金需求的增加，我們建議台灣有關當局重新審視目前單一授信限額

並考慮提供專案融資的例外(特別是對外銀分行的授信限制)。如此，外銀將得以繼續協助台灣本土企業策略性籌資需求並維持其國際競爭力。

建議三：持續擴展境外金融商品之發展與銷售機會

台灣政府近期採取許多措施，協助台灣金融機構在境外商品的提供上，提升至國際水準。例如，銀行現在已經可以用代理方式，經營外國債券業務。為持續這股正面的動能，本委員會建議政府應持續產品面的法規鬆綁，整合建立對於境外金融商品發展與銷售一致性的法規架構。

建議

3.1 短期措施 - 擴大可承做之外國債券業務範圍 如上所述，金管會近期開放准許銀行得以代理買賣方式經營外國債券業務，這對業界而言是一正面的消息--然而，業者可提供之產品仍僅限於一般債券。本委員會建議主管機關能擴大產品範圍，涵括證券化與結構型商品，以建立一個更寬廣與更有彈性的商品平台。

3.2 短到中程措施 - 境外結構型商品之發行法規鬆綁 現行台灣有關境外結構型商品之發行規範，較諸鄰近國家與其他國際市場更為嚴格。例如若要銷售境外結構型商品給一般投資人，該商品發行人之信用評等必須為AA-以上；對照同樣情形，香港僅規定發行人之資產淨值不低於20億港幣且信用評等為A-以上。而美國、歐盟、英國、新加坡與日本則並無信用評等之要求。

為使台灣與國際接軌，我們建議有關對一般投資人銷售之境外結構型商品，商品發行人之信用評等可調整為與香港相同的A-以上；此外，也可增加例如Basel III或同等標準的資本充足規定。

為提升資訊與風險揭露，以保障投資大眾權益，台灣亦可仿照中華民國壽險公會有關投資型保單投資境外結構型商品的做法，採取三段式風險預警系統。這種做法可以確保信用評等、5年期CDS的中價、每季盈餘與資本適足率等四種風險考量因素均已涵蓋。

建議四：允許銀行得參酌國際慣例訂定營運標準

台灣金融機構於提供客戶產品及服務係與世界各國競爭，其中重要的作法是由台灣金融業在金融服務上採取已開發市場之慣例，以確保台灣金融業與其他發展中市場的競合中保有競爭力。為提升台灣市場地位，本委員會建議主管機關重新審視現行規範，使銀行在不損及業務效率及安全性的前提下，擁有營運彈性並符合國際慣例。

其中，現行「金融機構辦理電子銀行業務安全控管作業基準」的規定有較國際慣例嚴格與不一致的狀況。依該作業基準，銀行之網路銀行系統擬進行大額支付時，將僅能使用由少數本地合格公司提供之數位憑證。該要求對於銀行使用其他技術(例如動態密碼憑證)辦理網路銀行業務造成許多限制，與當前國際慣例不同。考量全球發展電子銀行的趨勢，此等限制將使在台銀行難以發展一個健全的網路銀行平台，同時也將造成國際金融機構管理在台銀行帳戶上的作業困擾。

此外，依據「金融機構代客辦理存款作業範本」，銀行須於傳真指示扣款後取得客戶取款憑條或其他憑證之正本。銀行經常收到長期往來的企業客戶就上述規範之抱怨，客戶認為這項規定係屬多餘，也會造成額外的負擔，往往無意願遵循此要求。本委員會了解該規範之目的係為便於稽核追蹤及防止詐欺情事，但透過採取其他形式的身份認證方式，例如與客戶書面約定，以回撥電話確認的方式與客戶的傳真扣款指示相互驗證，或其他銀行認為適當的內部控制機制，亦可達到保護客戶之目的。

本委員會認同銀行相關法令旨在營造一個能確保安全與完善的銀行經營模式與平台。然而，為使台灣銀行業的運作能與已開發國家的國際標準接軌，本會建議主管機關與相關單位重新審視銀行業務監管相關規定，讓銀行在提供服務時能夠選用創新技術及依據銀行之內控機制制定適當之營運模式。

資本市場委員會

資本市場委員會感激主管機關對強化台灣之資本市場所作的持續努力。我們特別感謝主管機關付出各種努力回應我們所提出的建議，諸如鬆綁屬同集團間人員跨業登記的相關法規、澄清個人資料保護法相關疑義。我們讚賞以上已達成的成就，並特別感謝行政院金融監督管理委員會一如以往聆聽我們關切的議題。

由於全球資本市場具有高度互聯性，台灣的資本市場需要採納與國際規範一致的市場規則，尤其現在正是台灣亟欲加入跨太平洋夥伴關係(TPP)的關鍵時刻。有鑑於此，我們希望提出一些持續幫助臺灣進步的議題，並針對這些議題提出建議以創造充滿活力並有益於國內外參與者的資本市場、增加工作機會以及提升金融產業於國內生產總值內所佔比重。

一如既往，本委員會始終願意隨時協助台灣政府發展有效率且具競爭力的資本市場。

建議一：進一步開放台灣資本市場以鼓勵市場成長與增加國際能見度

1.1 檢視華僑及外國人投資債市之限制以吸引外資及活絡台灣債券市場

本委員會感謝台灣主管機關在穩定資本流及新台幣匯率所作的努力。然而，華僑及外國人投資台灣政府公債30%上限之規定卻降低了台灣公債市場之效率及對外資之吸引力。投資債市之外國投資人(包含貨幣型基金及指數型基金公司)皆視此規定為進入台灣債券市場之主要障礙，因此，外國投資人常要求於全球/區域指數中剔除台灣政府公債。而這些貨幣型基金公司皆為真正的債券投資人，並非外匯投機者。30%之投資上限降低債市效率、減弱對投資人之吸引力及市場競爭力。目前外國投資人僅占整體台灣政府公債市場在外流通總數之1-2%。

身為多年台灣金融市場主要參與者，為了創造更活絡之債券市場及吸引更多外資注入台灣市場，本委員會之會員希望能爭取開放這項限制。政府可以考慮開放某些特別種類(較長天期、具有閉鎖期)之公債免除於30%外國投資人之投資上限。基於台灣公債優良的債信，相信此開放必能讓台灣躋身亞洲領先資本市場之流。

1.2 開放設立表彰台灣上市櫃公司之非參與型存託憑證及一級存託憑證

具FINI資格之外資現今已成為台灣股市之重要角色，其每日成交量占大盤總量之百分之二十以上。然而，目前其他外資雖有意願投入台灣股市，但因為未取得FINI資格而無法投入。

未取得FINI資格之外資只能透過存託憑證來投資台灣股市。目前在台灣上市櫃的1,502間公司中，只有68間有設立參與型存託憑證。因此，我們建議可以藉由非參與型存託憑證及一級存託憑證之機制，讓未取得FINI資格之外資投資尚未設立參與型存託憑證之台灣上市櫃公司。

非參與型存託憑證及一級存託憑證可讓台灣上市櫃公司增加投資人之來源，因而受益於股東結構之多元化及穩定度或更甚者增加公司股票評價。根據其他國家之經驗在外流通之非

參與型存託憑證或一級存託憑證一般僅占整體流通量極小部分，因此不致於影響現行股東之權益。事實上，現行股東會受益於非參與型存託憑證或一級存託憑證所帶來之流動性。目前尚未有任何非參與型存託憑證或一級存託憑證相關之內線交易或其他犯罪行為之紀錄。此外，因為投資人只能在完成交易後始能換匯，此開放並不會造成炒匯之疑慮。

綜合以上原因及借鏡其他亞洲國家(包含日本、新加坡及香港)的成功經驗，我們建議配合修改外國有價證券發行及本國有價證券交易相關規則，開放非參與型存託憑證及一級存託憑證之設立及使用。

1.3 鼓勵專業機構投資人參與期貨交易市場

臺灣期貨交易所比其他境外交易所更接近台灣股票現貨市場，理應擁有絕佳競爭優勢，為了給予專業機構投資人更多誘因去參與衍生性金融商品市場，本委員會建議豁免專業機構投資人預收保證金之規定並建立give-up機制。如今國際上僅餘少數交易所要求專業機構投資人預先繳交保證金，亞太地區主要之交易所，如新加坡、香港均無預繳保證金之規定；韓國交易所則讓專業機構投資人得免除受預繳保證金之規範。有鑒於專業投資機構如銀行、期貨經紀商及其他經主管機關許可之金融機構，業已受個別主管機關高度監理且具備適足之風險控管機制，取消預收保證金制度不僅不會增加額外風險，亦可大幅提升交易效率並符合國際慣例。此外建立give-up機制以提供投資人於不同期貨商間進行交易時更多彈性及選擇。機構投資人基於保密原則、資金運用及分散交易對手風險，通常分散下單於不同的期貨經紀商，惟常委由同一結算機構集中交割，建立give-up機制將鼓勵境外機構投資人於台灣下單。取消預收保證金規定與建立give-up機制實互為表裡，缺一不可。

建議二：鬆綁國際證券業務分公司設立標準

金融監督管理委員會於103年2月18日公布一系列國際證券業務分公司(OSU)設立標準及辦理業務規範措施之函令，開放外國投資人可以透過OSU的平台申購境外金融商品。然而OSU申請設立之標準為申請之證券商淨值應達新台幣40億元或100億元，該標準使得所有外國證券商無法申請。在台灣的外國證券商因規模較小，未有任何一家外國證券商達到證券商淨值新台幣40億。參考國際金融業務(OBU)，因未設有法定淨值促使國際金融業務蓬勃發展。依中央銀行103年3月31號發布新聞稿所示，已開始營運之OBU共有63家，其中25家為外商銀行，佔全體OBU資產總額比例達14.2%，OBU資產總額高達173億美元。對此，本委員會建議，降低證券商申請OSU的證券商淨值抑或同意外國證券商可以總公司之證券商淨值為申請依據。外國證券商若可申請OSU，應可如同國際金融業務般，對於OSU的營收增加有正面助益。

再者，放寬OSU的申請標準亦有助於就業機會之增加；此外，多樣化的商品平台，除可經由外國證券商之參與助益台灣之金融產業發展，更可吸引更多國際金融人才的加入，對於所有市場參與者而言皆是雙贏局面。此舉不但可創造公平及開放之金融環境亦可收促進台灣經濟成長之效。

建議三：持續強化有價證券借貸市場

外國投資者一直視台灣為亞洲最重要之有價證券借貸市場之一。本委員會感謝臺灣證券交易所、財政部賦稅署與金融監督管理委員會近年來持續支持台灣有價證券借貸市場之發展，但台灣有價證券借貸市場的獨有特性仍需微幅調整，以符合所有市場參與者需求。長期而言，我們相信有價證券借貸機制若能與國際慣例接軌，必將吸引更多國際投資人。本委員會了解現行制度係配合台灣證券市場之特性設計，尚難大幅修改，故提出以下建議，

望有助於短期內解決部分市場參與者普遍提出的難題：

3.1 增加合格現金擔保品之種類

除美金之外，增加其他主要貨幣種類以提供借券者更多彈性。

3.2 移除再次出借之限制

出借人可借券給符合其信用審查之交易對手。這些交易對手可再借給更大範圍之借券者，因而增加券源以滿足借券者交易、避險、交割或提前還券之需要。

3.3 降低從事有價證券借貸之保證金比例至105%

現行從事有價證券借貸需繳交之保證金比例為140%，實較其他亞洲市場如，南韓、新加坡及日本，收取之105%高出許多，爰此台灣相較於其他市場較不具競爭力，本委員會建議降低保證金比例以吸引境外投資者參與台灣有價證券借貸市場。

3.4 放寬借券賣出當日額度

本委員會感謝主管機關已對全球金融危機後實施之借券賣出當日限額有所鬆綁，然而實行每日盤中借券賣出委託數量限額管制措施（每日盤中借券賣出委託數量數額不得超過該股票前三十個營業日之日平均交易量之20%），因投資人在該限額管制之下無法充分避險，恐造成證券交易市場效率降低，徒增投資人之交易風險。

不可諱言，全球主管機關於金融危機時期均會針對借券賣出有所規範及限制，惟多為一防範系統風險之暫時措施並在市場回復正常秩序後解除該等限制。為因應2008年之金融海嘯，美國及加拿大政府實施19天之金融股禁空令；多數歐洲市場及日本禁止無卷放空；韓國市場則在2009年取消非金融股之禁止借券放空並且業已在2013年全面取消禁止借券放空之限制。

借券賣出係國際交易市場上常見之交易策略，就借券交易完整的交易週期來看，借券賣出對證券交易市場來說未造成負面影響，主係因借券人最終仍須自集中市場買回標的股票，以回補其空方部位。國際間之金融監理單位普遍認為借券賣出實可體現價格發現功能亦可提高交易標的之流動性。

有鑒於政府致力實現台灣證券市場國際化之目標，本委員會建議廢除每日盤中借券賣出委託數量限額管制措施，惟基於市場監理之角度，主管機關可考慮調整回金融海嘯前之限額（即依該有價證券發行股數3%為計算之標準），使借券賣出之限額仍受監管之同時市場之流動性及成交量亦將提高。

建議四：增進市場效能並降低投資作業成本

4.1 允許證券商與保管銀行間採淨收付方式之交割

證券市場結算交割作業是構成金融市場基礎建設的主要部分，交割方式對於所有市場參與者而言，必須具有安全、迅速、確實及符合成本效益。就國際投資人之交割作業而言，除證券商與結算交割銀行另行簽訂契約外，保管銀行代理投資人與證券商間之交割款項作業，係以總額款項交割方式處理。總額款項之交割程序主要是以每個專業機構投資人個別帳戶進行款項收付交割，惟曠日費時且可能產生交割作業時程之風險。本委員會建議改採淨收付方式辦理，以風險控管之角度而言，交易資料保存仍可以個別專業機構投資人為基礎，以清楚確認該專業機構投資人之交割細節，並降低潛在爭議。

4.2 簡化外資月報表

現行保管銀行每月需向主管機關申報每一外資資產負債表、損益表、證券庫存，及資金匯入匯出資料。其他國家主管機關並無要求申報資產負債表及損益表。實際上，外國機構投資人本身並不編製這些資料，因外資已透過不同市場及金融產品進行風險分散。而台灣的保管銀行所編製的資產負債表及

損益表並無法反映外資全球的投資組合表現(包含境內外的避險及投資交易)。

逐一設帳登載交易帳務明細實為台灣市場所獨有，其需要額外的系統及人工支援，進而招致外資及保管銀行額外成本的增加並影響營運效能，卻只帶給外資或主管機關些微的助益於取得外資局部並可能被曲解的帳務資訊。

本委員會建議主管機關可維持現行的月底證券庫存、及資金匯入匯出表以管理外資的交易狀況，惟取消資產負債表及損益表的編製，以促進市場效能並降低投資及營運成本。

4.3 加強對於證券法規的解釋及適用的可預測性及透明性

本委員會讚賞金管會就我們所提出有關國外私募股權基金對台灣投資議題回應的重大進展。預期到未來將有更大規模針對台灣上市櫃公司進行的投資，我們相信金管會應進一步釐清其對現行「公開收購公開發行公司有價證券管理辦法」規定之解釋。根據該管理辦法，任何人單獨或與他人共同預定於五十日內取得公開發行公司已發行股份總額百分之二十以上股份者，應採公開收購方式為之。但是該管理辦法卻未明確說明所謂「取得」的認定時間點，究竟是以股份交易實際完成交割之時為準，或是以買賣雙方簽定股份買賣合約之時為準。尤其是當有一系列的股份交割行為發生時，倘若每一次個別交割行為時點相距都超過五十日以上，但個別交割股數之總和超過該公開發行公司已發行股份總額百分之二十以上股份者，是否會因此觸發強制公開收購規定目前仍無明確解釋。對於台灣為致力於創造一個對外國投資人友善且具吸引力的投資環境所付出的努力，上述公開收購規定以及其他法規的解釋及執行的可預測性及透明性至為重要。

4.4 簡化外資與券商之開戶流程

機構投資人會因各種不同目的而與許多券商設立有價證券交易帳戶。依照目前開戶流程，每份買賣有價證券開戶總契約長達數頁並需蓋上各別外資之專戶印鑑，故整體市場需要花費相當多的人力物力及時間從刻製、保存外資專用印鑑、審閱確認使用正確之外資專用印鑑、到保存用印後之開戶文件等。基於台灣證券交易所核發的外資登記證明已充分顯示外資之在台代理人與保管銀行，本委員會建議簡化目前外資與券商上述之開戶流程，允許保管銀行可使用代理開戶專用章辦理開戶並簽立簡化的一頁合約，相關之合約內容一樣可參考買賣有價證券開戶總契約。

4.5 研議外資在台扣繳憑單電子化

目前外資在台之扣繳憑單仍以紙本發放，外資之稅務代理人及保管銀行因而需要投注大量時間及精力於紙本憑單之核對、保管及查核，此亦影響外資盈餘匯出之作業時程。本委員會建議主管機關將外資在台之扣繳憑單電子化，並開放外資之稅務代理人得採網路線上查詢其稅務資料。此舉可簡化並縮短外資稅務代理人查核程序及時間，以利外資匯出需求，減少扣繳單位或其股務代理於處理稅務憑單之作業，以俾無紙化應用為響應環境保護措施之一。

4.6 取消大陸合格機構投資人於一定時間內匯入資金額度限制

目前大陸合格機構投資人須於取得匯入資金額度一個月內完成資金匯入。匯出資金後六個月內若未再匯入則額度將自動撤銷。由於匯入資金須用於證券投資用途，然而投資時點往往因市場狀況而所變動，且目前不鼓勵投資人長期將資金存放於帳戶，導致實務上投資人資金運用不甚便利，且造成臺灣證券交易所、大陸合格機構投資人及國內保管銀行資金運用監控之負荷。因此，本委員會建議取消此等匯入資金時間限制，使大陸合格機構投資人能比照外國機構投資人(FIN1)之相關規範。

建議五:開放證券商第三方結算服務(Third Party Clearing)

在全球化交易量下降、收入及利潤緊縮的壓力下，券商必須更仔細檢視它們的作業效率才能夠繼續前進與成長，而每一個市場の後勤作業需要極高的建置成本，這些固定成本變成券商競爭力的阻力，而在這樣的氛圍下，券商便開始詢問如何運用委外的方式去管理持續增加的作業成本。

這樣根本的市場變化使委外服務成為券商在亞洲另一個機會跟選擇，在節省成本及交易量不大的情形下，選擇委外的券商能更有彈性及更能因應亞洲動盪的市場。

為了促進流動性及競爭力，亞洲的各個交易所充分瞭解法規必須改變才能提供給會員或參加者更多的彈性，特別是在於交易後之後勤作業。針對券商的需求，某些亞洲市場已經採用新的結算及清算模式，特別是第三方結算服務(Third Party Clearing)，一些發展中的亞洲國家也在進行研究這樣的方案。

在第三方結算的架構下，券商須放棄它們在交易所或集中保管機構的會員並授權給委託的第三方結算服務機構與交易所進行結算及清算，第三方結算對於市場之益處如下：

- 更有效率地運用資本額及更能鼓勵券商進入新的市場。用變動成本代替固定成本，券能夠將多餘的資本在交易量增加的情況下支付交易費用，如此，券商便能更專注於它們的專業領域裡，如提供研究報告、自營、經紀與交易下單，這些專業領域的成長將吸引更多投資者進入該市場。
- 更有效率的結算程序。許多券商的交易將集中在幾家第三方結算服務機構，其機構將直接與交易所進行結算。
- 降低結算風險。提供第三方結算服務之金融機構有較大的資本額，能夠進一步減低結算及清算中的相關風險。

全球的交易所及資本市場互相競爭以吸引交易量及匯入資金的成長，本委員會建議主管機關能夠針對結算及清算作業提供券商更多的彈性跟選擇，例如允許第三方結算服務，讓台灣的市場架構與其他市場相較下保持競爭力並支持券商的成長，以獲得市場成長、降低風險及投資人受惠之三贏局面。

化學製造商委員會

職安法(OSHA)與毒管法(TCSCA)的母法皆已在2013年修訂通過，但兩法的施行細則仍在準備階段，預計今年完成。雖然兩法為不同的行政機關(勞動部與環保署)所主管，但皆有對化學品登錄管理的相關規定。化學製造商委員會關切後續子法修訂流程，及未來子法執行的具體性及可行性，期望透過白皮書的建言管道，提出以下5點業界對化學物質管理的統合意見及其他執行建議附件供勞動部與環保署參照採納：

建議：在規劃化學品登錄相關子法及施行細則時，應將工業界的建議列入考量

1. 提供充裕的溝通機會和時間，並盡速公告職安法與毒管法子法修訂流程，含公聽會及“業界說明會”日期

請於公聽會前舉行業界說明會，讓專業廠商對草案中有關施行面的具體細節如級距、登錄證有效期限等做充分討論並提出修改建議以利後續公聽會可更有效進行。與南韓花上一年的時間來規畫相比，我國子法的修訂與溝通的時程明顯不足。期望主管機關加快子法公告速度，以利業界能有較充裕的時間來準備。

2. 確保提供商業機密資訊足夠的保護

對於商業機密保護，建議政府提供詳細的審閱及核准指引，平衡商業機密、智慧財產及公眾知的權利。特別是那些仍在國外受機密保護的化學品，在台灣仍應可受到同樣的商業機密保護。並建議主管機關能參考美國及加拿大，提供申請範本及較簡便的申請辦法。

3. 在2014年底以前，再次開放國家化學品清單增補提報作業

便於業者能將2012年1月1日後至2015年1月1日(預估新化學物質管理清單生效日)前，已經在台灣生產/進口/處理/使用/銷售的化學品，當作既有化學物質提報。若不能再次開放增補提報作業，則建議將2012年1月1日後至2015年1月1日前已經在台灣生產/進口/處理/使用/銷售的化學品，可以在新化學物質的註冊時，依據註冊人的要求補充到國家化學品清單列表。

4. 對於“低關注聚合物”做更明確及詳盡的定義

我們建議對於低關注聚合物的認定標準，應參照既有國際標準(如美國、加拿大、澳洲)直接以分子量多寡做認定。我們進一步建議，對低於1噸/年PLC的確認由業者自行完成。此外，我們觀察到在毒管法立法意見交流的相關研討會中，並無提到“活性官能基”的定義。建議盡早與業界溝通活性官能基的確切定義。

5. 針對新化學物質需準備的資料，提供足夠的緩衝期

針對相關子法公告施行前已在國內運作之新化學物質，政府應提供業界針對新化學物質之資料準備緩衝期，尤其是毒理測試報告及生態評估報告等，需累積長時間數據之準備緩衝期(也就是政府應接受業界所提供的“測試評估報告計畫”或“替代測試方法”，即視為繳交資料已齊全，可優先核准生產或進口，並待業界後續補送規定的最終測試評估報告)。替代測試方法建議包括體外方法、計算測量、交叉閱讀與化學分類(允許內插和外推法)。

關務與國際貿易

本委員會感謝主管機關持續努力改善台灣國際貿易環境，並強化台灣海關效率與效能。這是本委員會第一年在白皮書中提出建議。我們選出成員最關注之四項議題，其中部分主題曾在先前的白皮書中有所討論，其他則關於近年國際貿易管制體制及政策之發展。本委員會認為，這些議題反映出成員對於台灣貿易自由化之期待。

建議一：對於台灣保稅區之三角貿易，免除所得稅。

一般商業慣例上，外國製造商通常直接從其分包商或在台灣保稅區之配送中心，將貨物運送至海內外客戶。由於政府打造台灣為區域物流中心之願景，台灣已在桃園國際機場以及主要港口之自由貿易區中設置保稅區，以鼓勵此種商業模式。相同的概念亦被運用於建立自由經濟示範區。

根據現行法令，在台灣購買且從自由貿易區配送之貨物，應免除台灣之所得稅。然而，稅務機關基於對相關稅法之極端見解，堅持分包商在運送至自由貿易區前所為之任何增值，皆應課徵台灣的所得稅。我們憂心，如此狹隘觀點的免稅，可能阻礙台灣發展成為區域物流中心。

以半導體事業為例，在晶圓成品進入自由貿易區裡的配送中心前，許多外國無廠半導體公司將積體電路製程在台灣外包，包含代工廠之加工、晶圓排序與切割、封裝及最後測試，最後再將積體電路自該處運送至海內外客戶。如稅務機關不向各承包商之增值進行課稅，將可鼓勵高科技公司善用台灣作為區域物流中心，吸引下游服務供應商提供服務，進而促進國內經濟發展。

