RETAIL

As the contribution of the services sector to the Taiwan economy continues to grow, retail activity will inevitably become a more important driver for the Taiwan economy. This Committee is committed to building a stronger partnership with government agencies in order to develop a stronger retail sector and address common challenges together.

In particular, the Committee believes that food safety in Taiwan can benefit from closer collaboration between industry and government. Our members are fully committed to support the government in enhancing food safety regulations and standards across Taiwan, and are pleased to note that collaborative efforts already undertaken with the Ministry of Health and Welfare (MOHW), Taiwan Food and Drug Administration (TFDA), and Food Safety Office have been very well received.

However, the Committee remains concerned by the arbitrary manner in which some new laws and regulations have been drafted and enacted in the purported interest of improving food safety. In many cases, food-related regulations were proposed without holistic consideration of the potential impact on the economy, society, and industry, or other factors. In view of these challenges, the Committee fully supports the Chamber's recommendation that Taiwan institute a legal framework similar to the United States' Administrative Procedure Act (APA). This step would ensure that any regulatory changes are made in a transparent, fair, and feasible manner. In addition, given the wide-ranging impact of the retail sector on the daily lives of Taiwan's citizens and Taiwan society, we believe it is critical for potential regulatory changes to be preceded and informed by a holistic Regulatory Impact Analysis (RIA). The RIA should be a collaborative effort among all key stakeholders, including the government, scholars, and industry players, and is commonly employed in other developed economies. Such an approach would improve the quality of regulation and ensure that all new regulations serve the interests of Taiwan as a whole instead of any narrow interest group.

As a WTO member and potential participant in the Trans-Pacific Partnership (TPP), Taiwan has a stake in ensuring that regulations are harmonized with her trading partners and aligned with international standards. While progress has been made in many areas by the Taiwan government over the past year, regrettably we have noticed several regulations and standards issued by TFDA that are not aligned with those of major trading partners. These include a recent ruling that packaged-food imports must undergo testing in a certified Taiwan lab, with testing reports from the home country no longer accepted. In addition, current regulations require a degree of detail in food labeling that goes far beyond what is demanded in any other market, adding greatly to production costs with little benefit to the consumer. Such "unique-to-Taiwan" regulations discourage the entry of high-quality foreign products into the market, reducing consumer choice and often constituting a technical barrier to trade that harms relations with trading partners and may hinder Taiwan's TPP aspirations.

We have also observed differences in interpretation and practice regarding some food-related regulations between central and local government authorities. This phenomenon creates additional complexities and resource burdens as industry attempts to comply with the regulation. We hope the Taiwan Government will clearly define and standardize the interpretation and practice of regulation between central and local governments.

We strongly believe that by jointly creating a transparent, well-thought-through, and consistent regulatory environment, we will not only help protect Taiwanese consumers' interests, but will also significantly enhance the overall business environment for the long-term benefit of the Taiwan economy.

Suggestion 1: Ensure that the food safety rules-making process is transparent, with the regulations based on scientific and statistical evidence.

Food safety regulation is not a zero-sum game, but can benefit both consumers and the food industry. An ideal regulatory regime upholds food safety standards, but does so through a transparent and predictable system that makes it easier for food-related businesses to flourish.

Since March of this year, the National Development Council has been asking all government agencies, as part of Taiwan's WTO commitments, to upload their English translations of all "trade-related" regulations. The exercise demonstrates Taiwan's willingness to fulfill its international treaty obligations and determination to participate in international trade agreements. However, within the field of food safety regulation, there is still much room for improvement, especially with regard to transparency. At a time when Taiwan is preparing for a TPP candidacy, such measures to enhance transparency will be beneficial to Taiwan and appreciated by its trading partners.

In this regard, we would like to make the following recommendations:

a. Gradually translate all the recognized testing methods into English, the major international language, to assist foreign companies in complying with Taiwan requirements. Decreasing the incidence of disqualification will save time and cost for both importers and TFDA inspectors, and make international trade even more efficient. Currently too much time is wasted by importers and TFDA officials due to unclear test parameters.
b. Disclose test reports and testing methods on request, as another way to increase trade efficiency.
c. Ensure that food safety-related regulations and standards are clear and practical.

Following are examples of problem areas in food-safety regulation:

1) ***Inspections without announcement or standards.*** A series of inspections launched since last December by the Council of Agriculture (COA) checked for the presence of plasticizers in imported organic oils. No prior announcement was made, and no applicable maximum residue level (MRL) has ever been set for plasticizers in organic oils. In the absence of an announcement of such inspections and the standards to be applied, importers were unable to notify their vendor to comply with the new government action. The result was that tons of oil sat on the docks and in warehouse, and the economic cost for re-shipping and spoilage was enormous.
2) ***Unique requirement on carried-over food ingredient labeling.*** Article 22 of Taiwan's Food Safety and Sanitation Act (FSSA) demands the breakdown and listing of all sub-components of food ingredients. The TFDA interprets the labeling requirement to mean that carry-over sub-components from ingredients must be included in the list of ingredients, even though they serve no technical function in the final product. For example, edible oil such as corn oil used as a dispersant/solvent of a food colorant or cornstarch used as carrier for a food flavor, serve no technical function in the final product, yet must be labeled in Taiwan products. The Taiwan FDA has exempted carry-over sub-components from being listed only if they are classified under food additives. This Taiwan labeling requirement conflicts with regulatory practice in the United States, European Union, and other major markets. In the United States, for instance, incidental additives that are present in a food at insignificant levels and do not have any technical or functional effect in that food are exempted from labeling.
The unique-to-Taiwan labeling requirement has caused tremendous problems for U.S. food suppliers, since redeveloping the ingredient list on labels takes a great deal of time and effort. Further, during customs clearance, officials may challenge companies, demanding elaboration regarding the sub-components of ingredients. If the U.S. exporter cannot provide the requested information on the carry-over sub-components – which can easily happen, as such information is not readily available on the original packaging – the shipment could be blocked from entering Taiwan. The situation deserves to be explored as to whether it constitutes a technical barrier to trade.
3) ***Unreasonable interpretation of regulations.*** When pre-packaged foods are imported into Taiwan, it is natural that the nutritional values on the Chinese label may appear to differ from the ones from the exporting country, due to different methods for rounding off numbers and different rules for claiming nutritional value. However, TFDA officers conducting border inspections have regarded such inconsistences as "misleading"– therefore constituting violations of Article 28 of the FSSA. Their disqualifying of such shipments has caused tremendous delays in the import process.
The intention of Article 28 in reference to "false, exaggerated or misleading" labeling is to counter any attempt to deceive consumers. The above-mentioned discrepancies between the Chinese and foreign labels did not involve any such purposeful effort to mislead or defraud, and therefore did not warrant any disruption in the import process.
Another example relates to the regulation of dietary supplements, which in Taiwan are classified as a food. Under current regulations, all imported foods in capsule or tablet form must be registered with the TFDA. For domestic products, however, only vitamins and minerals containing over 150% of the daily recommended dosage

require registration. This unjustified discrimination puts imported at a competitive disadvantage because of the time and cost needed for registration. According to the TFDA, the reason for the requirement is to eliminate the risk of such items being mistaken for pharmaceuticals (although the same risk should apply to domestic products). TFDA should create a more practical food supplement regulatory scheme focusing on function, rather than appearance.

4) ***Overly complicated organic food import process.*** Under current regulations, all imported organic products must apply for an Organic Labeling Permission Document in order to be labeled as "organic," even if they have already been certified by organizations approved by the COA. The labeling permission document review is unrelated to the quality of the food, but is aimed mainly at confirming the weight and volume to satisfy the TFDA's interpretation of the requirement in Article 28 of the FSSA that the labeling not be"false, exaggerated or misleading." Other than that, there are no scientific or statistical grounds for this process. The procedure is also unnecessarily time-consuming. Even if "confirmation" is required, it should not need a month to complete.