建議二：對於自願揭露違反出口管制規定之出口商，減輕或免除其處罰。

根據台灣的貿易法，未經許可將戰略性高科技貨品輸往非管制區，最高可處30萬元罰鍰，並得停止輸出入執照一年以下，或廢止公司輸出入登記。如未經許可將戰略性高科技貨品輸出至管制區，可處輸出者五年以下有期徒刑、拘役，或科或併科150萬以下罰金，並得停止其輸出入執照。在現行法令下，並不允許違反出口管制規定者以自願揭露之方式，換取刑罰與行政罰之減輕

或免除。

本委員會瞭解，處罰係為防範未來任何出口管制之違反。然而，對於自願揭露缺乏激勵，將降低出口商提供相關資訊之意願，對於政府機關有效執行出口管制之能力有不利影響。

有效的高科技物品出口管制，大部分仰賴出口商本身提供之資訊，因此，鼓勵出口商（特別是無規避出口管制法令之意圖，但未事前取得同意之出口商）遵循出口管制體制，並提供相關資訊，與防範違法行為一樣重要。對出口商而言，在主管機關開啟調查程序前，自首方案可以省下處理之時間與金錢。台灣的稅務體系有類似規範方式，例如於稅捐稽徵法第48條之1。許多國家對於違反出口管制已採用自首方案，例如美國、英國、日本、澳洲、新加坡等。我們主張修正貿易法第4章，並納入免除或減輕處罰之自首機制。

建議三：調和台灣與主要貿易夥伴之海關實務，並在國內達到內部一致性

本委員會對於台灣海關在稅則分類上與外國貿易夥伴不一致的部分表達關切，本委員會注意到台灣的海關對於同一貨物的稅則分類也時有不同的見解。我們發現數種具有新功能或新科技之進口貨品，其稅則編號與台灣主要貿易夥伴之海關所使用者，完全不同。我們亦注意到，有相同貨品被台灣不同海關作成不同分類之案例。此種錯誤或不一致之稅則分類，不僅偏離台灣主要貿易夥伴所運用之國際最佳慣例的關稅分類，亦與世界海關組織（WCO）之國際商品統一分類制度產生衝突。

因此，我們建議台灣海關參照WCO的分類方式，包含其定期發布之各種指令與解釋，並參考主要貿易夥伴海關所製作之分類。此外，我們期待台灣海關能即時協調各機關間的分類規則，透過適當的內部溝通以避免相互矛盾的解釋，並有效減少進口商應負擔之時間與費用。

建議四：採取更嚴格的執法以制裁走私貿易

由於台灣是一個島國，並基於其地理位置，因此台灣容易被利用作為將非法貨品被運往或運自東南亞及其他地區的走私中心。因此，為確保國家安全、改善貿易環境、降低政府稅費收入之損失，海關與海巡署有效執法相當重要。

非法菸品貿易造成高額的收入損失，因菸品價格結構的高比例稅金，提供走私品賺錢機會。最近江院長宜樺警示，在菸草走私透過跨國分工而更具組織性的時代，國家港口尤應嚴格防範菸草走私品之流入。

根據國際租稅及投資中心與牛津經濟研究院發布之2012年亞洲非法菸草指標報告（Asia-11 Illicit Tobacco Indicator 2012），2012年，台灣約消費30億的非法菸草，佔市場比率約7.7%。走私品被稱為「白牌菸」，通常隱藏在小量的合法進口品中，增加執法上的困難。非法買賣在國內菸草市場占有顯著的比例，但值得注意的是，菸品健康捐僅保留1%的收入，作為打擊非法菸草貿易之用。

我們主張分配更多資源執行非法貿易之管制，且對於違反菸酒管理法之非法菸草貿易，應加重處罰。

教育及訓練委員會

台北美國商會教育及訓練委員會，要推崇台灣教育部在「人力資本」培養籌備上的做法與貢獻，以助台灣民眾及企業在全球化的商業環境中提升競爭力。如同過去幾年的統計，2014年美國商會之商業景氣調查，評鑑台灣的專業人士具有「絕佳的教育水平」。

我們相信教育部官員都能深刻體驗，若無良好教育背景的人

力資本，其他方面的努力則無法幫助台灣在現今知識經濟為主的環境中立足並佔有一席之地。全球性的競爭越趨激烈，意味著台灣民眾及企業必須與國際上的創新強國，像是美國、德國以及英國正面競爭；也必須與周邊區域國家如南韓、新加坡、香港與中國等相互較勁。

簡而言之，台灣所需之人力資本不只是有良好教育背景之人才，亦需要具有豐富創造力的國際級人才。然而，每年的美國商會調查結果如出一轍，台灣的人力資本雖有不錯的教育水平，但是其素質仍不足國際水準，在創新創業方面的表現更是超乎想像的低。

我們很高興得和台灣政府當局計畫允許國外大學/學術機構，在台灣的自由經濟示範區開辦學術項目，這是十分巨大之突破性發展。該政策將讓台灣教育界，開始追上香港和新加坡這些在當地已有超過10年開辦國外教育的鄰近國家。

這項自由經濟示範區的新政策，將能協助教育當局完成政府吸引國外學生赴台就讀以及海內外優秀教授在台傳授知識的目標。我們相信，國際學術機構以及教授的進駐，將使台灣教育產業環境更受國際學生的青睞喜愛。

台北美國商會教育及訓練委員會，殷切期盼台灣當局正式核准海外大學能在台開辦教育機構及其學術項目，以造福來自兩岸及全球的學生。本委員會期望與台灣當局及美國在台協會共同合作，開始提供國際專業學位與非學位課程，以幫助台灣人才資本能更具有創造力、更具積極主動精神，俾使人力資本儘快達到國際水準。

人力資源委員會

本委員會感謝台灣政府已考慮並採納本會去年白皮書之建議，例如，取消特定領域中，外籍專業人士來台工作的工作經驗限制，包括於自由經濟示範區登記營業公司下工作之外籍人士。為努力解決白皮書所列重大、懸而未決之議題，政府國家發展委員會（下稱「國發會」）亦邀請人力資源委員會及中華民國勞動部（下稱「勞動部」）召開會議，成效頗豐。該會議協商提供政府當局及業界代表有效之溝通管道，並處理業務部門之部分主要議題。本委員會期待建立平衡聘僱法律制度之進一步發展，該制度可保護勞工利益，並適當考量雇主之商業需求。

今年，本委員會提出四項備受本會會員關注之議題。這些議題反映本委員會會員企盼台灣聘僱法規能夠更具彈性及可期待性之共同願望。

目前對本委員會最重要的議題為，於新派遣勞工保護法通過後，使用勞動派遣制度之建議規範問題。本委員會亦期待未來能對競業禁止條款可執行性有更明確的規範、全面刪除申請工作許可之兩年工作經驗門檻、及豁免部分高階或高薪員工就加班費規條之適用。

建議一：重新考量派遣勞工保護法建議草案，以平衡勞工保護及對商業之衝擊

派遣勞工保護法建議草案（下稱「派遣法」）由行政院勞動部於今年2月送交行政院審查。由於部分企業有賴使用派遣員工以應付工作量暫時增加之問題，本會會員仍認為，如何於新法中取得勞工保護及雇主彈性管理人力資源間之平衡有其重要性。本委員會呼籲勞動部避免過度規範使用派遣勞工。以下為本會會員之關切重點：

派遣及外包之定義

「勞動派遣」是指將某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。派遣法期望能建立管制該活動之規範架構。儘管該草案已定義「勞動派遣」之意義，「勞動派遣」與「外包」之差異仍付之闕如。當公司將其總機服務或客訴處理服務外包時，是否即視為從事勞動派遣活動，因而應受派遣法草案所載限制之約束？本委員會建議派遣法草案將勞動派遣與人力資源和其他商業服務外包作明確區分。

勞動派遣比例限制

派遣法草案第二十四條規定，派遣勞工不得超過該事業單位僱用總人數的百分之三。由於此概括適用之限制並未慮及不同產業公司之人力需求，本委員會仍然反對該限制。

該修正案對製造業的衝擊最大，因其僱用之派遣勞工為數最多。若公司無法使用派遣勞工，其替代方式可能為僱用外籍勞工或將轉移訂單至國外工廠。無論依何種方式，其結果皆會減少台灣勞工之就業機會並增加失業人口。另外，跨國企業通常會面臨正式員工人數限制。若台灣之聘僱彈性降低，該公司可能將工作機會轉移至其他國家。本會呼籲政府解除派遣勞工比例之限制，或考量不同人力資源需求，依不同產業性質設立不同限制門檻。

再者，該草案第二款規定要派單位應將使用派遣勞工之人數、派遣期間及工作內容等詳情公告之。因本項規定之理由不明確，且極可能使公司揭露其企業策略、容易激起勞資糾紛，而難產生正面作用，本委員會建議刪除本項規定。

要求派遣特定勞工之限制

派遣法草案第七條規定，要派公司不得於派遣機構僱用勞工前，有「面試」或「指定」派遣特定勞工之行為。根據我們與政府之溝通，我們了解該草案係為避免公司規避其作為雇主之責任，而透過派遣機構僱用勞工。然而，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。建議本條應透過額外說明作修正或為補充，以臻明確，並避免未來可能產生之誤解。

定期契約及勞動派遣

定期契約和勞動派遣均為台灣所常見，其因在於目前勞動基準法（下稱「勞基法」）就資遣或終止聘僱對雇主設下過度的限制，而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。本委員會認為勞動派遣及定期契約勞工之使用，係相輔相成。本會會員公司曾表示，企業會使用勞動派遣，常係因現行勞基法就定期契約之規範太過嚴格以致缺乏彈性。本委員會建議，若新法欲更加嚴格地規範勞動派遣，定期契約之相關規範則需配合同時放寬。特別是現行勞基法下，定期契約須符合四種法定定期契約其中一種類型，本委員會建議草案條文修正為雇主要得在有「暫時性勞務需求」時使用定期契約。

派遣勞工轉直接僱用員工

派遣法草案第八條規定，若派遣期間滿一年，派遣勞工有權以書面通知要派公司僱用其為直接僱用員工。若公司未於收到該通知十日內提出異議，公司及派遣勞工間之僱傭關係即視為成立。然而，該草案並未說明公司提出異議後之規範，為免疑義，我們建議該法或其執行細則應明確規範，當派遣勞工要求成為直接僱用員工而遭公司拒絕時，該勞工得繼續以派遣勞工的身分於公司工作，勞動派遣關係不因公司拒絕派遣勞工上開要求而終止。對於公司及派遣勞工而言，如此規範對雙方皆有利。

建議二：修訂勞基法，對關競業禁止條款之可執行性提供明確規範

為保護公司營業秘密，許多公司皆會與其得接觸營業秘密之員工簽訂競業禁止條款，限制該等員工於離開原雇主後能從事之活動。現行立法架構下，對於競業禁止條款可執行之範圍並未明

訂（關於地理範圍、期間或限制之行為類型等），且就雇主為執行競業禁止條款所應給付之「合理」補償金，亦無明確規定，導致競業禁止條款的可執行性及合理補償金的數額，僅能由法院裁量。

由於法院就該爭議之見解有所歧異，法律亦缺乏明確規範，本委員會認為，雇主應得依其特定業務需求，擬定合適之競業禁止契約。適當的競業禁止期間，則依情況有所不同。另外，雇主不應被迫支付執行競業禁止條款之費用。

本委員會亦認為，若員工及雇主於簽訂聘僱契約時即約有競業禁止條款，雙方應得協議可計入員工報酬之競業禁止條款補償金，例如，於聘僱期間可取得之股份選擇權數量。另外，聘僱結束後競業禁止之合理補償金，每月之補償金應介於一至一個半月之薪水。如有額外補償金之必要，其數額亦應由雇主及員工協議達成之。

建議三：豁免一定層級以上之高階或高薪員工就延長工時及加班費規範之適用

現行勞基法就延長工時及加班費設有嚴格限制。然而，部分資深或專業員工享有彈性工時及與其雇主對等協商之談判力量，這些員工毋需仰賴法律保護。因此，勞基法應給予雇主與該等員工協商工時及假期的空間。例如，若資深主管須與不同時區之國外客戶或總公司進行電話聯絡或視訊會議，要求該資深主管須於早上九點及下午五點打卡上下班，並將任何該時段外的業務活動皆列入加班時間，此作法不符合實際情況，且該限制將阻礙台灣晉升為跨國企業的營運中心。對延長工時的嚴格限制，也將造成公司執行員工在家上班制度的困難性，因為員工在家辦公之延長工時難以計算。

為求更多的彈性空間，本委員會建議修改勞基法修正草案，豁免高階或薪水超過一定額度的員工（如新台幣200,000）就延長工時及加班費規範之適用。

建議四：取消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、服務於跨國企業滿一年以上經指派來台者、及為登記於自由經濟示範區之公司工作者外，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。然而，現行規範仍要求欲在台工作之外籍專業人士需具備大學學歷，且除前述不受限制者外，應有至少兩年相關工作經驗。儘管對在台完成大學教育之外籍學生，主管機關已放寬兩年工作經驗的限制；但其他外籍人士（包括在台成長但於國外取得大學學歷之在台居住之外派工作者子女）仍適用上開限制。

本委員會再次呼籲應刪除兩年相關工作經驗限制。合適的職位候選人應由市場機制而非法律限制決定。本會不認為刪除兩年工作經驗限制將負面影響台灣勞動市場。事實上，刪除該限制將吸引更多國際人才加入台灣勞動市場的行列，增加勞動市場的多元化，並促使本地勞工熟悉國外實務，提升台灣企業競爭力。

基礎建設委員會

本年度基礎建設委員會提出了四項建言供政府參考。

第一項與能源相關。我們建議政府在未來採購液化天然氣時勿鎖定長約，如此方能為未來改變核能電廠延役政策預留彈性。

第二項有關政府採購。我們認為統包合約不適合以“最有利標”決標，而宜以“選擇性招標”方式決標。

第三項建議政府成立專責機關統籌海外採購。第四項建議政府擴大外國公司參與政府採購的機會。第五項建議吸引國外公司參與台灣BOT計畫。

有些建言與過去白皮書相類似，我們希望今年能得到台灣政府的正面回應。

建議一：重新考量液化天然氣採購策略

美國商會一再提醒政府，能源價格對台灣產業國際競爭性及吸引國外投資的重要性。但是政府的能源政策令人困惑。能源政策中有兩項都將導致未來能源價格飛漲。第一項是在現有核能電廠服役40年後予以除役，而不像其他國家核准核能電廠20年的延役執照。另一項是為了對抗氣候變遷所導致的“燃氣最大化”政策。

目前核電每度電的發電成本約為燃氣電廠的五分之一。執行上述兩項政策的結果將導致燃氣電廠取代除役的核能電廠，每年發電成本將因此增加超過1000億台幣(33億美金)。

因現任政府似乎遲疑於改變其核電不延役政策，本商會建議現任政府至少應讓下屆政府有採行核電延役的政策彈性。現有核電廠將於4年後(2018年)開始除役，而6部核能機組將在2025年前全數除役。因火力電廠自規劃到商業運轉要花8到10年光陰，台電已積極規劃如何填補核電除役後造成20%的供電缺口。台電最有可能以加蓋燃氣電廠來填補此一供電缺口，而中油則將負起供氣給這些燃氣電廠的重責大任。

燃氣發電成本80%為燃料成本，目前中油採購天然氣主要是簽訂長期合約，少數由現貨市場採購。因為長期合約均有“無條件支付”條款，一旦簽訂，20、30年內無法變動。如果中油在未來購氣仍以簽訂長約為主，則下屆政府將沒有任何採取核能電廠延役的政策彈性，因為台電及中油都因合約限制只好繼續營運燃氣電廠。

本商會建議政府應核准現有核能電廠延役。如政府無意變更此一政策，則應讓下屆政府有改變政策的彈性。政府宜指示中油未來10年以在現貨市場採購天然氣為優先，以保留下屆政府變更能源政策的彈性。

建議二：統包案宜採取選擇性招標方式

公共工程委會曾發函各政府單位規定各單位統包案應以最有利標方式決標。內容說明統包案不宜以最低標方式決標，但規定統包案一律以最有利方式決標亦不妥當。

依國際慣例，不同採購案件通常會採取不同的決標方式。在專案初始通常會聘請工程顧問公司進行可行性研究、工程規劃及基本設計，這些服務之採購，國際上多採「最有利標」決標。因為這些服務之費用占全專案預算之比例極低，但其規劃設計品質與得標公司團隊之經驗及技術能力密不可分，這些服務並將決定整體專案(含施工、營運階段)之成敗。所以在此一階段之服務並不合適採用「最低標」決標。

在施工階段，主要成本多為機電設備，及大宗材料如鋼筋、水泥、管線、電纜等，這些設備材料如合於邀標規範，則各投標商之成本理應相同，則採「最低標」決標為國際上通用方式。

如果專案之施工十分複雜，則得標廠商之相關經驗、財務健全度與專案管理能力就會影響專案之成敗。國際慣例對此一般採取「預審」制度，通過「預審」的廠商均認為有能力執行該專案，也才有資格投價格標。在第二階段價格標則仍以「最低標」方式決標。

因統包案通常較為複雜，其金額龐大亦類似施工標。吾人建議統包案亦宜以兩階段方式決標即採採購法「選擇性招標」之規定。

統包案若採取「最有利標」，極易產生弊端。由於統包案之金額均十分龐大，而最有利標決標較為「主觀」，十分可能在決標階段受到各級民意代表之壓力，意圖影響決標結果。

本委員會建議統包案應採取「選擇性招標」方式決標。

建議三：任命專職政府採購單位

在當前政府組織結構中，我們無法找到負責政府採購的機關或單位。雖然臺灣銀行提供政府共同供應契約採購服務，但是該業務並不屬於台灣銀行的專業核心能力與法定任務，更不屬於其直屬上級機關 - 公共工程委員會或金融管理委員會權責。據了解，公共工程委員會(PCC)僅負責政府採購政策和政府採購法，對臺灣銀行沒有任何管轄權。且根據政府組織改造計畫，PCC即將解散，其職能將被分散到三個政府部會，但都不具政府採購權責。

沒有專職採購的政府組織有損政府和產業的正常運作與發展。最近政府軟體採購共同供應契約的延宕，影響政府資訊建設進度與產業商機，就是一個明顯的案例。台灣銀行執行受委託之採購服務時，不需對政府政策與產業發展負責，因此大多採取最低價格標方式進行。這個方向不僅有損臺灣業界長期發展，更違反政府推動台灣經濟發展所設定的「促進創新和附加價值」的產業政策與目標。

政府採購共同供應契約確實有效提升政府採購效率、降低政府與產業採購招標成本。但唯有透過專職採購機關，方能確保该平台正常運作，兼具政府採購與產業政策、發展功能。因此委員會建議政府委任一個現有的政府機關，或設置專職機構，負責政府採購的執行與推動。

建議四：進一步擴大外商參與政府採購的機會

去年，本委員會在擴大政府採購機會的議題上，建議增加已升格為直轄市的新北市、台中市以及台南市，作為擴大適用世界貿易組織(WTO)下的政府採購協定清單中的行政管轄區。除了上述城市外，即將於2014年底升格為直轄市的桃園市也應該考慮加入政府採購協定中的行政管轄區開放清單內。

此外，開放清單也應該擴大開放中央各院級機關的政府採購標案(例如監察院、考試院、司法院以及立法院)。

然而，本委員會所得到的回覆是台灣政府並未考慮擴大世界貿易組織/政府採購協定中有關行政管轄區的承諾開放清單。我們理解那是一個有關條約修訂的議題，台灣政府有片面修改條約的限制。但本委員會一直認為擴大開放政府採購市場，是推動政府加入「跨太平洋夥伴協定」(TPP)或其他多邊自由貿易同盟的一個重要步驟，而主動開放市場之舉更是獨立於政府採購協定義務之外。

此外，除了上述行政管轄區域與中央各院級機關，本委員會在此強烈地建議未來在「自由經濟示範區」下所有的政府採購案，也應該加入對外商擴大開放的承諾清單內，藉由開放「自由經濟示範區」的規劃，可以傳達台灣政府誠摯地開放市場、朝向國際化邁進的決心。

建議五：堅持最佳作法以吸引外商參與公共基礎建設項目

每一年台灣政府舉辦民間參與公共建設的招商大會，藉以吸引民間企業參與公共基礎建設項目，透過建設/營運/移轉(Build/Operate/Transfer, BOT)的機制達成目的，儘管有著許多大型的重大項目，比如台北101、高速鐵路等幾個案例採用【促進民間參與公共建設法】(Public-Private Partnership, PPP)，但外商在此領域的參與幾乎是微乎其微。

時至今日，【促進民間參與公共建設法】已屆13年了，然而以外商身分獨力參與促參案件的，只有一家日本公司「三井不動產」參與在新北市『暢貨購物中心』的興建與營運，因此，本委員會建議為促進外商參與公共建設項目的公私夥伴關係，政府應考慮以下步驟

- 提供項目公告資訊以及與招標有關文件的英文版本
- 採納其他國家關於實施【公私夥伴關係】，多年有成且已經完善測試過的商業模式

- 實施過程的合理、簡單以及標準化。別讓台灣的公私夥伴關係(PPP)項目，太過於複雜，而令外商窒礙難行。
- 提高投資的基本回報率，以激勵外商的參與。對於潛在的投資報酬不要加以設限。

最終，促進參與的原動力必須是在心態上有所改變。除非民間參與公共建設(PPP)系統是真正地被認為是開放的，公平的，透明的，否則基礎建設所需要的投資資金將不會被投入台灣。

保險委員會

保險委員會已將今年的主題從過去的「保障」消費者調整為「保障與提升」。這項變化是由於我們體認到，儘管保險局及財政部持續努力增加對於消費者的保護以及加強保險公司的財務安定性，確實是正面的努力目標，但主管機關因此所實施的某些政策及措施，卻無預期的反而阻礙消費者隨著數位及網路時代的進步希望以更便利、有效率的方式購買保險商品的需要。在今年的白皮書中，本委員會特別強調下列本會認為特別重要的建議，其目的在於使保險公司得以更有效地推廣台灣消費者所需要的保障商品。

建議一：加強消費者投保保障型保險之便利性與容易性

相對於投資型商品，保險委員會全力支持保險局鼓勵保險業加強保障型保險商品的銷售。然而，目前仍然有6項主要的法規問題正嚴重阻礙政策的推展：

1. 台灣的「保險業經營電子商務自律規範」及「保險業電子商務紀錄保存及內部安全控制作業管理自律規範」，對於台灣消費者透過電子商務獲得保險服務及保障設下重大障礙。現行台灣的保險電子商務法令規定，客戶在申辦保險時必須使用「數位簽章」，但數位簽章則涉及相當複雜且繁瑣的註冊與授權程序。其結果已經影響客戶透過這個管道獲得保險保障的意願，因而顯著地阻礙了保險電子商務市場的發展。相較於台灣的情形，許多先進國家地區，例如香港、美國及日本，都採用較為務實的方法以滿足年輕世代的需求，亦即在客戶身分驗證上，允許客戶可使用帳號、密碼，再加上投保人的信用卡即可。台灣主管機關也應該允許忙碌的消費者可以用更為簡便的方法投保簡單的保險商品。

我們建議，關於線上申請保險的規範應比照「保險業辦理電話行銷業務應注意事項」，該規範對申請流程、程序、風險控管、爭議處理設有明確規定。這項改變將允許保險公司可以透過端到端(end-to-end)的電子管道，銷售簡單的保障型壽險及產險商品，而無需數位簽章或憑證，客戶的身分可以透過密碼、信用卡或其他便利的方式加以驗證。要保人與被保險人非同一个人的壽險要保書，可以排除適用上述電子投保管道。

為加強驗證客戶身分的程序，我們建議採用人壽保險公會與產物保險公會之保險通報作業系統，以交叉比對並驗證身分。目標應在於使保險業者能充分利用新科技接觸消費者，尤其是從未投保受到保障者。

2. 適用範圍過廣的「適合度評估(KYC)」及資訊揭露要求，時常帶給消費者困擾。他們常抱怨：「我只是投保簡單的壽險保障及產險，為什麼必須提供這麼多資料給保險公司？這並不是投資商品！」

在2008年金融消費者保護法施行同時，亦實施全面性的客戶保險需求及適合度評估(KYC)與資訊揭露要求，其目的係為確保消費者所投資項目符合個人需求，以保障消費者免於「投資」風險。然而大多數的保障型保險，與此並無關聯。我們建議，對於(a)保險內容與範圍單純，且(b)要保人與被保

險人為同一人之產險及壽險商品，應排除適用客戶保險需求及適合度評估(KYC)與資訊揭露要求。

3. 某些類型的保險僅可由壽險公司或產險公司銷售的差別規定，常使消費者混淆。他們納悶：「為什麼我可以在產險公司購買有壽險與非壽險利益的綜合旅行平安險，卻不能在壽險公司買到同樣的商品？」

在現行保險法第138條規定下，壽險公司不得經營人壽、意外、健康與年金保險基礎範圍外的商品。但在相同規定下，產險公司於經主管機關核准後，則可銷售一年期意外及健康保險。如此差別待遇，讓產險公司在銷售旅行平安保險上，明顯備具優勢，而這樣的歧異，不僅讓消費者困惑，也造成產壽險業者間競爭立足點的不平等。

我們建議，修正保險法第138條，開放壽險公司銷售包含傳統非壽險利益(例如：旅行不便保險)之旅行平安保險商品。

4. 目前在投保以及詢問過程取得的口頭或數位方式的回答，不得作為解除或爭執保險契約的法律依據。

愈來愈多現代消費者選擇透過網路或電話等更為便捷的管道完成交易，取代面對面會談的方式。雖然保險業者現在已經可以透過電銷方式完成某些保險商品的銷售(我們也希望可以再放寬經由電話行銷的商品的種類)，但目前仍不允許業者使用相同的錄音或數位回答，作為與消費者的完整契約之一部分，因而增加保險公司的風險、成本，最終亦反映到消費者身上。

然而依電子簽章法第4條規定，若資訊內容可完整呈現，經相對人同意，電子文件與書面文件具有同等法律效力。同法第2條規定則定義，電子文件是指文字、聲音、圖片、影像、符號或其他資料，以電子方式所製成足以表示其用意之紀錄，而供電子處理之用者。依該定義規定，客戶透過任何電子裝置所為之意思表示，都應視為電子文件。此外，在電話行銷中，客戶對健康狀況詢問的回答錄音也應視為電子文件，以符合上述第2條規定。我們的結論為，線上或電話行銷交易紀錄皆應視為與書面文件相同，而適用保險法第64條第1項。

我們主張修正「保險業辦理電話行銷業務應注意事項」以及與保險電子商務相關之法規，並認定「以電子或經錄音之口頭詢問」以及「以電子或經錄音之口頭回答」，具有與經簽名之書面文件相同的法律效力。

5. 針對保單期滿續約以及購買僅具有基本保障的簡單產險，如果只是為了技術上或行政上目的，而要求要保人簽名同意，將使得投保過程變得過度複雜，而增加保險業者與消費者不當負擔。依歐洲議會及歐盟委員會2002年9月通過的歐盟保險調解指令，已允許部分簡單的商品與服務免除書面同意的要求。

我們建議，對於要保人與被保險人為同一人之產險、小額旅行平安險、意外及健康保險，得免除簽名的要求。此外，我們亦建議若一家保險公司的既有客戶購買該公司其他保險時，該簽名要求亦得免除。

6. 保險業者被要求，不論要保書是否有實質變更，一律必須申請備查，徒增保險公司在時間及成本上的浪費，而無益於消費者。我們建議，已經具有完善內控及法規遵循的公司，倘若要保書的內容(1)已經具備法令規定的所有必要內容；且(2)已有提供被保險人/要保人所申請保險的具體條款，則可以免除申請備查的要求。這項改變使得投保更加便利，並能夠因應不同的銷售管道，將使保障型保險的銷售更為有效。

建議二：遵循國際最佳實務準則，解決保險經紀客戶之需求

儘管本委員會理解保險經紀人管理規則第28條修正案（限制經紀人公司就同一保險契約，不得同時辦理保險經紀業務及再保險經紀業務）旨在避免保險經紀業務及再保險經紀業務交易上的利益衝突，然而該修正案卻有悖於國際實務。國際最佳實務準則卻顯示有更有效的方式可解決上述問題，而無阻礙保險經紀人滿足其客戶需求。

為了風險管理，大型或跨國企業通常在同一保險契約中要求保險經紀人同時處理保險與再保險。要求該等公司與兩家以上的經紀人公司訂約以分別處理保險經紀業務與相關的再保險經紀業務，將造成保戶的不便，必須同時與兩家不同公司合作，亦將增加整體作業成本，並使得保險契約與再保險契約間有發生責任錯置及投保缺口的風險。

我們建議參考美國、英國、澳洲、日本、香港、新加坡及韓國之保險經紀與再保險經紀實務。這些國家並未禁止以單一經紀人公司提供滿足客戶需求，但要求保險經紀人公司必須進行必要的資訊揭露並建立防火牆，以管理保險經紀業務及再保險經紀業務交易上可能產生的利益衝突。因此，為了確保台灣業者得以繼續提供有效率的經紀業務（控制成本並保持國際競爭力），我們建議 貴局重新考慮修正案。我們建議更適當的作法應是提升保險經紀人的自律規範，在一個框架下有效解決利益衝突問題，滿足客戶需求，並遵循國際實務。

建議三：避免因增加保險業者的營業稅率而產生嚴重的非預期後果

保險業界藉由提供消費者生命、健康及退休需求的長期（事實上是終身）保障，在社會上扮演獨特的角色。因此，保險公司負有極長期的責任，並且為了維持雄厚的準備金，因應非預期事件及市場變動所進行的極長期投資。的確，十幾年來業界都在設法處理棘手的低利率環境。雖然大多數的保險業者皆能維持適足資本以符合最低資本適足率(RBC, Risk-based Capital) 要求，其中許多業者仍面臨嚴重的利差損問題。

在這樣的環境下，立法院上個月通過立法將金融營業稅率自2%調升至5%，將增加業界財務壓力，實非適當時機。我們希望能有方法能將衝擊降低。此外，我們強調，新的營業稅公式對於保障／風險集中型保險的銷售特別不利，因而不成比例地衝擊了專注於銷售此類保險商品的公司，而這類商品卻正是政府所鼓勵的。保障型商品獲利能力的減少，最終將導致其中某些商品退出市場，減少消費者未來保險商品的選擇。此外，在市場現況下，調升稅率將嚴重影響保險業者的財務狀況，特別是那些已經在財務壓力並且無法維持最低資本適足率的公司。該等公司可能無法繼續日常業務進行，將保戶的利益置於風險之下並減損台灣保險業界整體信譽。在那樣的情形下，政府將必須投入可觀的努力及花費才能解決問題。

營業稅的調升將使台灣作為跨國企業投資地點的吸引力下降，並與政府希望台灣成為亞洲金融中心的目標，以及維持穩定金融環境的政策背道而馳。

從法律觀點來看，實施稅率調升亦違反「法律不溯及既往原則」，因為稅率調升將會適用於先前在較低稅率下之保費組合。不溯及既往原則是國際與台灣法律（司法院釋字第580號）所公認之基本原則。關於契約之有效性，原則上應適用舊法。換言之，契約有效性應以締約當時適用之法律決定，因為雙方當事人皆以當時之法律為前提締結契約。政府僅有在緊急情況下，為了維護公共秩序、增進公共利益之目的，得例外適用新法，使得政府干預既存的契約關係得到正當化。若適用新法損害人民利益，立法者應設適當的救濟方式，或規定緩衝期間，以降低法律適用變更所帶來的損害，以符合憲法下保障人民權益的原則。

因此我們建議以下選項：

1. 延後實施保險業營業稅調升或階段性實施，以避免嚴重的負面非預期後果。
2. 從1999年7月1日起至稅率調整生效日為止所銷售保險所產生之保費，仍繼續適用2%稅率，因為保費在發出保單時已經固定。調升後之5%稅率僅適用於法律修正後新發保單所生之保費，因為保險公司在決定保費率時應該已經將稅率考慮在內。
3. 修正營業稅的計算公式，做為稅基的保費收入應扣除保險理賠及保單責任。保險理賠包括一切保險事故之理賠、滿期金、分紅及解約金。保單責任包括責任準備金、未報賠款準備金(IBNR)、未決賠款準備金(OSLR)。

建議四：改善保險業之財務能力

許多專家預期全球低利率環境在近期到中期的時間內，將持續挑戰保險業者的獲利能力以及後續的清償能力（不同的假設情境可能包括利率的急遽上升，但此也將帶給業者嚴峻的挑戰）。在這樣的條件下，本委員會再一次建議，對於已經連續兩年未達200%最低資本適足率標準者，在完成增資符合最低資本適足率標準以前，必須限制其不得簽發新保單，以控制未來潛在責任的增加。雖然新的資本適足率揭露要求（將財務強度級距類別從3個增至5個），可能使得部分謹慎的消費者注意到風險，但我們相信大多數的消費者或既有保戶並不清楚，當他們投保的保險公司無法增加資本或不能清償時，他們將面臨何種風險。消費者必須被教育並了解到，未來將不會有類似國華案由政府援助的紓困措施，因而他們會了解若保險公司無清償能力或進入破產程序時，他們可能無法或僅能取回一些部分的保單價值。為此，本委員會相信，確保消費者盡可能獲得其所面臨風險所必要的資訊，避免向長期無法維持最低資本適足率的業者購買保單，是非常重要的。儘管上述方法可能加速某些問題的惡化，但卻可以避免受影響消費者人數的增加，並減少對業界以及已經相當吃緊的安定基金造成全面性的衝擊。

建議五：排除「自願」提繳退休金適用最低保證利率的要求

本委員會認同勞工退休金條例的制定，旨在確保勞工提撥最低限度金額作為退休金儲蓄，且退休金的投資必須審慎。但在此同時，我們亦相信對許多勞工而言，尤其是有較長投資期間的年輕世代而言，更期待能夠在退休金投資上有更多的選擇，包括部份具有較高潛在報酬率的投資。在大多數市場，包括香港、新加坡、美國與歐盟，退休金制度均允許勞工至少將一部分的退休金提撥運用在具有風險報酬而無擔保的投資項目，以更為貼近勞工的需求。因此，我們仍然建議，作為務實的第一步，台灣勞動部應考慮開放勞工將其自願提繳之退休金，得以自由選擇投資項目，而不限於現行強制要求相當於兩年定存利率之最低保證收益。

智慧財產權與授權委員會

強化智慧財產權的保護對台灣有益，能鼓勵投資並助長知識產業的發展，其中知識產業是台灣在區域及全球經濟體中維持競爭力之關鍵。智慧財產權與授權委員會（以下稱「本委員會」）感謝台灣政府的持續努力，使其法制環境達國際水準，反映出保護智慧財產權之重要性。這些努力能讓台灣所有利害關係人受惠。台灣智慧財產局（以下稱「台灣智財局」）為了在立法及法制上進一步改善台灣智慧財產權制度，徵求所有利害關係人之意見並且協調相關提議，其所展現的持續領導力，本委員會亦予以肯定。近期法規上有些良好變動，包括2013年營業秘密法的修正等。儘管如此，還是有嚴重的問題持續著，特別是有關線上著

作權侵權的問題。

今年本委員會重申其對未決議題之關切，並在若干方面提出相關行動建議。詳細言之，本委員會建議台灣政府應修訂使新版營業秘密法能有效執行所必要之法律，並應採用證據開示機制，以確保營業秘密竊盜之受害人能獲適當且有效率之賠償。本委員會亦強力主張應執行具體有效之措施，以應付線上盜版所造成之真正危害。

建議一：引進證據發現程序以有效執行營業秘密保護

我們對於政府於今年五月有效率通過的智慧財產案件審理法深表感佩。營業秘密法及智慧財產案件審理法已通過修法，然而對於現行營業秘密保護不足之處，後續仍需強化民事舉證責任、強制文書提出、提高損害賠償額、延長請求權時效及加強司法人員訓練等。惟除了新增實體法上責任外，民刑事程序上也應同步強化，因此我們主張：

適度引進證據發現(Discovery)制度及相關配套措施：

由於營業秘密侵害案件與一般民事案件或其他智財案件(如專利或商標)相比，舉證特別困難，現行民事訴訟文書提出制度，須具體指明文書及待證內容等，但營業秘密因其特性，並不一定附著於特定實體或特定利用態樣，且營業秘密侵害案件幾乎所有侵害行為均在被告處實施，縱法院得命他造為必要之協助，但被害人根本無法知悉侵害之態樣更遑論指明何文書，實很難令他造提出，無法符合實際需求。

且由於當事人最了解其營業秘密及產業的情形，及營業秘密可能被侵害之情況，因此應於法院職權主義外擴充當事人蒐集證據之手段，以達到協助法院發現真實的目的。

美國證據發現制度雖非新的概念，但要將其配合我國民事訴訟制度及實務，確有其困難之處，然為了貫徹證據發現制度發現真實的精神，建議亦可兼參日本民事訴訟法之規定，初期適度於智慧財產案件審理法內引進美日證據發現制度及相關配套措施(例如擴大秘密保持命令範圍等)，藉以強化營業秘密民事訴訟制度，並配合我國訴訟實務的發展逐漸完善之。

建議二：強化智慧財產法院運作

智慧財產法院自2008年7月成立以來，為台灣發展健全、有效且可預期的智慧財產權制度豎立了重要的里程碑。本委員會認為，智財法院各法官與人員在此方面之努力值得嘉許，然我們也期待持續的進步，尤其是提升當前比例極低的保全證據聲請的核准率。

智慧財產法院能夠有效運作，端賴其能發揮智慧財產權訴訟的事實發現者角色。智財案件中，原告請求之構成要件的舉證責任幾係由原告負擔，故原告蒐集必要證據供法院判斷是否侵權，並判定適當救濟之能力至關重要。在調查階段，被告通常都會拒絕提供判定侵權與否與侵權範圍之相關證據。

相關程序法規已經提供智財法院核發證據保全命令的機制，然而，根據智財法院本身的統計數據，智財法院證據保全聲請案件的核准率僅有11%〔2008年7月至2012年7月間的205件聲請案中，僅核准了21件〕。而根據司法院在2012年12月28日出版的一份研究報告，在2010至2011年間的100件聲請案，核准率則約為17%；而中央研究院法律學研究所研究員劉孔中教授在2013年6月發表的研究報告中蒐集自2008年7月至2013年12月的185件聲請案中，核准率亦僅有約12.7%。從上述不同的統計數據來源所見，智財法院顯然採取一種極端嚴格的標準來審查證據保全命令的聲請案。

權利人不時遭受外界批評，藉由對被告提起刑事訴訟程序，以取得民事和解的「以刑逼民」策略。基於在民事訴訟程序中被核准證據保全的比率太低的現狀，許多權利人別無他法，只能將具備刑事條件的侵權案件以刑事起訴，因為刑事程序提供了更有

效的證據保全方法，而藉此取得的證據因而能在後續智財法院的審理中被用來進行合理的事實判斷。

極低的核准率可能歸因於某些法官在審理聲請案時會考量一些非法律的因素，例如：一、可能讓被聲請人聲譽面臨衝擊；二、聲請一經核准，在執行上可能耗費的力氣與時間；以及、三、在某些極端狀況下，法院與命令執行地點的距離。誠如立法者在智慧財產案件審理法第十八條規定立法理由所言：「智慧財產權之民事事件，其起訴前證據之保全，較之其他訴訟，更有必要。」

台灣目前缺乏一套完整的證據開示(Discovery)制度，智財法院應當強化現有的蒐證程序，以提高智財權保護的成效。我們呼籲智財法院採取更合理的標準來審查證據保全聲請，並建議非法律因素不應該過度影響證據保全聲請案的審查。

建議三：著作權集體管理團體條例之缺失

現行法中限制著作權集體管理團體收取使用報酬之規定不利著作權人，同時也阻礙著作權授權市場的健康發展。為求建立公平及有效率的自由市場機制，本委員會呼籲政府去除那些不合理及不必要的規定，茲建議如下：

- 1) 廢除智慧財產局審議使用報酬之權限(著作權集體管理條例第25及26條)。著作權集體管理團體與利用人長期以來都不滿意智慧財產局審議結果，因而必須耗費大量資源尋求行政救濟。事實上，自從2001年著作權法修正第82條之後，智慧財產局就失去審議使用報酬的法源基礎了。
- 2) 刪除著作權集體管理條例單一授權窗口相關條文。智慧財產局近來有關落實「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。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。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。

基於以上「單一收費窗口」執行上的問題，台灣著作權主管機關及立法部門應立即進行此一條文的修正。

建議四：落實有效管制網路侵權行為

網路著作權盜版品在台灣透過機上盒、多媒體播放器、電腦端機以及網站與愈來愈多的移動裝置等多種平台廣為散布的情況依舊。目前打擊網路侵權的措施未能見效。由於執法及救濟管道之不足，網路盜版對於包括台灣本地作者在內的所有著作權利人依舊是鉅大的威脅與挑戰。

2013年智慧財產局提出透過行政程序對於涉及嚴重著作權侵權的網站進行封鎖的概念，但稍後又撤回，令著作權利人感到沮喪。由於網路盜版的規模以及因著作權法的漏洞與ISP責任條款

未能充分落實，以致缺乏有效執法，此重要議題仍須再次提出，以期找到直接有效的救濟途徑。

本委員會呼籲政府加強網路邊境管制措施，期能阻止網路盜版。我們也呼籲台灣修正著作權法，將涉及重大與急迫侵權風險之網路侵權行為列為公訴罪。

建議五：著作權法必要的修正

智慧財產局於2013年底完成著作權法修正三年計畫並在最近提出著作權法修正草案初稿徵求公眾意見。本委員會希望能參與對這個草案的公開討論，並希望智慧財產局在將草案提交行政院及立法院之前，有足夠的時間讓公眾充分討論草案中的眾多議題。

本委員會同時呼籲政府刪除著作權法第37條中限制及歧視未加入著作權集管團體的著作權利人刑事救濟途徑的規定。

製造委員會

製造委員會致力於提昇製造卓越與培養加值創新，以定位台灣製造部門能成為經濟成長與繁榮的支柱之一。本委員會盼能藉由提供產業界與政府機構互動之平台，形成一致的產業政策與各項積極措施，以追求改善台灣製造部門之全球競爭力。

建議一：持續著重於提供充足與穩定的電力供應，並提供工業用戶更透明而且可預測的電費計價方式

充足與可靠的電力供應是高科技製造業生存的必要條件，我們鼓勵台電規劃並投資新的發電設備以滿足台灣未來的電力需求，並透過找出不定時電壓驟降或突升根本原因及制訂改善計畫的方式，持續改善供電的可靠性。

台灣工業用電電費在過去幾年持續攀升，對大宗電力用戶而言，這幾次電費的提高對產業獲利底線造成嚴重的負面影響。

我們建議經濟部及台電在考量電價調整時亦需將最近兩年多來國際煤炭價格下跌的事實納入計價的考量。此外，我們認為對電價的調整、訂定計價方式的細節、方法以及調整電價的決策流程能做更多的說明是有其必要性的，這可以讓大宗工業用電用戶對於未來的電費調整有所準備，並於編列預算及營運計畫時可以避免逆向的意外因素。

此外，經濟部與台電應該增加對省電節能的教育做更多的推廣，例如教育研討會、製造業節能的成功案例分享、經濟補助和能源耗用效率稽核等都應該視為是節約能源詳細計劃的一部分。

面對國際液化石油氣市場供應的吃緊及快速變化，中油應該確保能持續以合理的價格提供充足穩定的天然氣供應。長期而言（2020年之後），由於美國、東非、以及可能從加拿大及其他新興來源的充足液化天然氣供應，亞洲液化天然氣價格預期將下跌。我們鼓勵中油能訂定營運發展計畫，來掌握這些長期發展的機會。

建議二：允許退休員工可分期領取「舊制退休準備金」之退休金

現行立法架構下，有兩種平行運作的法定退休金機制：一為勞基法下之舊制退休準備金，一為勞工退休金條例下之新制退休金（於2005年7月生效）。

按照舊制退休準備金，付給員工之退休金係自退休日起30日內一次性總額給付。本委員會了解一次性總額給付的目的在於確保員工可於退休後立即領取退休金，以避免員工因公司財務困難被剝奪領取退休金之權利。

然而，一次性總額給付方式通常會大幅增加領取者於退休財務年度之收入，導致退休金領取者須適用較高所得稅級距之不利結果。此外，若該名員工不善理財，一次性總額給付也將提高其財務風險。

本委員會知悉公務人員有分期提領退休金之選擇。該選擇具備下列優點：(a)稅捐上較為有利及 (b)提供退休員工穩定之收入保障。另外，為解決公司可能迴避長期分期給付退休金責任之問題，我們建議將應給付之退休金提存予第三人（如銀行）持有之信託專戶。

因此，本會建議現行退休金制度可以採納與政府機關相同的退休金給付機制，允許雇主及員工自行協商採用一次性總額給付或依合意的時間表給付。因此勞基法施行細則第二十九條第二項應增訂以下條款：如應給付之退休金已提存於信託專戶，退休金得依雇主及員工之協議以分期付款方式給付之。

建議三：提出能提升台灣汽車產業力的整體計畫

雖然全台車廠產能可達70萬台，但目前產能利用率僅超過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。就如同永續發展委員會的白皮書建議，應考慮逐年淘汰超過10年車齡，占台灣5成以上的掛牌老舊車輛，以利提供更新的車型及具更先進的污染排放控制和高規安全標準。這樣的政策將益助於環境和擴大汽車市場的規模雙重效益。

我們也希望政府能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。我們樂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。

除了目前《兩岸經濟合作架構協議》（ECFA）中優先將關鍵零組件及整車列入今年兩岸經濟合作委員會談判清單，我們更希望政府盡速與東協及其他主要競爭對手市場TPP及RECP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。

醫療器材委員會

醫療器材委員會向來致力於與政府及相關單位合作，確保國內的醫療從業人員以及病患都有機會享受到最先進的醫療科技所帶來的益處。

我們在過去的一年與各政府機構有良好且正面的互動，尤其是衛生福利部所屬之食品藥物管理署及中央健康保險署。非常感謝政府單位就醫療相關之政策與程序，致力於與產業進行定期且有意義的討論，本委員會亦期許政府單位未來能持續與產業界保持建設性對話。

今年本委員會擬針對三個健保相關的議題、以及一個查驗登記方面的議題，提出建議如下：

建議一：對於新核發許可證的醫療器材給予二至三年的寬限期，暫不強制申請健保給付，以免阻礙新科技之引進

健保署於2012年底實施「全民健康保險醫事服務機構收取自費特材費用規範」（以下簡稱「自費規範」），規定所有醫材均需申請健保給付，從送件到決定是否給付的審理時程可能長達18個月。在等待結果之前，醫材需經健保署核發暫時自費碼，才可向病患收取自費。此外，若該產品為非植入性醫材或非現行給付類別者，則定義為「過程面醫材」，須先由健保署判定為醫療服務給付內含品項後，再諮詢醫院或醫學會，經專家研商會議，才決定是否核發暫時碼。此一核碼過程，依上述產品類別或屬性之不同，約需3至12個月不等。然而科技的進步與更新非常快速，醫療器材產品暨複雜、專精又多樣，健保署及醫療專家不易即時研

議，導致審查時程太過冗長甚至可能不予核發暫時碼，使醫師和病患都失去了選擇新醫療科技、享受高品質服務之權利。此自費規範與健保財務無關，卻在食藥署批准了產品的安全及有效性之後，因為需等待健保署核發自費碼的緣故，使產品上市時間至少延遲了3至12個月，甚至有可能無法進入市場。

本委員會感謝健保署過去一年不斷檢討修正，積極處理、消化待審案件，但在此仍要呼籲，鑒於審查的效率有待提升，對於仍在等待審查的數百件品項，若不及解決，應暫予開放；對於未來甫取得許可證的新醫材，建議健保署同意給予2至3年之寬限期，暫不強制申請健保給付或等待核發自費碼，可先行推廣上市，維護醫師和民眾選擇新醫療科技的權利，同時讓醫界有一段合理時間學習醫材之正確操作並評估其臨床效果，俾便後續評估健保給付時能有本地經驗之參考，使珍貴的健保資源能得到最佳的利用，維護民眾權益。

建議二：合理公平地管理差額負擔之病患自付價格

二代健保在有限的資源下允許差額負擔的方式使用高科技醫療器材，意即政府幫助民眾負擔部分費用後，讓民眾可以藉由部分自費選用新醫材，以達到整體醫療水準提升後最終普及化之目標。本委員會樂見自實施以來已有數個品項順利完成審查，提升了民眾對新醫材的可近性。