Our recommendations:

a. More closely align the Organic Labeling Permission application process with TFDA border inspections for greater efficiency.

b. In line with COA's promises earlier this year to simplify and shorten the current organic product import process, implement such new rules as soon as possible.

Suggestion 2: Encourage a new era of self-regulation by the private sector.

The Committee has long advocated establishing a system of advertising self-regulation to replace the existing government controls. Recent regulatory developments have reinforced our view that self-regulation in the private sector would serve to make government more effective and more efficient.

Referring to the many new food-related regulations adopted in recent months, these rules were often created haphazardly, in immediate response to particular incidents, without sufficient analysis of their cost-effectiveness or the impact on industry and the consumer, and without procedural transparency and adequate industry consultation. Maintaining this same model will only continue to result in complicated and Taiwan-unique regulations, stymie business development and investment, waste government resources on non-productive actions, and deepen public dissatisfaction with government effectiveness.

The practice of industry self-regulation is actually a co-regulation model that relies on cooperation among key stakeholders such as the government, industry, consumers, and non-profit groups in establish products and services standards and systems of enforcement. It has a proven track record of effectiveness in protecting consumer rights in advanced economies. For governments, it provides opportunities to deregulate and focus resources on the most critical areas needing government attention.

In the United States, for example, the Council for Responsible Nutrition (CRN) is a trade association embracing responsible consumer communications for dietary supplements. The CRN and the National Advertising Division (NAD) of the Council of Better Business Bureaus (CBBB) have worked together to monitor advertising for dietary supplements. This program enhances the marketplace by increasing consumer confidence in the truth and accuracy of advertising claims and encourages fair competition within the industry. There have also been very successful industry initiatives in the United States committed to children's health and environmentally responsible practices. All these institutions are industry-supported NGOs that educate the public, investigate business practices, administer compliance, and enforce socially responsible business actions by publicizing problematic behavior. These self-regulation efforts by NGOs and individual companies have eased the government authorities' burden and helped the good players to get rid of bad players to maintain the reputation of the industry as a whole.

This Committee feels highly encouraged that many business sectors in Taiwan are beginning to embrace this concept. Self-regulation initiatives such as systems helping to ensure food safety, improve regulations of cosmetics ingredients, and establish clear and stable advertisement guidelines have been taken up by committees and work groups under various trade associations. We sincerely recommend that the government seriously consider the benefits of this approach and take action to support and work with industry and other stakeholders to make it a reality.

Suggestion 3: Review the policy to penalize food-safety violators according to their sales or capital.

The "Standards for the Penalties Imposed under Article 44, Paragraph 1 of the FSSA" effective May 12, 2016 penalizes violators according to the size of the company, with penalties calculated by a formula that includes the amount of the company's sales volume or paid-in capital. As this Committee pointed out in a position paper sent to the TFDA earlier this year, this approach deviates from the basic legal principal that punishment should reflect "the severity of the violation, the number of impacted consumers, or the amount of financial gain accrued through the violation" – not the company's ability to pay.

With no supporting evidence, the paper said, the measure

"appears to imply that large food operators are more culpable." In fact, it argues, "large-scale food importers, manufacturers, and distributors with a large capital base generally maintain higher standards of social responsibility, and can be expected to adopt strict measures and take quick action to minimize any health risk to consumers."

The regulation is yet another Taiwan-unique approach that creates frustrations among companies operating in Taiwan and raises questions among Taiwan's trading partners about this country's commitment to following international standards and practices.

Suggestion 4: Recast the Cosmetics Act to avoid creating technical barriers to trade as well as drive regulatory transparency.