近期健保署已公告實施「全民健康保險辦理自付差額特殊材料之作業原則」，採取每年監控檢討方式，針對異常狀況，方才訂定差額給付之民眾自付上限。為了讓此機制能順利運作，我們建議健保署應針對「功效分類」，而非「功能分類」進行管理。個別醫材往往在材質、包覆物、設計或使用方式等方面有些微的差異，即使用在同類別的疾病治療，臨床使用成效也可能有不同的表現。若以功能類別作為訂定價格上限之分類條件，原本成熟的市場自由競爭機制可能無法發揮作用。因此本委員會主張，應根據產品實質特性，佐以治療成果、臨床表現等，以「功效分類」做為新的管理標準，才能真實反映新醫療科技之治療價值。

醫療科技的發展日新月異，本委員會建議 健保署對於差額負擔項目應採取更積極的開放態度。此外，為了提升資訊透明度，建議健保署可加強對民眾的政策宣導，以減少因認知差異而導致的醫病糾紛或不必要之誤解，讓差額負擔制度真正發揮政策原本之美意。

建議三：修正健保給付價格調整機制

價量調查是政府了解醫材市場價格，並縮小健保給付金額及醫院實際採購價格差異之方法。對於醫療器材市場而言，醫院必須利用給付價以及採購價的價差來支應倉儲、盤點、物流控管等相關行政管理成本，因此價差之存在係有其緣由。然而目前的價格調整方式，是將同功能類別所有品項於價量調查後統一調整為單一價格，並未考量個別產品之間在材料、設計、甚至功效上的品質差異。在此機制下，舊產品容易占有價格優勢，而較佳品質以及新一代醫療器材由於成本較高，將面臨推廣的困難，而減低了市場的可近性。

另外，健保署針對部分新醫材另行實施價量協議(PVA)，當產品使用量超過議定數量時，給付價將被調降，然而這些產品同時也會被價量調查及價格調整，因此對同類醫材當中較佳品質或較新一代者，更加不利。

醫材的給付係以浮動點值核算給醫院，通常實際給付金額大約在1到0.85之間。業界普遍認為醫材的浮動點值給付已經分擔了總額的風險，因此價量調查及價格調整對醫材而言可謂二度調降給付，可能迫使一些較高品質醫材退出市場。

爰此，本委員會建議：

1. 針對差額負擔及新功能類別品項目前兩年一次的調查，應比照一般品項，改以四年為一周期作價量調查較為公平，

因為這些新醫材需要一定的時間完成醫院採購行政流程後才能進入市場。

2. 由於價量調查及價格調查是對醫療器材的二度調降給付，健保署應同意業界可參考國際價格申請提高給付金額，並且建立價格申覆制度，以避免過低的給付價阻礙了高品質醫材進入國內市場。
3. 對於價量協議控管的產品，在協議期限內應免除價量調查及價格調整。

建議四：加速並簡化醫療器材審查機制

1. 以ISO13485證書取代製造廠品質系統文件(QSD)

食品藥物管理署致力於優良製造廠的品質管理(QSD/GMP)多年並且已獲良善成效，針對國外製造廠的品質管理亦達管控成效，成功為民眾使用優良醫材把關。綜所周知，ISO 13485為國際認可之醫療器材製造廠的品質管理系統標準，其查核管理制度完善，我國之藥物優良製造準則亦是參考ISO 13485 2003之內容訂定。有鑑於此，配合國際規範調和化趨勢，建議食藥署參考其他國家之作法，取消QSD之要求，改以ISO 13485證書來做為製造廠的品質認證文件。因第三方驗證機構每年皆會對製造廠進行實地查核，以確保各醫療器材製造廠符合ISO13485規定，並取得ISO 13485證書，以證明該製造廠品質系統的有效性。類此每年的稽核應足以達到政府對優良製造廠品質管理的要求，故本委員會建議取消QSD之要求，如此可大幅縮短產品的審查時程，讓國內民眾更快得到最先進的醫療服務，加速提升我國的醫療品質。

食藥署可將管理資源重新分配至上市後之監督機制，必要時，可要求醫療器材廠商提供相關文件或進行工廠實地查核，亦能實現政府對品質管理的把關。

2. 第二等級及第三等級醫療器材之審查簡化模式，建議採用美國或歐盟會員國官方或權責機關出具之核准上市證明文件，替代臨床前測試及原廠品質管制檢驗相關資料。

近年來政府對醫療器材登記的管理已趨完整成熟並走向國際調和化，為使國內醫材上市之時程與國際同步，政府亦規劃了簡化醫療器材登記文件的措施（簡化模式）。但該簡化模式要求必須同時具有美國與歐洲上市證明，使許多只在單一地區(美國或歐洲)上市之產品無法適用，遂使該簡化模式之美意無法充分落實。本委員會建議應改為具備美國或歐盟之任一上市證明即可適用簡化模式，如此一來不但減少政府單位重複審查所需的人力與物力資源，提升審查效率，更可縮短審查時間，避免延宕新醫療科技引進的時機，佐以加強上市後監督機制，必能為民眾健康把關，以保障國人使用新醫療技術、新醫材的權利及福祉。

製藥委員會

於2013年一月啟動的二代健保介紹了幾種可能對醫藥市場帶來嚴重負面影響的新法規。如以下建議一所提到的，以開發性製藥產業特別關注的是極低的新藥給付價格、偏低的新藥核准給付率，以及冗長的新藥物給付審核流程。這些因素都可能阻礙患者獲得創新藥物的治療。

二代健保法案還規定了藥品支出目標制度(DET)試辦計劃。委員會感謝衛生福利部和健保署願意針對施行辦法與產業對話並接受部分建議，但些許顧慮仍然存在，記載於建議二。

本白皮書已經倡議專利連結(Patent Linkage)與資料專屬權(Data Exclusivity)的議題超過十年而沒有顯著的進程。但我們對於近來台灣食品藥物管理署願意建立專利資料庫、往專利連結目標邁進、以及研議資料專屬權等進展深感鼓舞。

最後，我們認為，全面有系統地執行醫藥分業，將是長期營造良好的醫療保健系統的關鍵，因為它會將利潤動機從藥品管

理決策脫鉤。

開發性製藥產業將繼續與台灣政府密切合作，支持醫療保健政策改革，並幫助確保有效的醫療照顧台灣全體人民的持續可用性。

建議一：改革新藥給付審查流程與核價方式以加速新藥對病人的可近性

自從二代健保於一年半前上路後，健保署嘗試改善新的二階段新藥給付審查流程，將第一階段改為專家諮詢小組然後再將其建議送至第二階段的藥物給付項目及支付標準共同擬定會議進行審查。業界感謝健保署的某些極具意義的流程改善，如將完整的會議錄音檔上傳至網站上，此一舉動使審查流程更加透明化。

但在此一新的審查流程下我們發現，新藥新適應症的核准比例顯著的下降，此一現象在審查創新新藥部分更加顯著。以癌症用藥為例，在過去7次的共同擬定會議(2013年4月至2014年4月)，共有8項送件，但僅有1個新藥獲得同意給付。根據業界的統計，去年一整年的核准率約為62%，若仔細分析核准的案例會發現核准的幾乎都是“me-too”的藥品，也就是皆與已核准的藥品用於相同的治療族群。對於增加額外預算支出的創新新藥或提供病患更多益處的藥品，其獲得核准的機率便更低了。除此之外，並非核准的62%藥品皆會選擇上市，因為可能因核准的價格過低，廠商最後選擇不上市。

目前核准的給付價格約為十國中位價的51%，因為此一過低價格可能導致許多創新新藥無法在台灣上市。導致此一低核准價格的其中一重要因素為，大部分新藥(86%)在核價時皆是以目前健保已給付的參考品價格核價，而這些參考品皆已經過多次的藥價調整，其健保給付價都已十分低。因為低價與低核准率，許多送件都經過多次的申覆流程，因此更加延緩的病患使用創新新藥的機會。在去年的審核流程，新藥的核准平均需要475天，此一平均數遠高於之前流程的360天。健保核准後，藥品仍需花2-3年以被列於各醫院的處方集中以供病患使用。

另一引起關注點為共同擬定會議的成員主要為醫院之管理階層，且依據共同擬定會議會議記錄顯示部分藥品被否決是因為給付新藥的財務會衝擊到醫院的整體預算。這顯示委員身分的利益衝突與進一步可能影響到病患無法使用到最新治療的選擇。

建議方案：

1. **獎勵創新：**新藥核價應參考十大先進國的價格而非選用國內現有之參考品價格。針對在台進行臨床試驗或藥物經濟學評估之藥品核價，須依據已有之規定實際進行鼓勵。
2. **給付合作計畫：**因為新審查流程而無法執行的替代核價給付方式，如風險分擔計畫，應須繼續執行。
3. **增加共同擬定會議的開會頻率：**針對藥品的開會討論頻率建議由原每兩個月一次的會議增加至每月一次，以加速審查流程。
4. **重新平均分配共同擬定會議成員比例：**建議降低醫院管理階層代表的比例而增加臨床專家的比例，以減低利益衝突的疑慮，並對財務衝擊與病患用藥權益分開考量。
5. **增加病患代表參與新藥審查決定：**目前病患團體皆未參與在給付審查流程中，僅有一消費者團體可參與於流程中來表達對取得創新新藥障礙的擔憂。除此之外，健保署應針對共同擬定會議成員提供針對醫療科技評估、財務衝擊與給付評估方法學方面的訓練，以縮小會議成員中醫藥照顧人員/醫院管理階層與病患團體在認知上的差距。
6. **針對所有給付送件案件(新藥、新適應症與申覆案件)建立一個完整的追蹤系統：**在之前的審查流程中曾有一簡化的案件追蹤流程。我們期待健保署能提供一個更完整的系統，讓送件廠商能自行追蹤送件狀況以增加透明度與增加效率。

7. **停止給付指示用藥：**依據健保法51條，指示用藥不應由健保財源給付，將此部分資源用於給付創新新藥。

建議二：合理的藥價調整方案

美國商會肯定衛生福利部在去年宣布試辦為期兩年的「全民健康保險藥品費用分配比率目標制」試辦方案，所以在2013年白皮書也呼籲應與業界商討，以尋求透明、可預期、合理的試辦模式，為藥品支出目標方案奠定良好的基礎，並期待取代過去對醫、藥界產生嚴重衝擊的藥價調查暨藥價調整，營造多贏、穩定的醫療產業環境。

然而隨著衛生福利部於2013年10月2日公告「全民健康保險藥品價格調整作業辦法」後，美國商會對於政府對於未來病人的照護非常憂心。辦法中有關逾中華民國主成分專利，然而仍具有為智慧財產局所認可之其他專利保護產品逕行認定為逾專利，並據以進行藥價調整，再者，對於逾專利期5年且健保收載未滿15年之藥品取消最大調幅，而收載超過15年的藥品採同成分、同品質與學名藥同價格。一種藥品有可能在同一年初面臨價量協議的年度藥價調整、接下來又面對藥品支出目標之藥價調整、年底主成分專利過期依據健保法46條藥價再被調降以至於同一年遭受三次藥價調整...等，都讓開發性製藥產業對於在台灣未來的投資卻步，並可能因而延緩新產品在台灣上市。

再者，自第二年開始，藥品支出目標不再採用前一年的實際支出為基期值加上成長率，而是改用前一年的目標為基期值。此一方式不僅與藥界的建議不同，更將使藥價調整幅度變寬、加諸更多壓力在藥界。

開發性製藥產業致力於研發新藥，以滿足現今治療上之需求，維護全人類之健康，但近年來在台灣投資已變得越來越困難，肇因於政府延長新藥審查程序、核准率及價格偏低，對給付範圍設限且設定價量協議；並且開發性製藥產業面臨醫院索取藥價差以補貼其經營(之後又調降健保價以尋求縮小與學名藥之價格差異)。這些障礙，再加上市場規模過小並考量價格過低，將會與亞洲其他國家做比較，已經營造台灣成為對於開發性製藥產業不友善投資環境。

對於藥品支出目標方案試辦第二年，美國商會期盼政府能傾聽業界憂心之處並且針對執行方式進行微調，我們期待能尋求對人民提供優質醫療服務、政府能負擔、又能兼顧產業發展之三贏的解決辦法。

建議方案：

1. **以實際藥費支出為基期值：**應立即修改藥品支出目標方案試辦方案，依照第一年的計算方式，依照實際藥費支出為基期值加上合理之成長率作為第次年之目標值。
2. **採用廣義的專利定義：**具有(1)智慧財產局認定之有效專利(不僅限於成分專利之所有專利)、(2)資料專屬權、(3)新藥監視期等均應排除於藥價調整之外。
3. **提供一個公平的“合理的藥價差空間”(R-zone)以及對新藥設定一個合理的藥價調整方案，**以確保能符合病患之需求。對於逾專利期五年且收載未滿15年之藥品給予最大調幅，以避免藥價調整集中於此類藥品而爰以為新藥核價參考時造成新藥和價過低而降低引進之意願。
4. **加強品質查核，**以確保逾專利期且收載已滿15年之藥品能維持在高品質水準，並且限制醫院合理之藥價差以導向品質之競爭而避免價格競爭，以保障用藥品值。

建議三：藉由專利連結和資料保護加強智慧財產權保護

有效的專利連結與資料專屬權乃藥物智慧財產保護機制的重要環節。明確的專利和資料專屬權到期日不僅有助開發性藥廠和學名藥廠制定有關研發或製造的最佳投資策略、避免不必要的訴

訟資源浪費，並可持續推出創新產品嘉惠病患。

本委員會對於近來政府願意強化藥品智慧財產權的保障，以及衛生福利部表示願意與業界共同研議強化專利連結與資料專屬保護機制的進展深感欣慰。這些解決長期未決議題的努力將有助於台灣加入泛太平洋夥伴聯盟協議的加分。

專利連結

根據台灣2011年12月21日公告的專利法修正案第60條，藥廠可進行取得藥事法所定藥物查驗登記許可或國外藥物上市許可為目的，從事之研究、試驗及其必要行為，而免受違反原廠專利的罰責。這項規定不僅將形成不利智慧財產保護的商業環境，更會增加訴訟案件、降低原廠引進新藥的意願、危害病患使用創新藥品權益等負面效果。

根據藥業在2012年進行的一項調查結果顯示，有 65 種學名藥（來自 22 家藥廠）在原廠專利到期前就已取得台灣藥品核准並列入健保給付。根據台灣智慧財產法院的統計，藥品訴訟案件平均耗時 225 天（超過 7 個月）才能結案，而且約有 26% 的案件無法於該年度內結案。再者，此類訴訟都會上訴，加上藥品智慧財產爭議又具高度複雜性（通常涉及專利問題），實際訴訟時間會延宕更久。如果學名藥廠侵害專利的情形超過一年以上，原廠就算是最終贏得判決仍將蒙受巨額的業務損失。此情況不僅傷害台灣在國際上的專利保護聲譽，也使台灣有違反 WTO 貿易有關智慧財產權協定 (TRIPS) 第 28 條與第 41 條之虞。

目前在亞洲的日本、新加坡、南韓和中國均設有專利連結或類似機制，而歐盟國家雖無專利連結，但卻有完善的資料專屬權機制，足以防止學名藥在原廠專利到期前取得藥品核准。

資料保護

根據台灣的資料保護機制規定，法規單位在特定期間內不得核准學名藥。此一機制亦有部份缺失。例如，此機制僅適用於新化學成份（小分子）新藥，而不適用於新適應症和生物製劑（大分子）。若台灣政府欲鼓勵新適應症（藥品在醫療方面的其他應用）和新使用方法（如新劑型）的研發，應設法尋求上述問題的解決之道。

與十大先進國相比，台灣在資料保護方面敬陪末座。歐盟國家除了對新成份新藥、生物製劑以及甫逾專利之小兒科用藥提供 10 年的資料保護期之外，新適應症、孤兒藥和小兒科適應症的新藥並再分別給予 1 年、2 年和 6 個月的額外資料保護期。加拿大的資料保護期則分別是化學製劑 8 年、生物製劑 6 年，小兒科用藥可額外再加 1 年。日本則透過“再評估期”給予 8 年的資料保護。美國提供化學製劑 5 年資料保護，生物製劑 12.5 年，新適應症和小兒科適應症可分別額外取得 3 年和 1 年的保護。

為使資料專屬法規更現代化，台灣可參考以下經驗。第一、加拿大 2007 年修法將資料專屬權由 5 年延長為 8 年，目的在於維持加拿大於全球藥品研發投資市場的競爭力。第二、生物製劑是新一代救命和改善生命品質的藥品；但與小分子新藥相比，生物製劑的研發需時更長，耗費資金更多，因此也應給予更長的資料保護期；是故美國給予生物製劑 12.5 年的資料保護。

建議方案：

1. 透過立法和制定相關程序，在新藥查驗登記準則中建置專利連結制度，以有效保護研發者的智慧財產權。
2. 專利連結機制應包含以下項目：
 - a. 強化的橘皮書機制（新藥與學名藥的申請應該查詢既有專利）。我們建議可參考韓國近來實施的詳細制度。
 - b. 聲明程序 - 由學名藥申請廠商切結主張原廠藥品之專利權無效。
 - c. 通知原開發藥廠 - 學名藥廠或衛生署應通知原開發藥

廠有關學名藥申請案件。

- d. 暫停審查 - 若有爭議發生時，應暫停審查程序至某一期限（在美國為 30 個月），直到協議達成，或學名藥廠證明未違反專利或證實專利無效。
3. 應給予新藥和新適應症資料專屬權如下：
 - a. 小分子產品的新適應症和新使用方法：3 年
 - b. 新生物製劑：12 年

建議四：落實醫藥分業

這項議題已持續列在台灣政策白皮書許多年。在台灣醫院現有制度下，醫師被限制只能從醫院處方集中選擇開立處方的品項，然而，醫院的處方集品項的選擇卻基於醫院獲得利潤的多寡。大多數醫院執行“進一踢一”的政策以限制醫院處方集的項目數，並以相近的藥物進行分組比價，以此來獲得更多的利潤。這種做法可能會危及病人獲得最合適藥品的治療的權益。

基於以病人為中心的治療目標，政府應該建立一合理的環境，讓在醫院服務的醫生和藥師，能夠完全以患者福祉與個別化需求為基礎做出專業的判斷，處方健保署已經給付的藥品，而不必受制於醫院以利潤為考量所採用的品項。該問題已經變得越來越嚴重。這除了對病人得到最適切治療的需要造成潛在的影響，它也可能導致許多跨國公司決定不在第一階段台灣在引進新藥，因為醫院利潤的要求已造成在台灣淨價是國際上最低的。

為了匡正這種情況，衛生福利部和健保署應考慮如何讓醫院和醫護人員可以得到合理的報酬，讓他們不必依靠從藥物獲取利潤來補償偏低的醫療費用。社區藥局藥師應擔任主要調劑角色，提供病患對藥物和醫療保健相關諮詢服務。而藥局可依規定獲得適當的藥品管理費用。根據 2011 年監察院的全民健保調查報告，實施醫藥分業對於提高對患者藥事服務品質的關鍵。醫藥分業的實施將可以讓醫師根據自己的專業判斷處方最適合病患的藥物。而這樣一個機制的建立，可以讓藥師查核病人的處方，以避免在不同醫生或醫院之間的處方發生任何重複給藥或配伍禁忌的問題。

建議方案：

1. 消弭自藥品獲得利潤：設置明確的原則，以防止醫院基於利潤的考量從而限制了病人獲得健保給付藥品的治療。調整醫療給付，使醫院不再需要依靠藥品利潤補貼醫療服務，而醫院門診處方應強制釋出，由社區藥局調劑。
2. 設定明確的目標和時間表：採用一個醫藥分業的準則，即使必須分階段實施，亦應訂定明確的實施方向。一個整合的實施計劃應包括醫藥分業遵行度的評估，並將該指標納入醫院評審項目之一。它應根據處方釋出的數量，以及真正從事調劑的藥師人數設定標準。
3. 加強溝通和教育：提供民眾更廣泛的教育，對宣導實施醫藥分業的好處。幫助患者了解醫藥分業有助於醫療品質的提升，並藉由減少不必要的用藥來減少醫療資源的浪費。長期而言可以樽節健保開支。
4. 執行面的落實：制定明確的法規，以確保藥局調劑的品質，並防止未經醫師的同意而換藥的情形。並定期公佈個別醫院處方釋出的資料。

公共衛生委員會

公共衛生委員會在過去一年與政府衛生機關有許多正面的溝通與互動，共同為台灣許多公共衛生的議題做努力，期待繼續藉由各會員公司在不同領域的經驗，並且吸收更多其他國家的成功模式，可以提升台灣的醫療水準。

建議一：落實醫療法56條，提高安全針具使用比率以符合法令規定

立法院於2011年底通過醫療法第56條、101條修正案，規範醫療機構應在五年之內按照比例逐步換用安全針具。依照醫療法第56條的精神，醫療機構全院換用安全針具的比例應每年增加20%，2016年全面使用安全針具。然而，到2012年安全針具申請健保的比例僅佔3.72%，與法定目標差距甚遠。關於如何提高安全針具使用比率，本委員會對衛生福利部茲提出下列建議：

A. 修改醫院評鑑及感染管制查核基準之安全針具相關規定，使其符合醫療法56條精神，並應查核所有安全針具類別。

1. 建議修改醫院評鑑基準及感染管制查核基準之安全針具相關部分，規範使用率每年全院增加20%。

目前醫院評鑑基準及感染管制查核，合格基準僅規定「於急診、急救室、加護病房、手術室、透析病床、愛滋病房、感染科病房及高危險群病人使用安全針具」達一定比例，然這些單位針具使用量僅佔全院一小部分，如果僅這些單位安全針具使用比率符合醫院評鑑及感染管制查核基準，全院的使用比率仍然無法符合醫療法56條規定的每年增加20%。建議醫院評鑑及感染管制查核基準的內容應符合醫療法56條規定，要求醫院使用安全針具的比例，必須每年全院增加20%。

2. 醫院評鑑時應查核所有類別安全針具之使用情況，並比對針具類申請健保特材給付的比率

「2013年度醫院評鑑基準及評量項目、評鑑委員共識」，查核安全針具使用比率時，僅抽查靜脈留置針及肌肉注射。根據衛福部的安全針具定義，需使用安全針具的時機並不限於注射，採血也屬於高風險醫療行為，且採血針已經列入衛福部安全針具品項清單，故評鑑時應將採血納入查核項目及使用比例的計算。

此外，用抽查的方式計算安全針具使用比率無法反映實際情形，本委員會會員公司發現部分醫院僅在評鑑期間使用安全針具，即醫院評鑑有明顯造假情形，故比對針具申請健保特材給付的比例可避免此一弊端。

B. 對於使用比例未符合規定的醫療機構，建議衛福部依照醫療法第101條罰款。

到2012年底安全針具申請健保的比例嚴重偏低，僅佔3.72%，然截至目前並沒有任何醫院受到衛福部的罰款，衛福部對此應依法加強執行。

C. 建議衛福部針對安全採血產品，編列安全針具代碼

1. 採血使用的安全針具，因為內含於檢查費用，並無獨立的健保特材給付，故醫院使用安全採血針具時無法申報安全針具專款，需自行吸收成本，影響醫院換用安全針具的意願。另外，因為採血針具沒有申報健保特材給付，難以統計使用量，醫院評鑑及感染管制查核不易稽核採血時安全針具使用狀況。

2. 建議衛福部針對安全採血產品，編列安全針具代碼，便於醫院申報安全針具專款。並且醫院評鑑及感染管制查核時，可藉由統計醫院安全針具代碼申報數量，確認依法執行採血安全針具使用比率。

D. 建議衛福部每年於總額之外編列足額預算，用以補助醫院使用安全針具。

2013年醫院總額有一億點的安全針具專款，但2014年醫院總額安全針具專款減少為9940萬點。查醫療法規定每年都應增加安全針具使用比率，預算編列無法支付醫院使用安全針具的成本，顯然衛福部編列公務預算與法規執行要求明顯矛盾。

建議衛福部逐年增加足額的安全針具專款，並且將其獨立於總額之外以為因應。

E. 請衛福部依照「安全針具品項清單」之產品類別，提供2012年、2013年全國一般針具及安全針具健保特材申報數量為何，並且將其數量按季度公布於衛福部網站，以供全民監督法令落實情形。

F. 建議衛福部修改本國的安全針具定義，使其與國際接軌。

目前安全針具定義僅限「透對注射或採血針類及針筒等醫療器材產品之特殊設計，以降低醫療人員暴露於病原體及血液傳染疾病之風險」，狹義的將安全針具的類別限縮到注射、採血針及針筒，然會發生針扎的情形不限於此，實際上需使用安全針具的情況較定義的更多。衛福部狹義的安全針具定義，將使政策的落實僅及於狹窄的範圍，則醫護人員受到保護也受限制。

建議推行安全針具政策可參考其他有安全針具立法的國家之成功經驗，美國勞工部職業安全與健康管理局(OSHA)的安全針具定義就沒有對產品類別作規範：有預防銳器傷害設計的銳器意指，在抽取體液、進入動脈或靜脈、注射藥物或液體時，其設計為使用無針的方式、或有內置的安全設計或機制，可有效減少血液曝觸的風險。

另，有關定義中「特殊設計」一詞過於空泛，美國食品藥物管理局(FDA)於2005年制訂的指引「具防止尖銳物傷害特徵的醫療器材」(Medical Devices with Sharps Injury Prevention Features)在考量功能與人因工程下，已對該類型產品的「設計」給予明確建議，可做為本國的參考。

本委員會建議：

1. 衛福部的安全針具定義應與國際接軌，使政策落實更全面，提高對醫護人員工作安全的保障。

2. 在修改安全針具定義前，建議在審查納入「安全針具品項清單」的醫材時，衛福部可以放寬對安全針具定義的解釋。即不僅直接侵入人體的醫材可以納入清單，而是只要可以預防針扎及血液曝觸風險的醫材都應該納入，不論其是否直接侵入人體。

建議二：安全針具除預防針扎之外，應加強重視血液曝觸問題，以保障醫護人員權益

根據建議一提到的衛福部安全針具定義，意指安全針具不僅要能預防針扎，更要能避免醫護人員受到血液曝觸。以靜脈留置針注射及移除過程為例，根據美國疾管局研究，使用安全靜脈留置針雖可將每10萬次注射的針扎比例從6.6次大幅降低至0.7次，但其中產生血液曝觸的風險比率卻經常被低估及忽略，10萬次注射約會發生高達19.2次的血液曝觸。以透過靜脈留置針採集血液檢體為例，由於醫護人員經常直接從留置針軟針座直接以針筒抽血，或是將採血試管蓋打開直接從留置針開口處滴入血液，此外，醫護人員也常因為怕針扎，將採集好血液的針筒，將針頭取下，然後注入病人血液至已開蓋的採血試管，這些動作經常造成血液噴濺到採血者的皮膚、黏膜、或污染環境，甚至血液噴濺到病人身上，因而可能導致醫護人員染病。

因此在推廣安全針具使用的同時，應考量安全針具是否有預防血液曝觸的功能，方能確保醫護人員免於暴露於病原體及血液傳染疾病的風險。

目前臨床採血方式有許多感染風險，病人血液有很高機率暴露在空氣中，國際臨床與實驗室標準協會CLSI標準H3A6亦建議：以封閉式方式採集血液，才可有效避免針扎、血液曝觸、血量不足及溶血退件等問題。封閉式方式的採血為從病人體內採集血液至血液流到試管內這段過程中，血液並未暴露在空氣中。

基於上述原因，我們建議：

A. 疾管局應要求各醫療院所建立標準流程，以封閉式採血方式，確實避免危險的血液採集方式所引起之血液暴露感染風險及其他檢體退件等問題。

- B. 我們亦建議疾管局在做感控查核時，能明訂查核安全採血之規範流程，如此可以減少血液曝觸事件的發生，減少醫護人員染病的風險。

建議三：維護病人安全，減少血流感染

血流感染是最常見的院內感染種類，自2003年已躍升台灣院內感染部位第一位。根據台灣院內感染監視系統2012年分析報告，醫學中心加護病房感染部位有41.4%發生於血流感染，區域醫院加護病房則占了31.5%。

影響導管相關的血流感染危險因子很多，包括病人因素、醫療處置方式、導管維護、住院日數、輸液成分等。其實，透過有效的政策及適當的鼓勵措施可以有效降低血流感染的發生。我們將分二方面作探討：

- A. 提升導管維護品質。為維持導管暢通，護理人員需經常沖洗管路，然而導管維護的過程有可能造成病人感染疾病、導管堵塞等問題，危及病人生命。

傳統沖管是由護理人員手工配製充填生理食鹽水到針筒內，在導管接頭處進行沖管操作，由於無法確保無菌配製，可能促使病原菌沿導管接頭進入導管，細菌繁衍從而導致血流感染。且傳統沖管程序中若無確實給予正壓封管，將導致血液回流，可能引起血栓形成進而引起導管堵塞及相關併發症，將嚴重影響臨床治療效果。

2000年美國某診所曾爆發大規模交叉感染C型肝炎的嚴重案例，原因是從同一個生理食鹽水袋抽取沖洗導管用的食鹽水，造成99名患者感染C型肝炎。為減少上述導管維護(或沖管)造成的相關問題，美國疾病管制局建議，應選擇單次使用的沖管系統(例如：單次使用藥瓶，預沖式沖洗器)，另外美國靜脈輸液護理學會(Infusion Nursing Society, INS) 2011年的靜脈輸液護理標準(Infusion Nursing Standards of Practice)也有相同的建議。美國靜脈輸液護理學會亦建議沖管時應給予正壓封管避免回血，或使用能防止回血之單次使用沖洗器以達到更好的沖管成效。

由於台灣醫院對於沖洗導管皆無嚴格規範，建議加強院內導管沖洗規範，降低各種可能的風險。本委員會建議：

- 訂定導管維護的標準作業流程，可從以下方面加強規範：
 - 建議導管沖洗的時機
 - 建議導管沖洗的頻率
 - 使用預充式沖洗器避免手工配製的風險
 - 確實做好正壓封管避免回血以落實沖管成效
 - 將美國疾管局及靜脈輸液護理學會所建議的導管維護標準，納入感染管制查核基準的查核項目。
- B. 提供誘因採用封閉式系統，獎勵醫療機構積極提升醫療品質及降低血流感染
- 軟袋式設計之輸液可使包裝袋柔軟變形，不需對外排氣平衡壓力，避免與外部空氣接觸，形成封閉式系統。研究結果顯示，相較開放式系統，封閉式軟袋輸液系統可降低血流感染發生率。

本委員會建議：

- 提高醫護人員對血液感染的認知，並提供教育訓練。
- 提供誘因並鼓勵採用封閉式系統，如封閉式輸液軟袋及封閉式的靜脈導管系統，以降低血液感染發生率。
- 獎勵醫療機構積極提升醫療品質及降低血流感染。

建議四：健全醫療器材上市後之無菌性監測抽樣計畫，確保民眾使用醫療器材的安全性並避免干擾產業競爭秩序

食藥署現所執行之年度無菌性監測抽樣計畫，於施行前其整

體執行程序、計畫目標與抽樣方法、檢驗方式皆未透明，對於檢驗結果仍有疑義時卻已將該資訊釋出，導致醫療院所與使用者莫名地恐慌，嚴重擾亂市場交易秩序。本委員會建議食藥署就以下幾點重新檢視：

- 使用無菌試驗來檢驗終端醫材，不是證明產品滅菌效度的恰當方式
自1984年起，國際上具權威的衛生主管機關及主要藥典，如美國FDA、歐盟藥典都已正式確認對終端產品進行無菌試驗有侷限性，故現行的國際滅菌標準皆採用流程驗證來確保醫材的滅菌效度。現行的檢測方式明顯與國際標準有所抵觸。
- 對當事人資訊公開/對未確認的資訊應保密
無菌試驗結果若經適當的驗證流程已排除偽陽性而確定為陽性，則應將檢驗數據報告給予廠商以利進行預防矯正措施。然目前食藥署並不提供檢驗數據報告，僅以公文通知結果，不但有違行政程序法第46條對當事人資訊公開的規定，且造成廠商檢討問題根源的難度並增加溝通成本。而在檢驗結果尚未被驗證與釐清前即輕率公布資訊，不僅造成民眾不必要的恐慌，亦嚴重干擾市場交易秩序。
- 中央主管機關與地方衛生主管機關之權責劃分
該監測計畫既為食藥署保護民眾就醫安全性的重要措施，若已確認有高度的滅菌效度疑慮，則應由食藥署統一發布處理措施，並由地方衛生主管機關與各醫院、廠商配合執行。然現行方法是將仍有疑義之結果逕交予地方衛生機關，由各地衛生機關自行決定後續處理，不僅造成各地方政府不同調而無法給予全國民眾一致的保護，且造成醫院與廠商無所適從。

由於現行無菌性醫材抽樣監測計畫之檢驗方式並不恰當，且執行程序並不完備與透明，本委員會建議食藥署重新評估計畫之可行性。倘此計畫要繼續施行，亦能於施行前先與醫院與廠商進行實質溝通執行程序，以落實保護民眾安全之美意。

不動產委員會

過去兩年台灣政府公布數個不動產相關政策對整體不動產市場產生相當大的影響，包含住宅貸款限制令、實價登錄及保險業不動產禁買令等。商業不動產及住宅市場於相關政策實施後成交量及價格皆出現波動。台北美國商會不動產委員會(以下簡稱本會)，並意識到台灣政府在不動產價格透明化及防止不動產泡沫化的努力與決心，但同時本會亦察覺到部分政策對於未來市場發展可能會產生的負面作用。因此，為了確保台灣在未來仍能持續吸引外來資金至此投資，本會於此提出數項政策及法規修正建議，並期望與相關單位進行商討，確保台灣不動產市場的健全及優勢。

建議一：修正「不動產估價師法」以推動一般法人取得不動產估價業務認證

過去國內估價專業未有任何法令依據，及至民國89年立法院才正式通過「不動產估價師法」，以制定估價業者之身份資格、服務內容項目等限制。就現行法規規範，執行估價業務需同時符合以下條件：通過國家考試取得不動產估價師證照、具備兩年估價實務經驗且領取不動產開業證書、以及加入該管直轄市或縣(市)不動產估價師公會。換言之，國內估價業者以自然人或合夥人為開業基準，由具備執照之不動產估價師開立事務所以提供估價服務，而一般公司法人即便聘用不動產估價師，仍無法透過登記或其他法令認證來承接估價業務。此外，依法估價師需承擔業務產生之各項責任。但相較於一般法人公司，估價師事務所多未投保相關責任險，實際上目前國內亦無

類似保險產品。

建議除現有制度外，應開放一般法人申請成為可提供估價服務之業者，與國際制度接軌。以德國為例，法令未限制公司法人從事估價業務；而依據日本「不動產鑑定評價法」規定，只有經國土交通省或都道府縣府登記之不動產鑑定業者及不動產鑑定士，才可執行不動產估價專業服務。不動產鑑定業者定義及登錄方式則明定於該法第24條內。

除此之外，一般法人提供估價專業服務還具有下列實質效益：

1. 基於公司法人多已投保各項責任險，可提供客戶更具保障的專業估價服務
2. 藉由一般法人原有的內、外部營運準則，建置系統化估價流程，以提供更高品質且具可信力之估價報告書
3. 增進本土估價業者與各國估價體制交流合作，將國內估價業務提升至國際性水準

建議二：降低對保險業投資商用不動產最低租金投報率，使其得以策略性分配資產，達到獲利及充分避險的目的

在2012年第四季台灣金融監督管理委員會公布實施一系列的保險業商用不動產禁買令，俗稱「金八條」；其目的係為緩和過熱的商辦投資市場及急速上升的價格。主要條文內容明定保險業者僅能投資於現有或興建中的建物，現有建物必須有60%以上的出租率，且租金收益需大於2.875%以上。建物取得後，五年內禁止轉讓出售。在土地投資方面，保險業者於取得土地後，視建照取得與否而定，六至九個月內須開始動工或提出建照申請，施工期需於五年內完成。土地逾十年內並禁止出售轉讓。但實際上，於禁買令期間內，縱算保險業者購買自用辦公室亦仍需透過管管會嚴格審核，主要為確實抑制投資市場過熱。

雖於2013年底管管會對保險業者投資商用不動產的禁購令已解除，保險業者於進行不動產投資時除仍遵照上述規定外投資，其最低租金報酬率仍維持於2.875%，且會將租金報酬率與保險業者的風險資本額（RBC）連動，屆時，業者若投資投報率少於2.875%的大樓，RBC係數則要增加。雖已解禁，本會不動產委員會仍建議政府相關單位將最低租金報酬率降低為2.0%至2.5%之間，並得採個案審查方式進行，給予酌量之彈性。主要因為各地區不動產價格差異甚大，若給予單一最低投報率的規定，保險業者於特定縣市投資時恐有窒礙難行之虞。

此外，商用不動產租賃於主要都會區需求較高且較穩定，雖資產取得成本較高，但於取得後的空置風險相對較低。且保險業者之主要收入來源為保戶繳納保險費，於保單到期或賠償時，業者需償付約定之金額。因此，為確保保險業者有償付各保戶之能力，保險公司除須觀察市場動態，妥善投資外，亦須策略性不定期調整資產分配，將其分配於多種，甚至多國的投資工具以達到避險的目的。再者，不動產投資風險及市場波動相對上小於股、匯市等投資工具，並為抗通膨及保值的投資標的，因此完全禁制保險業者投資於實質不動產，恐限縮其投資分配的彈性。故建議政府除調整最低租金投報率至目前市場平均約2.0%-2.5%的水平外，並可朝個別審核投資案件進行最低租金報酬率的審核為方向；因各投資人及標的之屬性皆不盡相同，以策略性調整為原則。

零售委員會

零售委員會留意到政府最近為了準備加入「跨太平洋夥伴協定」，而作了一些放鬆管制的措施。我們相信成為該協定的成員，將帶給台灣消費者更多的益處，因此，儘管有部分反對聲

浪，希望政府仍然能夠堅定立場。

零售委員會同時關心政府在制定新法或規定時的處理態度。每當發生安全議題時，立法委員和主管機關便會倉促作出考慮不周的修法提案，像是食品添加物和化妝品防腐劑標示規範即是如此。明顯的瑕疵又導致重新審查和修法，因而耗損政府部門和相關企業的資源，亦引發對政府效能的批評。我們認為政府修法應該依據合理的科學證據和現行國際慣例，這樣能讓台灣與國際最佳範例接軌，因而為加入「跨太平洋夥伴協定」，甚至未來其他國際協定作準備。

本委員會也樂於見到越來越多產業自律或自主管理的相關討論。在歐、美或日本等主要市場，有關商品、服務和商業廣告，通常是由私部門來設立負責的標準及自主管理，讓公部門可以專注其資源於最立即重大的問題，大眾因此而能受惠於負責任的企業與高效能的政府。我們期望台灣政府能支持食品產業和化妝品產業朝此方向前進。

零售委員會同時感謝食品藥物管理局對於去年白皮書中關於改進食品標示及宣稱的正面回覆。食品藥物管理局在2013年5月公告草案，同意認可依科學證據所提出的產品宣稱；目前草案尚未正式公告，希望新的管理機制能儘快實施。

以下提出三項對於放鬆管制、國際協議和產業自主管理的建議，希望能夠成為加入「跨太平洋夥伴協定」的助力。

建議一：避免在「食品衛生管理法」第28條中修訂不必要及不切實際的規定。

食品衛生管理法第28條的立法宗旨在於「管理不適合兒童及特殊需求者長期食用之食品廣告及促銷」，以維護國民健康。商會全體成員完全支持此一目標。

然而，本辦法草案與既有的國際通行做法顯然相悖。以本辦法第3條為例，該條文之修正既非基於有益消費者健康的科學證據，亦過於限縮消費者的選擇，難以落實執行，並可能嚴重傷害台灣的國際競爭力與經濟整合的渴望。本委員會籲請衛生福利部修改本辦法第3條以符合國際慣例，原因如下：

1. 本辦法草案將「不適合兒童長期食用之食品」定義為：「一、脂肪所佔熱量為總熱量百分之三十以上；二、飽和脂肪所佔熱量為總熱量百分之十以上；三、每百克固體或每百毫升液體之反式脂肪含量為零點三公克以上；四、每大卡含熱量為一毫克以上；五、糖所佔熱量為總熱量百分之十以上」。

這些原則大致上符合世界衛生組織建議的每日飲食準則；但是，如硬要將這些原則一體套用在個別的食物項目上，既不合邏輯、也缺乏實用性。通用的單一標準並沒有說明食物是如何被攝取、份量、以及攝取頻率。要是認定沒有落在標準範圍內的食物就一概無助於有品質、均衡的飲食，會完全違背食物金字塔鼓勵飲食類群多樣化的原則。

要是根據衛生福利部提出的判準，有些對於兒童的健康和發展不可或缺的食物，例如牛奶、低脂牛奶、蘋果、香蕉和米飯，都將被認定為不適合兒童長期食用，因為這些食物並未被明確排除在衛生福利部所提出判準（本辦法第3條第4項）之外。一般認為米飯和水是台灣主食，但這兩項都沒有在標準範圍之內。如此國際上前所未有的、不切實際的營養指南，讓許多廣受歡迎的台灣食品，像是湯圓、三明治、沙拉、涼麵和餃子，都成了「不適合兒童長期食用之食品」。基於此一判準，連原本衛生福利部認可的健康食品，像是「愛之味鮮採番茄汁」（Oligo Tomato Drink）、「雙健茶王」（Super Functional Tea Drink）、「玉露綠茶」（Gyokuro Green Tea）等罐裝飲料，也會遭列入「不適合兒童長期食用之食品」。

由於忽略台灣日常飲食習慣和當地市場環境，未來如率爾執

行該項管理辦法，勢將遭遇極大困難。

- 2). 本辦法草案對相關廣告和行銷活動施加不必要的限制，會抑制自由貿易與市場行銷，也與其他國家的類似情況顯有落差。

本辦法草案第3條禁止任何促銷活動，包括「不得於兒少頻道廣告，亦不得以贈送、加購玩具或以玩具為獎勵等方式為促銷」。沒有任何科學研究顯示限制促銷活動有助兒童健康。本辦法草案將限縮消費者的選擇、抑制市場競爭，服務業是就業機會的主要來源之一，但本辦法草案將有礙服務業的長遠發展。

不足為奇的是，幾乎沒有任何先進經濟體採用如此不合理的行銷與宣傳規定。舉例來說，英國、加拿大、韓國和馬來西亞皆已制定類似本辦法第3條的法規，但僅規範針對兒童（未滿12歲）的廣告，不包括其他行銷活動。本委員會建議衛生福利部採用國際公認的兒童頻道廣告管理辦法，勿對其他行銷活動施加額外限制。

- 3). 本委員會了解從歷史觀點來看，政府與法規在在台灣一直發揮著強而有力的作用，為消費者創造正面成果。在其他經濟體，如美國和歐洲，長久以來「自律」日益重要，為消費大眾、產業與國家開創出雙贏的成果。

如下文建議四將進一步解釋，本委員會認為「自律」是更佳解決方案，並建議從針對兒童廣告的約束開始採取自律原則。

建議二：基因改造（GMO）食品相關法規與主要貿易夥伴協調

台灣自2011年起即實施基因改造食品相關法規。2014年2月，修正後的「食品安全衛生管理法」，納入含基因改造食品原料應經中央主管機關健康風險評估審查之規定。本委員會明白一些消費者想要知道食品中是否含有基因改造食品成份，所以建議台灣訂定相關法規時要與主要貿易夥伴協調。

嚴苛的法規環境將限縮台灣從全球不同地區的供給彈性，大幅限制食品產品的供應能力，削減食品種類及增加供給成本。

任何食品在生產及供應程序中有被含基因改造成份交叉污染的可能。在實務上，若沒有訂定非刻意添加而被交叉污染基因改造成份的合理容許比例，食品業不可能正常運作。例如因應採收、儲存和運輸期間非刻意的基因改造成份與非基因改造成份的交叉污染，5%是很務實的容許比例。許多在台灣可購買的食品，是由鄰近國家供應的。本委員會因而建議台灣維持與大多數貿易夥伴以及TPP（跨太平洋夥伴協定）未來成員國所採用的非刻意添加可容許交叉污染比例。衛生福利部食品藥物管理署（TFDA）最近宣佈有意將此可容許比例由目前的5%調降到3%，遠低於日本和香港等許多亞洲國家／地區。如果台灣打算將非刻意添加可容許交叉污染比例降到3%或以下，本委員會建議事前應就基因改造食品標示的法規衝擊進行評估，俾以了解貿易成本及食品供給可能受到的干擾。

建議三：檢視進口有機食品逐批審核流程

2009年開始，食品藥物管理署（簡稱食管署）與農業委員會（簡稱農委會）即針對所有有機進口食品進行逐批審查，其中食管署負責管理食品標示及衛生安全，而農委會則負責審理宣稱「有機」的食品符合本地的標準。在本小組認同正確標示確有其重要性的同時，我們也鼓勵當局能採取一個較為簡化的角度，不再繼續目前這種長達三星期以上會阻礙自由貿易發展的審查程序。現行的作業制度要求同一種經認證商品每次進口均需重新申請，再加上當局要求必須以正本提出包含精確的重量及正確批號的資訊，其實是不必要的重複而且是容易造成人為疏失的做法。

目前美國國家有機農業計劃(National Organic Program, NOP)約有100個位於全美國及世界各地經農業部(USDA)核可之認證機構，這些機構主要是在為有機食品業者審查其整套流程並進行實

地訪查以確認各產品的有機運作程序符合標準。而在農業部每次核可的時間為五年期間，NOP也會二、三年一次地進行現場評估以確保認證機構在核可期間內持續地符合所有條件。歐盟與日本亦有類似確保有機食品以符合的相關規定措施。因此，許多有機食品在出口進入台灣前，在其國內就必須經過嚴格的規範，始得合法標示與宣稱「有機」進行販售。

本小組力促台灣當局認可並接受他國事前嚴格管理的成果並考慮修改現行過於耗力費時的申請及審查機制。我們建議主管機關採用類似標準檢驗局商品驗證登錄的作法，讓有機食品進口業者得以申請，且在經過一連串的檢驗及文件審核核可後，核發長達5年效力的有機標示同意文件證書，如此不僅可以加速通關時間，符合政府推動貿易便捷化的目標，而且亦得以減少逐批審查所耗費的人力。若當局因此擔心無法掌控後續的追蹤管理，或許可以建置類似或甚至利用TFDA已啟用的食品添加物登錄平台，使有關單位仍可持續掌握所有的有機食品進口資料，相信進口商將樂意配合相關的配套措施。

建議四：鼓勵產業自律廣告規範符合國際最佳做法

本委員會為食品藥物管理署同意化妝品產業自律建立廣告規範而喝采，不過，廣告規範的自律在全世界廣為應用，遠不限於化妝品。本委員會建議食品藥物管理署考慮開放更多產業採取廣告規範自律，包括食品業。我們敦促食品藥物管理署檢視世界各地現行做法，讓食品業能夠建立並實踐自我負責的標準。

本項建議與前文論及本辦法第3條對兒童行銷的討論相關，前述的討論側重於一個緊迫、當下的情況，但自律原則其實涉及潛在更廣泛的層次。

台灣應考慮歐洲國家的經驗。根據歐盟執委會文教總署研究，自律對於約束以兒童為目標受眾的廣告行為特別有效。在這些國家，產業團體擬定嚴格的自我規約措施，由外部的、非屬該產業的專家和官員監督。由於產業自律和自制，政府管控成本降低，使得過程更有彈性，相較於更耗時的立法程序，自律規範更能夠符合社會的需要。

根據明確的證據顯示，健康飲食習慣無法單單經由法律規定來形成。相反地，對於公共健康最具正面成果的有力計畫，無論是健康飲食或運動，往往是透過主動方式來鼓勵。在廣告當中加入營養事實，鼓勵孩子多吃蔬菜和水果，並創造鼓勵規律運動的企劃，都是很有價值的。

「歐盟營養白皮書」（EU Pledge on Nutrition White Paper, EU Pledge）在2007年公佈，有二十多間跨國公司簽署，這些公司佔歐盟食品和飲料廣告量超過80%；這就是一個已達成正面健康成果的自律企劃。

在美國，有16家公司在2007年簽署了類似的自律承諾，也同樣展現出政府如何透過與產業合作、而非通過立法途徑，來對健康和營養造成較大的正面影響。經過科學測試與實際營養指導，以及由各間參與公司自願努力鼓勵健康飲食，簽署16間公司在2012年銷售產品的總熱量是54兆，相較於2007年減少了11%，或者說每人每天減少了75大卡，從2004年至2012年間，2到5歲的肥胖兒童比率從14%下降到8%。

正如歐盟和美國的產業自律承諾證明，健康結果比較可能透過善用產業與政府機關集體力量所發動的自律行動而達成，相較於提案的管理辦法草案，為廠商和消費大眾規定一個不符合現實、不切實際的產品營養目標，恐怕只會增加管控成本。本委員會鼓勵衛生福利部如同其他先進國家一般善用自律原則，以達到食品衛生管理法第28條的立法宗旨，並維護台灣的國際聲譽。