The Committee welcomes TFDA's initiative to modernize the Statute for Control of Cosmetics Hygiene (the Cosmetics Act for short), which was first promulgated in the 1970s. We urge TFDA to harmonize the Cosmetics Act with similar legislation enacted by Taiwan's major international trade partners, refraining from adopting unique regulatory requirements that could create technical barriers to trade posing impediments to Taiwan's TPP membership. In addition, we also urge TFDA to start disclosing its decision-making rationale instead of maintaining unpublished internal guidelines. We offer the following specific recommendations:

a. ***Remove pre-market registration from the new statutory requirements.*** Draft amendments to the Cosmetics Act propose creation of a five-year transition period during which the current pre-market registration system would remain in effect, while at the same time industry would be required to be compliant with a new system of post-market control through Notification and Product Information Files (PIF). Such a dual-control system is a unique regulatory design found in no other country. It would impose a double burden on industry, while bringing no added value in protecting consumers. The Committee urges TFDA to follow the practice of other country's regulatory bodies, which is simply to rely on post-market surveillance – for example, through Notification and PIF – as well as to foster industry self-regulation.

b. ***Ensure that any restrictions on ingredient use are based on scientific evidence and adopted in a transparent manner.*** In this regard, TFDA should disclose the review process and assessment rationale, and announce the results to industry with a sufficient period for consultation. Moreover, it should seek to harmonize its regulations with advanced economies like the United States and the European Union.

c. ***Recognize labeling of the responsible local supplier as sufficient for consumer protection and post-market surveillance/audit.*** The draft Cosmetics Act requires the listing of contact information for both manufacturers and importers. This requirement is unique and not aligned with global trends. Other countries require only that the local responsible company's information be printed on the product labels. Providing the importer's information should be sufficient for consumer protection, because consumers in Taiwan will only contact the responsible local supplier, not the overseas manufacturer. For post-market surveillance or audit purposes, the manufacturer's information contained in the PIF should be sufficient.

d. ***Ensure that the proposed new PIF system is workable and reasonable by only addressing critical regulatory needs to avoid technical barriers to trade.*** TFDA has provided assurances that it aims to establish a "reasonable" and "workable" PIF guideline, with industry given adequate lead-time for PIF preparation. While we appreciate those assurances, we nonetheless still urge TFDA to avoiding creating a unique and complex PIF system that combines elements from the EU and ASEAN together with TFDA's own requirements. It should be noted that such large economies as the United States and Japan do not utilize PIFs at all. Given the potential complexity of the exercise, Taiwan might inadvertently create technical barriers to trade, leading to trade disputes with its trading partners. To avoid that consequence, the content of the PIF should be streamlined to address only critical regulatory needs.

e. ***Recognize other countries' equivalent of the Taiwan Cosmetics GMP.*** Although a Cosmetics GMP (Good Manufacturing Practice) system is mandatory in the EU and ASEAN, both jurisdictions also accept other countries' GMP standards. TFDA, however, intends to take the Taiwan standard as the only standard, which will inevitably lead to significant technical barriers to trade. Instead, the Taiwan government should recognize Guidelines for Cosmetics GMP such as those issued by the U.S. Personal Care Products Council (PCPC) and by other health authorities as equivalent to the Taiwan Cosmetics GMP, and also allow companies to self-certify compliance to overseas GMP standards of equivalence as a means of fulfilling the Taiwan GMP requirement.

f. ***Refrain from creating a unique "Corrective Advertisement"*** policy. In contrast to the international best practice of promoting advertising self-regulation, the draft Cosmetics Act authorizes health-administration personnel to determine whether an advertisement or claim is "seriously exaggerating or untrue," including advertising content that is not safety or hygiene related. Violators would be required to broadcast or publish apologies by means of a "Corrective Advertisement." The Committee was distressed to learn that this "Corrective Advertisement" provision, which was previously removed from the draft legislation in the course of a public hearing

in 2013, has now been restored. The measure would grant health authorities enormous power, including the ability to damage a company's reputation and brand equity, extending to areas outside their professional competence and without providing the accused with timely recourse to due process in the judicial system. As this Committee has repeatedly emphasized, we strongly urge the MOHW and TFDA to withdraw this proposal. If the "Corrective Advertisement" provision becomes effective, it could even be viewed as contravening the freedom of speech guaranteed under the national Constitution. As an alternative approach, we suggest that the authorities engage in broad-based discussions to establish advertising guidelines and a system of industry self-regulation – an approach that has proven its effectiveness in many other markets (see Suggestion 2 above).