美國商會的會員公司歡迎任何與台灣企業與相關部門的合作機會，關於發展自律機制方面可善用其他先進經濟體的經驗來進行。開始時焦點放在針對兒童的廣告，以達到食品衛生管理法第28條的終極目標，但可能將範圍逐漸擴大，延伸到更廣泛的一般廣告和其他產品類別。

建議五：就消費者保護法修正草案接受合理的修改建議

該修正草案將授予相關行政部門權力，得決定企業與消費者間定型契約之條款，並得選擇特定行業類型強制適用該等條款。由於「定型化契約條款」的定義包括了所有企業與消費者溝通之形態，例如海報及戶外高招等，該修正草案將授予相關行政部門極廣闊的權力來管制私人契約及廣告之內容。此外，如果某企業使用定型化消費契約，政府將被授予警察權而得派員就不特定的目的及檢查範圍檢查該公司的業務。這些作為，對一個自視為尊重法治和自由市場經濟的社會，極不恰當。

其次，修正草案也讓消費者得於購買後之七天內，不須原因即得取消任何類型的交易。這項措施就某些類型的產品和服務而言完全不可行，包括非實體之貨品如電腦軟體，和轉瞬間完成給付之服務。儘管修正草案於規範技術上，為政府機構保留了得決定例外項目的空間，有鑒於台灣近來盛行之消費者民粹主義，產業界擔心，政府很可能無法建立必要的例外項目。本委員會在此敦促政府於該修正案中，應明確納入已在歐盟、日本等主要市場的法規中早已規定的例外項目。

其三，修正草案要求，於消費者就其經由網路或通訊交易或訪問交易方式購買之產品和服務解約時，企業經營者須於15天內退還全額款項。此退款時期間的限制忽略了許多企業於15天內執行退款的實務作業困難。例如，許多企業仰賴銀行提供之出納服務，而相關系統處理作業所需的時間往往已超過十五日。同時，由於退款要求量預期將增加，

即使在一個30天的期限內，企業及金融服務業也將很勉強才能應付該項作業。

本委員對行政院尚未將上述問題充分考慮便將該修正草案提交立法院，感到失望。我們寄望立法委員能夠就該修正草案進行認真的審查，以彌補這些缺失。

建議六：改革化粧品相關之規章制度

本委員會感謝食品藥物管理局致力於法規改革與借鏡國際規範以調和標準，避免技術性障礙而導致台灣無法進入TPP。我們藉此也提出一些重要議題供食品藥物管理局參考：

- 1) 平衡法規國際化 - 近來食品藥物管理局在制定新法規時，主要參考對象為歐盟的產品標準與法規要求，但作法是從多國法條中部份挑選再予以結合，而非自單一法規整套採用。其結果是法規的包羅萬象而政策缺乏一致的邏輯性。例如：
 - 禁用或限制成份 - 在歐盟，大約有1,500種化粧品成份被禁用或是有最低許可濃度的限制，但生產者可以提出放寬禁用與許可濃度的要求，而這類要求被准許的例子所在多有。在台灣，大約有300種成份不是完全被禁止使用，就是最低許可濃度比大多數國家低許多，且要求放寬的申請迄今均遭拒絕。相反地，在日本與美國，被管制的成份不超過30種，若如預期，食品藥物管理局採用歐盟全部禁用成分與最低濃度許可標準，卻又維持現行絕無例外的政策—即使是那些在歐盟已經被放寬的成份—那麼很多產品將無法引進台灣市場。
 - 產品資料檔案(PIF) - 食品藥物管理局正計畫建立一系列的PIF規定，此規定要求生產者提供許多技術性文件留廠備查，特別是針對產品安全、品質、與功能宣稱之佐證。食品藥物管理局欲結合歐盟與東協標準，建立出同類法規中全球最嚴格的規則。再者，食品藥物管理局對技術性文件的許多要求缺乏透明度與明確性，而是根據法規管理者的任意決定。因此，當被要求查核文件時，很多化粧品公司可能會陷入不合法規的高度風險，而面臨嚴格的處罰甚或需回收產品。美國與日本並沒有PIF制度，而台灣受限於市場規模，往往未能專為其準備技術性文件，導致並非所有在台的美國或日本公司都有能

力達到PIF要求，形成一個潛在的因技術而構成的貿易障礙議題。

- 強制性化粧品GMP - 食品藥物管理局採用ISO 22716做為台灣的化粧品自願性GMP，並規劃將其升格成為強制性化粧品GMP。在美國及日本，化粧品GMP是自願性的。雖然歐盟及東南亞國協(ASEAN)對化粧品GMP是一強制性的要求，但也都接受其他國家的GMP標準規範。食品藥物管理局只規劃、接受唯一標準，對由非歐盟及東南亞國協進口化粧品的業者而言，則可能會造成難以突破的技術性障礙。

綜上所述，我們強烈建議食品藥物管理局應避免制定「台灣特有」的法規，以免造成國際性公司在台灣難以生存，並進而可能造成台灣無法與國際間其他國家締結平等貿易協定。

- 2.) 明確規範化粧品廣告中之管理範圍 - 本委員會對於「更正廣告」已從化粧品衛生管理條例修法草案中刪除一事，衷心地表示感謝。但是，對於仍被保留下來之「商品下架」罰則，業者的廣告何時會被視為「情節重大之虛偽或誇大」，進而必須接受「商品下架」罰則的規範是不明確的。但我們覺得欣慰的是，食品藥物管理局已與地方主管機關溝通，此罰則應只在當業者之廣告有造成消費者身體安全之虞時才能適用。為使其透明、公開、清楚，建議將前述原則明訂於化粧品衛生管理條例修正草案中。
- 3.) 簡化含藥化粧品之審查登記程序 - 針對食品藥物管理局決定保留「含藥化粧品上市前之查驗登記」程序，委員會今年之建議與去年白皮書相同，建議主管機關重新考慮「含藥化粧品上市前之查驗登記」之必要性。同時，在化粧品管理條例相關修正實施之前，建議食品藥物管理局簡化查驗登記的審查程序，加速含藥化粧品審查流程，例如：(1). 免除繳交國外生產國家之市售證明；或(2). 針對如防曬產品等風險較低的產品，免除上市前的查驗登記等。
- 4.) 在新的化粧品法規架構下，牙膏/漱口水商品應被分別獨立考量：

政府擬將牙膏/漱口水變更為法規限制更為繁複之化粧品，勢必對業者造成相當大的不利衝擊。因牙膏及漱口水並未涉有安全性問題，任何合規性爭議將僅與技術層面相關，據此，委員會建議食品藥物管理署應採取下列措施以降低衝擊：

 - 提供較長的過渡期間 - 應給予至少五年以上的緩衝期以利牙膏及漱口水能完全融入化粧品法規。在新的化粧品法規架構下，業者將需要進行大幅度的產品標籤及可能的配方更改，但他們在化粧品衛生管理條例修正草案立法通過及相關的配套措施完成公告前，卻無法開始進行檢視。若產品配方必須變更，光是產品安定性測試就需要更長的前置期間。此問題對於自全球各地採購商品，且多個國家共用產品標籤及配方的跨國公司影響最為劇烈。
 - 以製造日期來決定市面上商品是否符合新制度 - 要管理在新法規生效前已於市面上流通之商品，顯已超越製造商及進口商之能力。而政府亦將發現，用製造日期做參考會更容易確保產品之合規。
 - 對牙膏及漱口水適用國際標準 - 委員會敦促食品藥物管理署採用國際上接受的產品標準，准許已被任何一個已開發市場(例如美國、歐盟或日本)接受或准用之物質。此外，我們亦建議食品藥物管理署能更改像是漱口水之產品歸類，以與國際慣例一致。例如，含cetylpyridinium chloride (CPC)成分的漱口水，在歐盟、東協及大陸係被歸類為化粧品且沒有限量規定，但目前在台灣則歸類為成藥。

- 維持目前一般牙膏得宣稱之詞句 - 委員會建議食品藥物管理署在牙膏得改歸類為化粧品之後，仍能維持目前牙膏得廣告宣稱之詞句。我們相信對於此規範現況的正式聲明，對避免產生牙膏相對於其他類型化粧品政策之混淆，將會是一個有效的方式。

建議七：刪除不必要的商品標示要求

2013年白皮書討論了各種不當或繁瑣的商品標示要求。關注重點可歸納為：

- 1). 一般商品仍然需要揭露詳細的製造商訊息，這種不必要的要求還是存在的。台灣政府並沒有權力稽核國外的製造商，本地消費者也少有可能撥打國際電話與非中文聽說之外國人士發問或投訴。相反的，進口商應該對進口的貨物擔負全部的責任，這在消費者保護法第9條即已明確規定。此外，由於許多供應商認為製造商的訊息是高度的商業機密，若堅持揭露此信息可能會導致提供更少的產品給本地的消費者。而一些產品類別，如服裝，紡織品，食品，並無要求製造商信息，因此，我們敦促經濟部以一致的邏輯考量，一般的商品也無需此項要求。
- 2). 一般商品的標籤上有著製造日期的要求並不確然適用於非容易腐壞之商品。某些類別 - 如服裝，紡織，玩具，文具和鞋 - 已豁免於此項之規定。本委員會要求這項豁免擴大到其他沒有保存期限考量之商品類別，例如紙製品，清潔用具，辦公用品，燈飾，家具，箱包，首飾等。
- 3). 由行政院環境保護署所設計的方形回收標誌仍然是一個台灣特例。委員會再次呼籲台灣能夠接受已經在國際上廣泛使用之回收符號，如歐盟的三角回收符號。為了此特殊的方形回收標誌而另行印製及貼標，不僅額外增加企業的負擔，更不符合“永續發展”的原則。

建議八：中國進口商品限制的開放

委員會留意到去年對於十一項管制商品有些進展。但仍然有多項來自於中國的食品與非食品項目受到管制，造成以全球供應鏈運作的跨國企業的困擾，同時也使得台灣消費者的商品選擇受到限制。委員會建議優先開放管制的商品品項詳列於下方表格。

| | CCC Code | 未開放號列 |
|---|-----------------|---|
| 1 | 7009.91.90.00-8 | 其他玻璃鏡子，未鑲框 |
| 2 | 7009.92.00.00-6 | 其他玻璃鏡，已鑲框 |
| 3 | 6302.21.00.00.8 | 棉製其他印花床上用織物製品 |
| 4 | 6302.22.00.00.7 | 人造纖維製其他印花床上用織物製品 |
| 5 | 5208.52.00.00.7 | 印花棉平紋梭織物，含棉重量在85%及以上，每平方公尺重量超過100公克，不超過200公克者 |
| 6 | 5208.59.90.00.1 | 其他印花棉梭織物，含棉重量在85%及以上，每平方公尺重量不超過200公克者 |
| 7 | 5209.51.00.00.7 | 印花棉平紋梭織物，含棉重量在85%及以上，每平方公尺重量超過200公克者 |
| 8 | 5210.21.00.00.1 | 漂白棉平紋梭織物，含棉重量在85%以下，主要或單獨與人造纖維混製，每平方公尺重量不超過200公克者 |
| 9 | 7318.16.00.00.5 | 鋼鐵螺絲帽 |

| | | |
|----|-----------------|---|
| 10 | 6804.30.00.00.0 | 手用磨利、拋光石 |
| 11 | 6910.90.00.00.8 | 其他陶製之洩水槽、臉盆、臉盆座、浴缸、洗滌盆、抽水馬桶、沖洗槽、便器及類似衛生裝置（瓷製者列入第691010·00款） |
| 12 | 1901.20.00.00-4 | 供製作第1905節烘製食品用之混合料及麵糰 |
| 13 | 0705.11.00.00-5 | 結球萵苣，生鮮或冷藏 |
| 14 | 2103.20.00.00-8 | 番茄醬及其他番茄調味醬 |
| 15 | 1905.31.00.00-7 | 甜餅乾 |
| 16 | 2004.10.11.00-7 | 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 |
| 17 | 2004.10.19.00-1 | 酸漬除外之調製或保藏其他馬鈴薯，冷凍 |
| | CCC Code | 有條件開放號列 |
| 1 | 6115.95.00.00-6 | 棉製長襪、短襪及其他襪，針織或鉤針織者 |
| 2 | 6203.49.21.00-1 | 再生纖維製男用或男童用長褲、膝褲及短褲 |
| 3 | 6204.69.21.00-5 | 再生纖維製女用或女童用長褲、膝褲及短褲 |
| 4 | 6207.99.20.00-7 | 人造纖維製男用或男童用汗衫及其他背心、浴袍、晨衣及類似品 |
| 5 | 6208.92.00.00-7 | 人造纖維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 |
| 6 | 6208.99.90.00-1 | 其他紡織材料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 |
| 7 | 6211.49.90.00-7 | 其他紡織材料製其他女用或女童用衣服 |
| 8 | 7013.37.00.00-8 | 陶瓷玻璃器除外之其他玻璃杯 |
| 9 | 7007.19.00.00.8 | 其他強化安全玻璃 |
| 12 | 4811.59.00.00.1 | 其他以塑膠（接著劑除外）塗佈、浸漬或覆面之紙及紙板，第4803、4809、4810節所述者除外 |
| 13 | 2530.90.99.90.9 | 其它礦物質 |
| 14 | 8301.40.00.00.2 | 其他鎖，卑金屬製 |

永續發展委員會

永續發展委員會在此感謝台灣政府對我們於2013年度台灣白皮書的建議給予的正面回應，然而，我們亦同時對於台灣政府在能源政策相關議題的緩慢進程感到遺憾。我們仍然期待台灣政府能更積極加速與能源政策相關方案與必要計畫的執行速度，以期能因應未來的挑戰。目前國際間已具備許多與能源事務相關的專業能力與實質經驗，我們在此呼籲台灣政府能採用這些已然成熟的專業資源，協助台灣政府制定與執行兼顧經濟發展、環境影響與社會期望的能源政策。建議台灣政府應該加強節能政策的執行，包含採用燃油效率高的車輛以逐步汰換老舊車輛，更重視再生能源的實質發展，並盡可能增加再生能源在總體能源使用量的比例。

其次，本委員會針對環保署曾對本會承諾將在2013年把新修正、認同國際責任林木管理機構認證原生紙漿面紙之環保標章，至少再延至一項以上家紙品項（餐巾品項），但卻進度遲滯

一事感到失望，我們懇切地期待環保署在革新環保標章作為上速採取廣被先進國家採納的雙軌制，同時認同經國際負責任林木管理機構認證之原生紙漿與再生紙漿產品。

建議一：持續將新修正的原生紙漿面紙環保標章標準，延伸至更廣泛地家庭用紙產品領域。

2012年，環保署修訂環保標章規範，將獲得國際具公信力森林驗證機構所認證的原生紙漿面紙產品納入現行環保標章系統，2013年環保署曾承諾將進一步把新修訂之環保標章規範延伸至原生紙漿餐巾紙產品類別，但迄今並未有具體作為。

• **國際森林走上永續認證潮流 回收紙已非單一環保選項**

如同2013年白皮書中所陳述，無論就永續發展或經濟成長面向來看，天然資源的可再生性都變得益發重要。使用可回收物質並非降低家用紙品環境影響的唯一途徑。根據產品生命週期評估，再生紙纖維製成之家用紙品其生產過程中因回收與脫墨程序所產生的碳足跡，比原生紙漿製成之家用紙產品要來的高。有鑑於此，關注產品生命週期，能從源頭到終點監督永續性的負責任林木管理系統與產銷監管鍊認證，已逐漸在全球各地獲得大力推廣。

• **木漿纖維無法毫無止盡回收利用 原生紙漿加入製造流程實屬必要**

由於木漿纖維無法達到毫無止盡地回收利用，因此持續讓原生紙漿加入生產製造流程中是絕對必要的，再者，根據原生紙漿屬性與不同製造紙品的類別差異，木漿纖維通常在重覆使用5至7次後便會逐漸耗損，因此原生紙漿必須持續把注至生產製造流程中，以填補因永久儲存性文件、木漿纖維自然損耗以及基於衛生考量而無法再回收使用等因素所造成的回收再生紙漿缺口。一項國際研究報告即客觀指出，當我們斷絕使用任何原生紙漿來源而只想仰賴回收紙張或再生紙漿時，嚴重的紙漿供給短缺問題將可能在短短數日內發生。

• **台灣廢紙回收率高 卻未能極大化使用效率與效益**

根據台灣紙業同業公會2013年報統計，儘管台灣地區的廢紙回收率已高達67.2%，但台灣2012年仍因回收量不敷使用而自國外進口83萬立方公噸的廢紙漿，從全方位環保觀點來看，大費周章地自國外進口回收廢紙用以製造家用紙品是極無資源使用效率的，因為以廢紙漿製成家用紙品後，基於衛生考量，其纖維即無法再回收利用。倘若我們把再生回收紙或回收纖維拿來製成非家用紙製品，例如包裝紙、書本、包裝紙箱等，我們將可極大化纖維重覆使用效益高達5至7回，在資源有限的情況下創造紙漿纖維可重複使用的最大效益。

• **台灣森林禁伐 落後環保紙品認定規範卻成鄰國熱帶雨林破壞幫兇?**

台灣對自身的森林資源有相當嚴格的禁伐規範，百分之九十九的紙漿纖維幾乎都是進口而來，但當愈來愈多已開發國家/地區均實施嚴格法令，包括美國雷斯法案、歐盟木材法規(Forest Law Enforcement, Governance and Trade)等，以杜絕所有非法林木與紙漿纖維產品進入國土之際，我國針對進口紙漿纖維是否來自永續認證與負責任管理的森林卻毫無規範，據估計，24%-31%台灣進口的紙漿纖維係來自於未經永續森林管理體系認證的森林，其中尤以馬來西亞、緬甸、印尼等熱帶雨林嚴重破壞的國家為大宗。設若原生紙漿環保標章系統僅僅侷限在單一面紙品項，那麼廣大消費者將無法區分永續認證紙品與毀林紙漿製成品。

加速原生紙漿紙品環保認證 追上國際永續發展潮流

緣此，有鑑於愈來愈多已發展國家與國際組織，包括澳洲、

紐西蘭與國際綠建築標章等，皆已將FSC國際森林委員會驗證標準等同視為其環保標章標準，**本委員會懇切建議環保署應進一步將新修訂之原生紙漿面紙產品綠色環保標章規範，延伸擴及至所有獲得國際具公信力永續森林認證系統驗證的家庭用紙產品。**

建議二：在汽車市場加速導入少污染、環保及安全的車輛

在2013年，已在台註冊的7,367,000車輛中，3,804,000輛已有超過10年車齡。換句話說，公路上有超過了半數的汽車是屬於低燃油效率，高排碳量的老舊車型。自2000年至2013年，因環保局強制執行高燃油效能的法規，台灣車輛的平均燃油效能提高了30%，因此，我們建議重點淘汰超過10年的高齡車輛，以鼓勵增加環保節能車輛。

目前，電動車和汽油電動混合動力汽車只是過渡技術。我們建議獎勵任何低排放和高燃油效率的車輛，特別是那些符合歐洲五期甚至未來六期廢氣排放標準，並能與電動汽車每公里碳排放量相匹配的車。

我們強烈敦促各政府相關與執法部門包括經濟部、交通部以及環保署等單位，能聯合一致提出積極的計劃，以達成在未來10年中以新節能車取代老舊車輛。

例如，交通部應考慮對於使用中老舊車輛逐年徵收額外的牌照稅及燃料稅。此外，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。

稅務委員會

財政部近期推動財政健全方案，其中包含一系列稅制改革以增加國家稅收。然由於部分之計畫可能對於現行稅制有重大衝擊，財政部之計畫不該只經由政府部門內部推動，更該多方聽取可能受影響的社會大眾意見，包含商業界。財政健全方案中的許多部份對於投資台灣的成本有重大影響，將可能降低潛在投資人的投資意願。

委員會臚列以下幾項會員所關心之議題，我們在此呼籲財政部及其他政府機關關心這些議題，藉以降低投資台灣之成本並刺激經濟成長。稅收可以經由經濟成長而增加，不僅只有提高稅率或嚴訂法規一途。委員會期待接下來數個月可與稅務機關積極且有成效地討論這些議題。

建議一：重新考量可扣抵稅之修訂

在現行的稅法裡，若營利事業當年度之稅後（17%營利事業所得稅）盈餘未在次年底前分配，應就該未分配盈餘加徵10%未分配盈餘稅。10%未分配盈餘稅和其它公司支付的所得稅一樣可計入公司之股東可扣抵稅額帳戶（ICA）。公司股東於盈餘分配時，可將所獲配股利之可扣抵稅額，計入公司股東之ICA帳戶。對於非台灣居民股東，台灣公司於盈餘分配時可將非台灣居民股東所分配之可扣抵稅額扣抵應扣繳之稅款。這是兩稅合一制度之立法意旨中就同一筆所得不應於公司及股東階段都加以課稅之原則。

日前台灣政府擬修改法令，若營利事業當年度之盈餘未在次年底前分配，未來分配時，股東可使用之股東可扣抵稅額將降低50%。在目前的法規裡，相較於台灣居民股東，外國投資者僅有相當有限（即10%未分配盈餘稅）的可扣抵稅額。這次的修法，將更進一步減少外國投資者的可扣抵稅額。這將對台灣投資環境產生不利的影響。

有鑑於此修法將大幅縮小外國投資者的可扣抵稅，稅務委員會敦請政府在擬定新規定的草案時能夠重新評估此修法對台灣投資環境的影響。此外，若修法施行時，政府應重新考量此修法是否可以僅用在未來的盈餘上，而非非法令實施前過去年度之保留盈餘上，以降低影響程度。

建議二：就區域服務費之爭議應提供更明確之指示

在目前全球化之商業環境為了提升競爭力及增進營運效率，跨國企業(MNCs)通常會以將資源集中在某地區然後再分配資源及協助予集團內之成員。該跨國企業通常會與其全球關係企業(子公司或分公司)間簽訂管理服務協議，提供諸如法律、會計、財務管理、風險管理及資訊系統維持等服務，而該關係企業會依據合約支付區域性之服務費。

區域服務費用之收取主要包括兩項稅務議題：1.就所支付之地區子公司或分公司，是否得作為稅前費用扣除。2.支付時是否須扣繳稅款。

關於是否當作費用扣除之議題，稽徵機關通常會基於下列理由而否准全部區域服務費之認列：

- (1)服務之提供與酬金之給付間應為一對一或直接對應之關係
- (2)雙方之服務協議中並無定明管理費用如何計算。
- (3)費用分攤之方法不適當，如以收入為分攤基礎。
- (4)並無相關證明文件證明台灣公司有從該服務得到相對之獲益。

雖稽徵機關有權審視收取服務費用與分攤方法之合理性，及提供服務之相關證明文件，惟實務上，在部分否准認列服務費用之案例中，須俟稽徵機關做出核定之課稅處分，納稅義務人不服而據以提起行政救濟時，才有機會提出反駁。再者，對於跨國企業而言，通常難以證明服務之提供與酬金之給付間有直接因果關係，且此亦與國際上實務之作法有所背離，區域總部之營運就跨國企業而言是很普遍的情形。

為避免日後之爭執，我們希望財政部能夠發佈較明確之指示，關於應提供何等文件才足以作為支付區域服務費用之佐證。上開文件應包括，諸如載有詳細費用計算之服務合約、提供服務者所開立之發票及證明有提供各種服務之文件等。如此一來，跨國企業亦能確保此一一致性之方式能在現在或未來確實被採納。

至於扣繳稅款之議題，因大部分的區域服務費用其本質上為成本之分攤，是否須扣繳稅款，容有疑問。依中華民國來源所得認定原則第14條之意旨，僅有研發相關成本費用之支付時無須扣繳，實務上，亦僅有此情形無須扣繳。若區域服務費用之收取本質上為成本之分攤，並非所得，該費用之支付亦無庸扣繳才是。另一困惑點亦為何僅限於研發相關費用之支付無須扣繳？我們希望財政部能重新檢視區域服務費用之扣繳爭議，以促成日後稅法之修正。

建議三：修正外商「境內加工境外轉售」交易模式之課稅方式

半導體產業之榮枯對台灣經濟環境的影響佔有舉足輕重之地位。近年來，政府雖鼓勵產業升級並發展自有品牌，惟目前臺灣半導體產業在產業鏈扮演之角色主要仍以受託加工為主流。

換言之，國外半導體設計廠商將其重要元件（如晶圓片等）提供予臺灣代工廠商進行加工、測試、封裝等程序後，再指示其將成品轉運至國外半導體廠商位於海外之客戶，即一般所稱「境內加工境外轉售」模式。雖現行解釋函令對「境內加工境外轉售」模式提供些許免稅空間，惟前提是該貨物須在國外產製，且於臺灣境內未變更該貨物之性質、形狀、功能、顏色等。此外，「自由貿易港區設置管理條例」雖亦給予國外廠商免稅優惠，然國外廠商在港區內從事之活動須侷限於儲存及簡易加工。因晶圓製造、測試、封裝等活動不僅改變貨物本質，

在臺加工程序亦遠大於儲存及簡易加工之範疇，故前述免稅優惠在實務上對國外半導體廠商形同虛設，亦未能有效解決「境內加工境外轉售」模式之課稅爭議。

就目前財政部之見解，若國外半導體廠商於該貨物運離臺灣前，已接獲訂單、確定買方或交易條件等，則該筆貨物於臺灣境內業已完成銷售行為，即須就在臺委託加工活動衍生之附加價值認列臺灣來源所得，予以課稅。然而，半導體產業鏈現行一般交易模式，係以交易條件確認後，方由國外半導體廠商委託臺灣代工廠商進行後續加工事宜。因此，財政部目前之見解，與半導體業一般慣例大相逕庭。

另，依租稅協定精神，若臺灣代工廠商僅為國外半導體廠商從事儲存、運送行為，該國外半導體廠商在臺應無常設機構，而得以適用營業利潤免稅。惟該免稅適用須事前申請核准，且在臺營業行為應不得包括加工、測試、封裝等活動。然臺灣代工廠商於全球半導體供應鏈之核心價值，在提供晶圓加工、封裝、測試等高階活動，而非僅為國外廠商進行貨物運儲等不具附加價值、且可輕易被取代之功能。此外，考量臺灣目前僅與二十五個國家（目前臺美並未簽訂租稅協定）簽訂全面性租稅協定，故受惠之國外半導體廠商寥寥可數。

況且，委託加工活動衍生之附加價值，已部份轉化為臺灣代工廠商之加工收入，並納入其課稅所得進行年度營利事業所得稅結算申報。如財政部認定國外半導體廠商應另行課稅，恐導致同一營業行為於國內代工廠商及國外半導體廠商階段重複課稅。

為降低上述稅務風險及不確定性，國外半導體廠商目前大多採用下列解決途徑：

- 一、將高階晶圓代工活動轉移至其他國家，並降低在臺進行代工活動之比重。此業務轉移策略勢必對臺灣半導體產業立即造成負面衝擊。
- 二、委託臺灣代工廠商將成品先行運至國外半導體廠商位於境外(如香港、新加坡等地)之發貨倉庫存放後，再運送至最終客戶手上，以規避被財政部視為在臺灣境內完成銷貨交易。然此轉運模式，勢將增加國外半導體廠商之運送倉儲成本。
- 三、簡化臺灣代工廠商之功能，使僅限於「儲存及簡易加工」。如此以來，臺灣代工廠商將從技術密集代工活動，轉化為勞力密集代工活動，勢將矮化臺灣半導體產業在全球供應鏈之位階，甚至淪為被其他工資低廉之開發中或未開發國家取代之窘境。

因此，無論國外半導體廠商為降低稅務風險採取何種解決途徑，將對臺灣長期之經濟發展造成難以彌補之損害。眾所皆知，半導體產業為現階段臺灣之經濟命脈，然而目前對國外半導體廠商在臺灣進行「境內加工境外轉售」之稅務稽徵方式，恐將削減臺灣在國際舞臺之競爭力，抑制其經濟發展，更難以達成政府目前致力將臺灣打造為全球營運中心(透過自由經濟示範區)之長期願景。因此，本委員會懇請臺灣政府能重新檢視「境內加工境外轉售」交易模式之課稅方式，為國外半導體廠商所面臨之稅務困境解套。

建議四：將非居住者取得中華民國來源所得適用之扣繳稅率降至低於20%

營利事業所得稅已在2010年由25%調降至17%，然而扣繳稅率依舊為20%。外國營利事業與國內營利事業不同，其扣繳稅款為最終稅款，且因無法扣除成本費用的緣故，外國營利事業負擔的實質稅率遠高於國內營利事業。在從事相同業務的情況下，外國營利事業有或沒有營業代理人將使其有截然不同的租稅負擔，無營業代理人時稅負為收入總額之20%，有營業代理人時稅負則為收入淨額的17%。

下表為亞太地區主要國家2014年之營利事業所得稅率及扣繳稅率（暫不考慮租稅協定稅率）：

| 國家 | 對非居住者之扣繳稅率 | | | | | 扣繳稅率低於或等於營所稅稅率（是/否） |
|------|------------|--------|--------|---------------------|--------|---------------------|
| | 營所稅稅率 | 股利 | 利息 | 權利金 | 服務報酬 | |
| 台灣 | 17% | 20% | 20% | 20% | 20% | 否 |
| 香港 | 16.5% | 無 | 無 | 4.95% 或 16.5% | 無 | 是 |
| 新加坡 | 17% | 無 | 15% | 10% | 17% | 是 |
| 韓國 | 10%-22% | 20% | 20% | 20% | 20% | 是 |
| 中國大陸 | 25% | 10% | 10% | 10% | 15% | 是 |
| 日本 | 25.5% | 20.42% | 20.42% | 20.42% | 20.42% | 是 |
| 泰國 | 20% | 10% | 15% | 15% | 15% | 是 |
| 馬來西亞 | 25% | 無 | 15% | 10% | 10% | 是 |
| 緬甸 | 25% | 無 | 15% | 20% | 3.5% | 是 |

台灣的扣繳稅率高於營利事業所得稅率，此稅務結構與亞太地區主要國家明顯不同。而且台灣的扣繳稅率也高於其他亞太地區國家，導致外國投資者來台投資的意願降低。此外，在一些商業談判的結果，例如權利金或是技術服務報酬，多半是台灣公司而非外國公司需要負擔扣繳稅款。即便外國公司願意負擔扣繳稅款，但該扣繳稅款實質上也可能已反映在授權費或是技術服務費的價款中。在這樣的狀況下，高扣繳稅款導致台灣企業需要負擔更高的經營成本。

在2013美國商會白皮書辦理情形回覆中，財政部表示降低扣繳稅率將減少台灣與其他國家協商租稅協定時之租稅談判籌碼，反觀香港與新加坡雖為低扣繳率地區/國家但卻仍擁有完整租稅協定網絡。委員會很感激財政部於推動簽訂租稅協定的努力，但這實不該成為拒絕降低外國投資人扣繳稅率的理由。

台灣多年來皆致力推動成為亞太營運中心，但其中一個阻礙即為台灣稅務政策與國際標準實務相異，且稅務結構問題亦成為台灣難以維持國際競爭力的原因之一。扣繳稅率的差異這個議題已年復一年於台灣白皮書中提出，但卻尚未被正面回覆，當局應正視處理此重要問題，刻不容緩。

科技委員會

科技產品與服務是台灣經濟的基石。要使科技持續作為經濟的主要驅動者，台灣需要拓展技能，增強研發能力，以提昇其在科技價值鏈中之地位。有鑑於台灣在個人電腦、消費性電子產品代工、及液晶面板製造向來所有的競爭優勢已受到挑戰，調整策略重心是刻不容緩的。

鑒於台灣廣大的技術生態系統、受到良好教育的勞工與健全的金融體系，台灣佔據極佳的位置，能夠從價值鏈的許多部份獲益。政府透過經濟部與工業研究院正積極以增加產業之附加價值為政策目標，其中相當重要的一環是創造鼓勵投資一尤其是新創事業一之法令環境，另一個則是修改法規以促進跨國企業在台灣投資，例如設立區域研發總部或參與當地標案。最後，我們對工研院為提升台灣發展更創新、附加價值更高產品的能力，在種子科技項目中所投入的研發表示肯定。

本委員會在今年提出的白皮書中持續關注上述議題。我們

期待政府能廣納我們的建議，同時也感謝政府當局於過去一年中，在發展創新導向的經濟上已有所進展。

建議一：允許動態頻譜接取，例如開放使用閒置的電視頻道，以增進頻譜利用及效率

受到消費性產品、人類溝通方式、以及機器對機器通訊與物聯網的影響，無線數據以爆炸性的速度增長且不斷提高。這樣的增長已經對支持各種無線通訊方式的無線電頻譜資源造成沉重的負擔，以更有效的方法來管理和使用頻譜資源成為當務之急。加速採用頻譜共享技術和政策成為世界性之明顯趨勢。其中方式之一就是開放更多的頻譜，比如閒置的電視廣播頻道（TV White Space），給予“無需頻譜執照”（unlicensed or license-exempt）的共享應用。

正如交通部對去年白皮書建言的回應所言，頻譜屬國家稀有資源。在現行的頻譜管理與運用模式下，頻譜資源的分配往往是靜態的劃分，並在很長的時間內難以變動。過去科技進步相對和緩而且市場前景也容易預測的情況下，這種模式運行無礙。然而，這種傳統的靜態頻譜配置方式在今日已經趕不上科技的快速發展以及市場環境的變遷，造成了某些頻道過度擁塞，而大部分頻譜則嚴重地荒置。

動態頻譜接取（DSA）提供了另一種政策選項，其創新的技術容許主管機關可針對閒置的頻譜進行立即且有效的運用，同時保留彈性以利日後分配或其他特定用途的可能。與其為了未來特定用途而先把頻譜資源“預留”下來，造成閒置的頻譜長期荒置，我們建議政府允許鼓勵動態頻譜接取政策和技術，如空白頻譜資料庫及感知無線電，以善用閒置的頻譜資源。總的來說，動態頻譜接取的目的是要大幅增進頻譜的利用與效率，將稀有的頻譜轉化為豐富的資源，進而釋出革新產品以及具有價值的發明。

除了美國已經立法允許無需證照可接取閒置的電視頻譜，不少國家也積極研擬法規朝此方向發展，包括英國、加拿大和新加坡，預計都會在今年年底前公布相關規範。英國電信監管機構Ofcom正透過進行一系列的試驗以實測去年底公布的法規草案可行性；新加坡資訊通信發展管理局（IDA）2013年6月就動態頻譜接取公開徵詢各界意見，今年年底前可望公布諮商結論。同時，新加坡閒置頻譜先導試驗工作群（SWSPG）則持續與來自公、民營部門的客戶合作，擴增商業性的試驗項目。此外，積極進行商業試驗的其他亞太國家還包括中國大陸、日本、韓國、印度、菲律賓及不丹。不久前在杜拜舉行的國際電信聯盟（ITU）世界電信發展大會，有來自137會員國、82個企業部門的1,300多位與會者參加，會後通過「杜拜行動計畫」裡，也納入了推廣動態頻譜接取的動議。

台灣擁有強大的半導體、零組件、系統和設備製造產能。在爆炸性增長的全球無線通信市場中，台灣已經享有巨大的商業成功。在這樣堅強的基礎之上，台灣將有機會在DSA技術所帶來的新一波無線創新和機遇中，獲得更大的躍升。為了要促進本地活躍的生態系統，政府扮演著一個極重要的角色。積極的政策創新和扶持將可使台灣定位為全球性的動態頻譜接取之無線電與設備的領先市場與技術供應商。一些具體的行動建議包含：

- 1). 為本地公司提供一個扶持性的政策和法規環境，讓本地公司可以透過無需頻譜執照的頻譜資源去創新無線科技。透過提供更多可利用的無執照頻譜以降低市場准入門檻，允許小型創業公司去追求創新的解決方案，而無需承擔鉅額的頻譜許可費。電視數位化的發展提供了一個絕佳的機會以頻譜共享和無需執照（shared and unlicensed）的方式將UHF電視頻段（470-790MHz）的良好傳播特性充分應用於開拓新一代的無線寬頻服務上。
- 2). 把政府研究發展資金導向於動態頻譜接取技術的研究。政

府研發機構如資策會和工研院已經在閒置頻譜的相關科技方面做了相當的研究，可鼓勵該類機構進一步的建立其能力，以及技轉其研究成果給民間企業做商業性開發。

- 3) 授予試用許可證和科專資金進行商業試驗，並開發應用在智能城市（例如防救災）和數位包容（連接鄉村和偏遠地區）等領域。政府在桃園縣復興鄉的所進行的試驗，已證明使用閒置的電視頻道對偏遠地區的聯繫極為有效，目前該項目的重點在證明此概念與技術之可行性，我們建議下一步擴大探索商業模式，並藉由適當的政策鼓勵，拉高規模配置。

建議二：修正政府資訊服務採購規範，營造有利創新之公平環境

隨著資訊科技暨行動應用高度普及，政府機關資訊規劃、建置與維護之實施品質對政府治理績效與民眾服務滿意度之重要性愈來愈高；加諸全球化與國際化浪潮下，政府積極投入參與區域型經濟合作，與國際接軌益形關鍵。建請政府採購資訊服務適切定義廠商損害賠償與服務績效違約金之範圍及限制，且廠商建議書宜視個案之性質定其著作權歸屬，使優質廠商樂於投入政府採購，以促進良性市場競爭、提昇政府採購水平，營造有利創新之環境。

現行(101.10.02版)資訊服務採購契約範本第十五條則載明「契約訂定之損害賠償金額上限為〇〇〇元(由機關於招標時載明；未載明者，為實際損害之金額)」。實務上機關多未訂定損害賠償金額上限；契約範本亦未明確定義實際損害金額上限依契約總價訂定之。另服務績效違約金亦未訂定其上限。

觀察國外作法，美國FAR、德國VOB、日本及歐盟的相關法律雖未明確要求政府採購契約應訂定損害賠償上限，但透過其他規定的運作，在實務上有可能達到與責任限制類似的效果。例如歐盟財物採購規則規定，若投標廠商在決標後有重大違反契約情事，機關得處以懲罰，惟金額不得超過相關契約的金額。在契約範本部分，FIDIC規定一方對他方所受之衍生性損失，原則上不自賠償之責；除例外規定外，原則上廠商對業主的總責任不應超過特殊條件中規定的限額，或契約金額。ENAA規定，廠商並不承擔業主可能遭受之衍生性損失。

是以，衡盱台灣現行政府機關採購契約使用實務，並參考主要國家法令及其他規定運作，損害賠償上限或服務績效違約金毋須規定於法律之位階，建請透過資訊服務採購契約範本之修正達到規範上限之效果，即以契約金額為損害賠償限額，且不應包含其他衍生性損失之賠償。另損害賠償有上限而服務績效違約金卻無上限，與舉重明輕之法理相悖；再者，資訊服務績效違約金等同工程契約之品質缺失違約金，參照公共工程技術服務契約範本訂有上限，資訊服務契約範本卻付之闕如，諒應就服務績效違約金訂定上限，以符公平原則。期能與先進國家同步，具體實踐公共工程委員會「推動政府採購契約賠償責任之合理化與透明化」之承諾，提昇政府效能。

現行(101.10.02版)資訊服務採購契約範本第十六條第(三)項第3款載明「廠商依本契約約定向機關提出之各項建議書經機關核定後，其著作權屬機關所有」，未視個案屬性，一律規定廠商建議書著作權屬機關所有。

按廠商之建議書中常常包括了投標廠商業務上核心競爭力之資訊和know-how等成果，建議書之著作權若一律歸屬於採購機關，反而導致無法供第三方使用機會，並阻礙智慧財產之流通與社會之進步。是以，宜由採購機關依資訊服務採購契約第十六條第(三)項第6款之選項，視採購個案之屬性定其歸屬。

建議三：將IT的主要支出從硬體轉移到軟體與服務

2013年台灣綜合研究院的研究指出一些關於台灣相對於鄰國在軟體與電腦服務花費上的具體特質如下：

- 於2003年至2013年間，台灣資訊投資平均年成長率為5.89%，低於亞太地區平均之8.57%
- 軟體與服務全球平均占資訊整體支出70.54%，台灣卻僅佔48.79%。
- 於2003年至2013年間，台灣在軟體與服務平均成長率為6.18%，相較低於鄰國如新加坡7.35%、南韓8.80%、馬來西亞10.24%、與越南12.2%。
- 我國製造業與服務業在資訊上之投資明顯低於其他已開發國家，尤其南韓製造業在資訊投資比率為我國之3倍，其服務業亦為我國之3.81倍。
- 台灣整體花費在軟體與服務站GDP比例僅為0.87%，遠低於其他已開發國家。如新加坡之0.92%、南韓之1.46%、美國之1.56%、與日本之1.63%。

從上述數據觀察，台灣在資訊上重硬輕軟之投資方向，將無法掌握資訊核心價值，不利台灣長期發展與競爭力。因此我們提出下列建議：

- 一、台灣轉型為知識與創新經濟，必須將資訊定位為國家策略性基礎建設，並將資通訊之應用納入所有國家重大經濟建設計畫。
- 二、建立政府首長改變重硬輕軟機制，大幅提升軟體與服務占整體資訊投資比例。
- 三、比照南韓，訂定明確資訊應用與產值目標。

建議四：創造一個適合新創事業發展的法規環境

當新世代的科技以及如行動通訊、電子付款解決方案、分散式平台與服務、雲端計算等軟體崛起之際，台灣有成為亞洲領導者，因此台灣社會應當營造適合新創企業蓬勃發展的環境，反映出對嶄新科技創造力的培育。然而，這樣的環境卻尚未形成，因為台灣目前有關新創企業的法律與法規環境，落後許多其他如香港和新加坡等地的司法系統。政府沒有展現應有的領導力，制定良好的措施與政策，使台灣的企業得以和其他的區域性競爭對手抗衡。

台灣在科技領域上的企業獲利與影響力正在縮減，於此之際南韓的手機品牌卻席捲全台，而中國的品牌如小米，也同樣蓄勢待發。中國與南韓也正全力進攻5G網路測試，可望為大量數據資料的傳輸創下紀錄，在資訊傳輸上比起台灣提早好幾年鋪路。台灣落後的趨勢將無法挽回，除非能立即將精力與焦點投注在鼓勵與發展下一世代的領先科技上。政府應鼓勵台灣人民，同時提供適當的環境與工具，使其得以發展其創造力與才能。

新創企業面臨許多挑戰，這些企業可能難以提升或維持原先已發展出的國際經驗與專業。新創企業必須儘早佈局，而國外資金和人才引入的困難則阻礙了企業的發展。

雖然美國商會很高興看到經濟部願意聆聽我們的建議，但我們依然看到有太多外資投資的障礙威脅台灣新創企業的形成，同時支持企業發展所需的外籍人才也難以引入。如前所述，這樣的情況無法反映出現階段潛在的投資環境。

具體建議如下：

1. 在核准程序的法規上仍需努力，才能排除外資投資新創企業的障礙。儘管政府決定撤銷外資投資金額500萬美元或以下的計畫案需提交申請書的規定似乎有所幫助，但決議總未能成形。外交部一再承諾將簡化法規或審核的程序，但仍無法與新創企業生存需仰賴的迅速機敏之政府領導力達成一致。
2. 新創企業成立兩年後若無法獲取利潤，任職的外籍經理人不應因此而失去工作許可權。如前所述，新創企業的股東瞭解要使一家科技公司獲利可能需要一段時間，而在此重要時期這些股東願意資助公司的營運。

3.尚未有任何便捷引進外籍人才的具體計畫，目前台灣的實習體制使新創企業幾乎不可能僱用實習人員。雖然有許多外籍人士來台可免簽證，但卻無法在新創企業工作。就短期參與新創企業的外籍專業人士而言，申請工作證與居留的書面程序往往過於繁複耗時。新創企業的簽證將是有效解決方式，得以網羅外籍人才並確保這些人士有貢獻台灣的權利。

電信及媒體委員會

電信及媒體委員會感謝國家通訊傳播委員會（NCC）與交通部（MOTC）在支持發展電信與媒體產業方面所做出的努力，我們尤為樂見台灣政府於2013年完成行動寬頻業者徵選及發照方面的成就。我們相信此政策將確保全國行動寬頻網路的普及，並有助於快速發展創新高效率的通訊技術和服務。

以下我們將從產業的角度，針對如何進一步提升這股趨勢提出建言。我們期望未來幾年能藉由這些議題延續與主管機關之間的交流。

建議一：持續改善4G 環境，增進業者與消費者雙方的利益。

用於無線數據通訊的 LTE（Long-term Evolution，長程演進技術）標準，已成為全球 4G 行動網路的公認標準。據全球行動供應商協會（GSA）在 2014 年 5 月提出的數據，目前在 104 國裡已有 288 家業者正式商轉 LTE 技術。

委員會感謝台灣的主管機關從討論階段到規畫與執行，主動並有效地指導 4G 網路發展。為建立一個長期健全的 4G 網路基礎，我們提出以下事項，以供政府單位參考：

- 1). 確保有效利用珍貴的頻譜資源。台灣在去年分配 APT700 頻譜與重新分配 GSM 頻譜，對發展成為真正的行動寬頻社會向前邁進了一大步。委員會因 NCC 公布分配 2.6GHz 頻譜供 LTE 使用一事受到莫大的鼓舞，但同時也對相關狀態和時程的不確定感到疑慮。頻譜是一項珍貴的資源，需要有效規畫以善加利用。我們建議 NCC 能在 2014 年對於 2.6GHz 頻譜提出明確的規畫和時間表，以確保無線寬頻聯盟（WBA）與 LTE 業者對於日後發展有清楚的規劃。此外，委員會並建議 NCC 每年公布台灣使用頻譜的計畫，包括接下來三到五年的可用頻譜及分配時間表，使台灣的電信業者能針對分配到的頻譜準備最有效的規劃利用。
- 2). 確保網路基礎建設的服務品質。由於 3G 網路使用流量的飛快成長，已出現消費者要求提高頻寬和速度的需求。隨著目前正在部署的 LTE 網路，及後續將隨之進行的擴建，台灣用戶將需要比 3G 網路更大的寬頻吞吐量。因此，對於基地台的需求更勝以往。為避免日後出現網路塞車的情況，業者將需要政府的主動協助和支持，以獲得足夠的基地台架設站點。委員會在此請求 NCC 加快腳步且進一步簡化無線電設備進口和新基地台站點審核過程。這個解套的動作對於促進建設異質網路所需的 Small Cell（小型基地台）設施尤為重要，讓服務供應商能快速靈活地部署更高的網路容量和處理能力。這些建議的行動將進一步提升台灣用戶的使用經驗品質，加速行動寬頻網路普及所帶來的正向經濟成長表現。

建議二：促請立法院加速審查衛星廣播電視法修正草案，以簡化衛星頻道節目供應事業之重複申報作業。

NCC 依衛星廣播電視法（以下稱「衛廣法」）第 29 條規定；於每年 4 月及 10 月要求頻道申報戶數，然鑑於衛星頻道節目供應事業

及他類頻道節目供應事業僅係將節目或廣告傳送至供公眾收視聽之平臺，並未直接向訂戶收取費用，衛廣法修正草案已修改為「直播衛星廣播電視服務事業及經營直播衛星廣播電視服務之境外衛星廣播電視事業分公司應與訂戶訂立書面契約。」由於現行衛廣法第 29 條之規範實與實際運作狀況有違，將促請立法院加速審查衛星廣播電視法修正草案。

建議三：衛星頻道節目供應事業之營業機密資料應予尊重

2014 年 3 月，NCC 即以「為健全產業秩序及確保消費者收視權益」，而依衛廣法第 32 條及第 42 條規定「節目供應者無正當理由，不得對有線廣播電視系統經營者（包括有線電視節目播送系統）或服務經營者給予差別待遇」、「主管機關得派員攜帶證明文件，對衛星廣播電視事業或境外衛星廣播電視事業分公司、代理商實施檢查，並得要求就其設施及本法規定事項提出報告、資料或為其他配合措施，並得扣押違反本法規定之資料或物品。對於前項之要求、檢查或扣押，不得規避、妨害或拒絕。…」而要求頻道業者提供具高度商業機密文件，即與各播出平台之頻道授權合約（含頻道名稱、播放平台、授權平台、授權條件及授權費用等）。

我們認為上述條文係適用於特定且明確之調查事項，惟 NCC 本次調查並未說明具體調查原因，亦未說明所調查事項與待證事實有何關聯且所調查之資料如何可以作為其判斷基礎的理由，況目前並無任何事證顯示衛星頻道節目供應事業有違反衛廣法第 32 條之情，NCC 此次調查為行政調查權限的濫用，並已引起所有境外頻道節目供應事業的異議及 CASBAA 的關注。建請 NCC 應暫緩要求業者提出相關機密資料文件。