g. ***Treat toothpaste and mouthwash separately from other products under cosmetics regulations.*** Toothpaste and mouthwash will be newly added categories of cosmetics after the amended Cosmetics Act is passed. Since the relevant cosmetics regulations were developed without considering the unique characteristics of toothpaste and mouthwash (particularly, the fact that they immediately rinse off after use), the Committee urges TFDA to adopt the following measures to assure a smooth transition and minimize the impact to both industry and consumers.

   1). ***Provide a sufficiently long transition period.*** A grace period of at least five years is needed for toothpaste and mouthwash manufacturers to prepare to come under the Cosmetics Law. In the meantime, all in-market products should be exempted. Although TFDA has conducted several workshops to communicate with industry, businesses are unable to begin assessing or investing in product labeling/formula changes until the final Cosmetics Act is passed and all relevant implementation regulations are settled. This problem is more acute for multinational companies which source products worldwide and share product labeling/formulations across countries. Especially if the product formulation must be changed, a longer lead time will be needed to complete the product stability test.

   2). ***Harmonize technical requirements and ingredient standards for toothpaste and mouthwash with those of major trading partners.*** Current cosmetics regulations related to restrictions on ingredients or substances (for example, the cosmetics preservative ingredient list) were established without taking toothpaste and mouthwash into consideration. The Committee urges TFDA to review and make appropriate modifications to the cosmetics preservative ingredient list by accepting the substances allowed by any one of Taiwan's major trade partners, such as the United States, EU, or Japan, so as to harmonize with international regulations and avoid adopting unique-to-Taiwan standards or restrictions.

Suggestion 5: Harmonize the regulation of GM food material labeling with that of major trading partners.

Taiwan has enforced regulations for the mandatory labeling of foods containing genetically modified (GM) materials through an amendment to the FSSA enacted in February 2014. The relevant GM labeling rules were announced in May 2015. Among the key elements: 1) if the level of adventitious GM material exceeds 3%, the entire material shall be regarded as GM and products made from it should be so labeled, and 2) highly refined foods made directly from GM materials (such as soy oil, corn oil, corn syrup, etc.) must be labeled as GM even though the final products does not contain transgenic DNA fragments or transgenic proteins.

Some remaining concerns still need to be highlighted. There is no threshold for GM labeling in finished products, which results in mandatory labeling even for very small quantities of GM ingredients. In addition, Taiwan is among the very few countries with mandatory labeling requirements for highly refined ingredients. Further, anti-GMO activists and some legislators are pushing for a tightening of the labeling regulations by adopting EU standards, which would reduce the adventitious threshold to 0.9% and require mandatory labeling for all highly refined ingredients.

In an era of global trade liberalization, new regulations should follow international best practice, avoiding the creation of trade barriers that could adversely impact Taiwan's food industry. It is important that Taiwan's regulation be harmonized with those of its major trading partners. Establishing a more restrictive regulatory environment than its trading partner would narrow the scope of supply from different countries and regions of the world, reduce the variety of food available to Taiwan consumers, and increase food costs.

Before implementing the proposed regulations, the government should undertake a comprehensive impact analysis to understand the likely ramifications for food supply, costs, consumer welfare, and Taiwan's economic competitiveness and trade relations. As the current GM labeling regulation in Taiwan is one of the most stringent in the world, there is no need to make it any stricter.