建議四：於提供著作權人免於網路侵權前暫緩實施分組付費

NCC 近來以保護消費者權益為由，要求有線電視系統台業者必須就其所播送的基本頻道加入分組以供消費者選購。然此舉將使媒體產業陷於不健全且不合理的環境，蓋事實上分組付費將使業者面臨頻道普及率及節目收率降低的風險，進而導致廣告營收減少等嚴峻挑戰。如此將使頻道業者及有線電視系統台業者於此數位匯流的過程中不再做數位化的投資。尤有甚者，考量台灣內容提供者面臨經由網際網路提供未受任何規範的 OTT（Over-the-Top）業者的不公平競爭，台灣內容提供者已因此艱困的商業環境受到嚴重的傷害。因之，為確保著作權人權益，建請 NCC 於推動分組付費前，應先與經濟部智慧財產局共同合作，建立防止從境外網站經由網際網路從事任何侵害著作權行為的保護著作權機制。

建議五：NCC 的法規應與國際著作權實務相符

依著作權標準授權實務，著作權人經由授權其著作給內容集成者進而轉授權予包括廣播、無線電視、衛星電視、直播電視、有線電視、網際網路電視及 IPTV 等不同的平台（亦可稱之為網路營運商）。於付費電視產業，頻道供應商即為前述內容集成者的一員，頻道供應商對於其所使用的每一著作均付費取得於特定平台播出的權利，對於所要付出的授權金為若干將視所要播出平台為何而定，於一個或多個不同平台播出是決定權利金多寡的最重要因素。

於台灣市場，因大部份的頻道係經由有線電視網路播送，因此頻道業者通常僅付費取得於有線電視網路播送的權利，而不會另外付費取得在其它平台，如 IPTV，播出的權利。如果頻道業者想要將他的頻道在 IPTV 平台播放以取得額外營收，頻道業者必須另支付在 IPTV 平台播放的授權金。

然而，NCC 於 2012 年 6 月 25 日所修訂的現行「有線廣播電視系統工程技術管理規則」卻允許有線電視系統台業者於 IPTV 網路以 IPTV 技術提供「有線電視服務」，此項規定完全違反內容授

權的機制且背於國際授權實務。台灣此項特殊的規定將無可避免地引發著作權人、頻道業者及有線電視系統業者間的授權爭議。例如，如依照NCC前述法規，IPTV業者可以於其IPTV網路經營「有線電視服務」進而播放以往僅於真正的有線電視業者網路播放的頻道，然其所播放的內容卻僅取得於有線電視平台播送的權利，如此將侵害著作權人的權利，致使頻道業者面臨法律風險，所謂的「有線電視業者」及頻道業者將因自始未取得於IPTV平台播出的權利而侵害著作權人的權利。

NCC前述工程技術規則雖然稱前述業者為「有線電視業者」，但無法改變其於IPTV平台經營的事實，因此只能播放已取得於IPTV平台播放授權的內容。為避免此種混淆，建議NCC修訂前述規則，明定有線電視業者僅能經由有線電視網路提供有線電視服務。

旅遊與觀光委員會

台灣政府近年推展觀光旅遊成績亮眼，以2013年為例，來台觀光旅遊人數突破800萬人次，比2012年成長9.64%。本委員會身為台灣旅遊界的一份子，對於台灣觀光發展近年的卓越成果同感欣慰，我們亦將全力配合政府「2016年躋身千萬國際旅客觀光大國」的政策目標。

值得注意的是，依據政府公布的資料，在整體觀光客中，來自中國大陸的旅客佔入境遊客總量的絕大多數，其次是日本、香港、澳門、韓國及部分東南亞國家；很顯然，亞洲之外如美國和歐洲的旅遊市場，仍有待進一步開發。因此，在今年的白皮書裡，本委員會將就重新定位台灣旅遊策略以開發亞洲以外的市場，提供建議。

台灣的觀光業所面臨人才短缺的困境仍未獲得改善，特別是台灣極度缺乏具有國際管理經驗及傑出語言能力的人才，而使得觀光產業服務品質無法進一步提昇，並對產業發展造成極大的衝擊。有鑑於此，本委員會再次呼籲政府進一步放寬外籍人士的工作許可證申請相關限制，並且提供獎勵機制，吸引並協助世界頂尖觀光旅遊訓練機構來台設立訓練課程，藉此提升觀光產業的人力素質。

本委員會樂見行政院將《觀光賭場管理條例》列入本會期建議立法院優先審議之法案清單。我們認為，這對於引進國際資金開發離島國際觀光度假區以發展離島博奕事業，將有正面助益。不過我們也必須提醒政府：台灣當下正面臨來自日本和韓國日益激烈的競爭，因為這兩個國家正加快腳步推動博奕事業；倘若博奕法的審議持續延宕而未能儘速通過，台灣極有可能會喪失爭取國際知名博奕業者來台投資的龐大商機。

一如以往，委員會期待繼續與政府並肩合作，就提昇及擴大台灣的觀光旅遊產業的動能共同努力。

建議一：吸引、培訓與聘僱優質觀光旅遊業專業人才，以建立並長期維繫國際化的服務水準

台灣素以好客有禮、人情味濃及待客週到著稱，許多外來訪客對台灣的服務極有好評。由本委員會所代表的觀光旅遊業者由衷欣賞台灣旅遊從業人員的這些特質，但是我們也對台灣缺乏具備管理經驗、傑出語言能力，能協助培育本地員工達到國際水平的頂尖專業人才而感到憂心。

台北固存在這樣的問題，在本島其他非城市地區，優質人才短缺的情形更是嚴重。為了提昇整體觀光客流量，增加吸引具有高價值的會議商旅，如會議、獎勵旅遊、展覽(MICE)以及西方遊客的潛力，台灣需要引進更多具專業的外籍觀光業人才以提升服務層級及管理績效到國際水準。此外，旅客人數增加，造成人力需求孔急，台灣必須引進世界頂尖的觀光旅遊專

才以發展訓練本地人才，更積極與世界級的餐旅學校擴展合作關係。這些國際級的餐旅學校在台灣的存在有其必要，不僅僅提供年輕一代教育機會，更提供了他們進入餐旅服務業，包括零售、運輸、旅館及餐廳等工作機會。我們期待政府能鼓勵及推廣領域中的專業培訓機會的建置。

如果想吸引更多國際大型活動在台灣舉辦，並且在獲利機會頗多的國際會展產業占有一席之地，台灣必須在短期內建造更多大型世界級旅館，聘用及訓練優質的工作團隊。我們建議參考新加坡與澳門的模式，針對那些將開幕之新設大型旅遊觀光計畫所需的人力放寬限制，使業者在聘用外籍勞工方面有更多彈性。沒有足夠的專業人力，頂尖旅遊觀光業者將難以在台灣成功發展，台灣也無法建立聲譽，成為受大型旅遊業投資案青睞的地方。

本委員會建議：

1. 進一步放寬工作許可審核限制，吸引更多有專業技能、才華出眾的外籍專業人才來台灣工作，藉此推動台灣觀光旅遊產業迫切需要的改變，確保永續成長。
2. 提供獎勵機制，積極協助本地大學與世界頂尖觀光旅遊業者或訓練機構在台灣建立世界水平之人才訓練中心。
3. 積極與國際訓練機構合作，特別專精於餐旅服務業及其他相關部分，鼓勵他們在台灣設立課程以培訓出符合國際標準的觀光旅遊業菁英。
4. 鼓勵及資助本地旅遊業具體且有系統的引進英語訓練，對台北之外的地區應該投入更多資源。

建議二：重新規劃及重點定位推廣台灣觀光

雖然台灣在過去幾年已經看出旅客人數的增長，但多數被觀察到的成長是來自於中國大陸遊客的人數，以及少數來自亞洲其他的國家。然而，亞洲以外的潛在旅客不是沒有接收到台灣的觀光訊息，就是傳達的訊息並不足以有效的吸引他們，來自亞洲以外的國際旅客人數依舊停滯不前。必須找到更有效的推廣訊息去接觸非亞洲旅客並與他們產生共鳴。吸引更多西方旅客以平衡其他市場的波動而有利於台灣的旅遊市場。這應該也被考慮為台灣大力推廣的“人與人的外交”的一個重要部分。

這個議題涉及到更大的焦點，當我們檢視以前使用的台灣旅遊標語。雖然這些口號可能對當地的台灣人有意義但是他們不一定成功地對非亞洲的外國人帶來足夠的台灣印象。

例如，台灣採用“觸動你的心”作為一個口號用了好幾年，用視覺形象植於原住民主題。但很少有從北美或歐洲國家的潛在遊客將這些有文化背景的識別圖像認為為代表台灣的原住民圖騰，而不是隸屬於泰國或緬甸的山區部落的圖騰。台灣目前的定位為“亞洲之心”也是有爭議的，因為亞洲以外的許多人都把中國大陸，香港，日本視為亞洲的心臟地帶。

確認台灣的實際優勢並不困難。它有著文化多樣性的特點，具有獨特性的融合福建，客家，原住民，外省人，和日本文化。台灣的吸引力在於它的美麗的山川，海岸邊等自然風光；人民的友好；美味小吃；熊貓在亞洲最優秀的動物園之一；歷史悠久的鐵路；令人驚艷的自行車道和登山步道；驚采的潛水海域；獨一無二的寺廟（無論新舊）；和世界上最多中國文物的收藏。優越的交通選擇，包括台北捷運，高鐵，特種旅遊列車和公共汽車，以及廣泛的高速公路網絡，到處去都非常便利及方便。最重要的是，有別一些亞洲旅遊國家的缺點，台灣治安良好沒有街頭犯罪和宗教緊張局勢。

順勢利用台灣的優勢來成為一個重要的旅遊訊息或口號是它正面臨著推廣進國際旅遊業的主要挑戰。這工作需要被分配到經驗豐富的廣告人才及公關專業人士，與他們擬議好的宣傳資料，然後邀請可成為實驗目標的眾海外人士來做招待測試。（居住在台灣的外國人不適用被選為實驗目標人群，因為他們

已經太熟悉台灣可提供的生活機能。)雖然這種做法無疑將耗資超過目前旅遊業發產的支出,但是委員會有信心,此舉將帶來更好更多的旅遊收入,且台灣將被承認是一個理想的旅遊勝地。

我們也建議了以下步驟來使非亞洲遊客他們在台灣可以更便利,更舒適:

- 1) 建立一個專門的網站來讓海外遊客可以方便直接購買火車票和申請入山許可證。
- 2) 持續努力改善英文路標和其他外語的服務,尤其對於台北以外的地區,這樣才能使台灣成為真正的國際旅遊勝地。

建議三：儘速完成《觀光賭場管理條例》的立法程序，以吸引國際知名博奕業者來台投資

《觀光賭場管理條例》目前正在立法院審議。本委員會樂見行政院將本法列入本會期行政院建議立法院優先審議的法案,且各黨派都審慎審查本法案。

《觀光賭場管理條例》條文內容的嚴謹程度,將是未來政府推動離島博奕政策成功與否的重要關鍵,因此,立法院在審查本法案時必須仔細地評估,任何一項建議條文是否將影響潛在投資人投入大筆資金的意願。況且,近年來亞洲地區新興博奕市場風起雲湧,當前台灣面對的潛在競爭對象為日本和韓國,前者今年內將啟動博奕法立法程序,後者則在不久前核發了第一張外資設立的賭場執照;台灣面對日趨激烈的競爭,必須更積極地創造良好的投資環境以吸引國際級的博奕業者來台投資,這已成為台灣的當務之急。

在此前提下,本委員會擔心,目前部分立委對於行政院版本的《觀光賭場管理條例》草案部分法條所提出的建議版本,將會大幅削弱國際級博奕業者來台投資的意願:

- 1) 博奕執照特許期限由30年縮短為15年:依照台灣期待在離島見到的投資規模而言,業者要在15年內回收投資成本甚至開始獲利,的確太短。另外,這麼短的執照期限將使台灣成為亞洲博奕市場唯一的案例,博奕業者也會對台灣博奕產業的長期發展前景產生疑慮。
- 2) 最低實收資本額為新台幣600億元(或20億美元):據本委員會的了解,世界上沒有一個開放博奕的國家設下如此嚴苛的投資條件 -- 事實上,這麼高的實收資本額,甚至超過好幾個台灣的銀行之總市額。如果立法院的用意只是要確定參與競標的投資人具備真實的資金實力,那麼只要提高履約保證金的額度,也能達到一樣的目的。
- 3) 提高博奕稅率至62%:本商會曾在2013年的《白皮書》中指出,合理的稅收制度能為一個新的博奕市場吸引更多的國際投資;相反地,過高的博奕稅很可能就會打消投資人的興趣。當然,每個政府都希望透過提高稅率來增加稅收,但值得注意的是,投資人通常會選擇在稅制合理的國家投資,一旦投資人認為稅率比起其他國家高出許多,就很容易打退堂鼓。部分立委建議提高博奕稅至62%,此稅率遠高於亞洲任何一個國家所課徵的博奕稅,如此一來,台灣的博奕產業將徹底失去吸引國際博奕投資人的魅力

此外,《觀光賭場管理條例》草案第24條規定,即使未有違反規定情事之虞,政府仍有權利勒令觀光休閒度假區附設的賭場關閉。本委員會擔心,如此一來投資者將會對台灣抱持負面印象,認為政府並沒有誠意認真發展博奕事業,即便僅在離島開放博奕。對於政府依法撤銷違法業者的博奕執照,我們並不反對,但是,若政府可在業者執照期限未到、且業者又無明顯過失的情況下終止執照,這將會對吸引潛在投資者來台投資形成巨大障礙。

建議四：博奕法通過後，儘速設立博奕管理專責機構

我們在2013年的《白皮書》中曾提到,博奕執法機關是否公正獨立,亦為吸引外國知名博奕業者來台投資的關鍵因素之一,有鑑於此,我們建議台灣博奕事業監管機關應為交通部下轄之一個獨立機關,其首長直接向交通部長負責。若此機關必須被設置在交通部觀光局之下,則建議至少指派一位觀光局副局長專門監督博奕事業監管機關,並直接向交通部長負責,否則博奕事業監管機關將無法真正獨立於觀光主管機關之外,而觀光主管機關可能有其他的優先政策目標,而無法完全致力於博奕監理事業。

此外,在博奕事業監管機關正式設立之前,政府應先組成一個工作小組,專責推動博奕事業監管機關的設置以及博奕法其他相關業務之執行。此工作小組應由交通部召集,成員包括相關政府主管機關的高階首長。

本委員會非常榮幸能在《觀光賭場管理條例》草案擬定的過程中,有機會向交通部提供意見;我們也期待未來能繼續與交通部及觀光局進一步討論我們關心的草案內容,更期盼有機會與立法院交通委員會建立溝通管道,就該草案內容進行深入討論。

其他

脊骨神經醫學

自從2007年起美國在台商會每年都为商會的脊醫會員對台灣政府提出同樣的請願:在台灣提供提供脊骨神經醫學法源基礎。在沒有法源認可的情況下,在美國或甚至其他先進國家取得執照的脊骨神經醫師完全無法施展其專業,政府態度表面上是容許,但實際上視脊骨神經醫師同等於民俗療法業者,或脊背調理業者。完全未給予專業應有的尊重甚至偶爾給予不定期的稽查、騷擾。甚至連簡單的維持網頁的運作都被視為違規而處罰巨款。

每一年,直到現在,台灣白皮書的要求一直被衛生當局堅持考試與執照之前必先在本土醫學院設立本土脊醫學系而碰壁。然而實際上這卻是一條死胡同,在確定所培育的畢業生所學是政府所認可的專業之前,根本沒有任何一所大學院校政府願意投資或設立一個新的系所。

在最近幾個月來似乎讓脊骨神經醫學在台灣有認可的契機,由於政府當局積極加入跨太平洋夥伴關係(TPP)而希望制訂合乎國際規範的規範制度與國際接軌。以脊骨神經醫學來說,台灣當局顯然是脫離了國際慣例。世界脊醫聯盟是隸屬於世界衛生組織(WHO)的非政府組織,並協助台灣以觀察國身分參加衛生組織大會(WHA)。根據世界脊醫聯盟的資料,台灣與南韓是目前世界上唯二的兩個國家對脊骨神經醫學專業既無明確法律上的認可甚至拒絕接受的狀態。

遺憾的是,從衛福部提供的給予執照的途徑竟是要求脊骨神經醫師考台灣物理治療師執照,這對由世界衛生組織認可的脊骨神經專業是完全無法接受的。其一,這等於變向要求台灣的脊骨神經醫師自動降級為治療師等級來換取合法執業。衛福部的立場不僅冒犯甚至侮辱了脊骨神經醫學的專業,甚至無視於世界衛生組織頒布的“脊骨神經醫學基礎培訓與安全性指南”。此外這將剝奪脊骨神經醫師行使診斷權,使其完全依賴西醫的診斷與轉介。脊骨神經醫學上的診斷需要透過脊骨神經專科的訓練,而西醫在完全未接受過脊醫訓練下,無法給予病患脊醫學上的診斷。

然而近來與官方的對談讓一直被誤解的幾個脊骨神經醫學議題能有澄清的機會。包括以下概念:

• 台灣脊骨神經醫師要求被認定為“西醫”(MD)位階?

事實上並不是，脊骨神經醫師所持學位為 Doctor of Chiropractic(D.C.)。與西醫(MD)分屬於不同的學科領域，就跟牙醫(DDS)也是有別於西醫的一門獨立的專業一樣。

• 脊骨神經醫學只是一門手療技術而非一個完整綜合的治療系統?

脊骨神經醫師需要了解許多複雜的知識才能對身體並與個案所承受的問題有全盤的了解。一個領有執照的脊骨神經醫師需要經過學士後五年的脊骨神經專科養成訓練。脊骨神經醫師在西方國家中是僅次於西醫與牙醫的第三大醫師團體。

• 脊骨神經醫學在美國並不是完全的認可?

脊醫會員所提供給官方的資料證明了美國每一州均有給予脊骨神經醫師執照的機制，在世界其他已開發國家也是有一樣的執照制度。

美國商會的脊骨神經醫師會員享藉此機會感謝行政院國家發展委員會與衛服部的官員近幾個月來考慮我方的意見。然而，將脊骨神經醫師置於治療師的位階不僅是有辱脊骨神經醫學的專業，更妨礙脊骨神經醫師妥善的診治病患的工作。脊骨神經醫學是一門有關診斷並治療肌肉骨骼神經系統失調的專業。只有脊骨神經醫師，而不是其他醫療服務提供者有這種專業訓練與能力來給予脊骨神經學診斷。

我方今年的訴求如下：

建議：設立新的一類醫療專業，可以讓持有外國執照的脊骨神經醫師們在合適的位階下執行脊醫專業。

在安排這個新的類別時，有兩個因素必須注意：

1. 非常重要，新增加的位階必須讓脊骨神經醫師有權利診斷並且進行治療，而非需要西醫的醫囑，西醫對於脊骨神經醫學治療程序並不熟悉。在其他承認脊骨神經醫師並且有立法的國家，脊骨神經醫師都有診斷權。
2. 新位階應該讓脊骨神經醫師在相對的嚴謹教育及訓練之下，得到應有的尊嚴及尊重。

歡迎脊骨神經醫學對於台灣人民與全民健保只會有好處。脊骨神經醫師能夠治療許多老化人口的痠痛與疼痛。尤其在台灣已經瀕臨老化甚至極度老化的人口結構，還有許多因為更多的人口因為生活型態更趨活躍而衍生其他多樣的病痛與運動傷害。脊骨神經醫學，是一門安全有效又合乎經濟效益的健康專業，如果能整合併入成為台灣民眾另一種治療的選擇，將可以幫助減少全民健保的財政負擔。

此外，一部分靠世界脊醫聯盟的協助與世界其他有合法脊醫制度的友善國家支持下，台灣在多年的奮鬥後終於享受著在世界衛生大會的成果，請謹記台灣仍以觀察國的脆弱狀態參與大會。台灣當局若能認可脊骨神經醫學將會是一個適當表達感謝其支持的做為。

菸品

台北市美國商會菸品產業會員在此感謝關務與國際貿易委員會，同時也在其白皮書內容裡表述台灣需要制裁非法走私菸草產品的觀點。

建議一：重新思考菸品稅捐政策，以降低市場波動並保障合法菸品產業之權益

菸品產業一向支持透明、合理、可預期的菸品稅捐政策。這樣的政策不僅能保障合法菸品產業免於非法菸品交易所帶來的危害，亦能同時達成政府在公共衛生和財政稅收上的政策目標。若無合理、漸進、及可預期的菸品稅捐制度，政府將更加難以控管非法菸品交易，且會嚴重影響合法業者的投資環境。

台灣的非法菸品市場主要是以非法「白牌菸品」為主。白牌菸品是以「少量合法進口、大量非法走私」的方式來台。根據中華民國菸業協會進行的全台大規模劣菸品本土實證調查顯示，非法菸品每年造成我國國庫約16億新台幣(美金5,300萬元)的稅損。

由於相關查緝單位的共同努力，[菸品非法走私]的情況已經獲得有效的控制，2013年度非法菸品的總量已經小幅度減少。但在預期菸品價格調漲的心理影響下，龐大的不法利益將引發不法業者強烈的走私動機。行政院長江宜樞也曾針對此在今年二月的行政院治安會報上指出，「若依照目前(行政院之提案)，未來大幅提高菸品健康捐與菸稅後，我們將可以預期走私非法菸品的誘因必然增加」。

有鑒於此，我們建議：

- (一) 菸品產業應與其他合法產業享有一致性公平對待，與菸品產業相關法規必須透過正當且遵循法律的程序制定，以確保菸品產業的合法權益；
- (二) 菸品健康捐調整的相關配套措施，應以穩定市場秩序為主要考量，並審慎評估非法交易的潛在影響。當菸品健康捐調整過於倉促或金額過高，從過去經驗顯示，將造成非法菸品走私的增長，最終導致政府稅收與合法市場秩序受到負面衝擊。

建議二：採行有效及符合比例原則，且合乎我國國際貿易義務之菸品管制政策

菸品產業支持合理的菸品管制政策，但產業認為政府在制定實施相關的公共衛生政策前，應邀集與政策利害相關之各界代表共同討論及評估政策可能之影響及其有效性，並考慮其他可以達成相同目標的替代措施。政府也應該注意提出的政策是否符合我國的國際貿易義務。

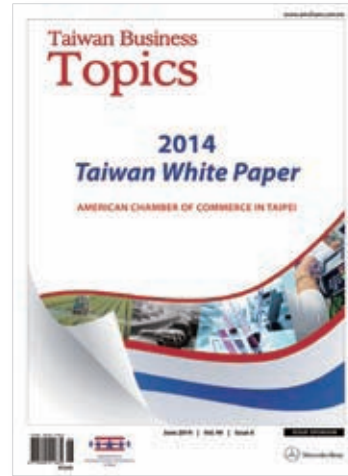
目前，已有立法委員提案要求禁止於零售點陳列菸品，並且要求實施菸品素面包裝。當前，全世界僅有澳洲已通過類似的法案。目前仍無足夠的證據能證明該政策對減少青少年或全體國民吸菸率有助益。另外，許多國家，包括：多明尼加共和國、宏都拉斯、印尼、烏克蘭等國已透過世界貿易組織的智慧財產權協定(TRIPS)及技術性貿易障礙協定(TBT)等挑戰澳洲的素面包裝政策。該澳洲法律也正受到香港透過其與澳洲的雙邊投保條約的挑戰。

另外，也有立法委員已提出禁止菸品添加香味料的提案。類似提案，如美國在2009年通過的「聯邦食品、藥品及化妝品法案」，由於禁止添加香料菸品之販售，也曾引發國際貿易爭端。丁香香菸製造國印尼在世界貿易組織控告美國違反技術性貿易障礙協定的義務。美國敗訴，且須賠償印尼約美金兩億元。依此可推論，若台灣通過禁用菸品添加香料法案，將有國家在世界貿易組織下對我國提起告訴。

有鑒於此，我們建議：

- (一) 針對有缺失的菸品控管政策可能對我國在國際貿易義務產生之影響，建議政府應當將彙整各相關部門意見後，轉呈行政院「我國參與國際經貿策略小組」。
- (二) 在任何新菸品控管措施進入立法審查階段前，應召開公聽會，邀請所有與政策利害相關之各界參加並提出建議，以確保有足夠的公共討論。
- (三) 加強執行現有的禁止青少年取得菸品之相關法規，並讓民眾關注此議題。採用上述方式遠比通過爭議性措施，例如：素面包裝、零售點禁止陳列菸品等，在處理青少年吸菸問題上更為有效。

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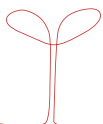


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691001794
578 公升 (5.1)
ITEM 103173

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747 公升
ITEM 50

\$3000 省下金額 **\$600** 省下金額

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