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**Working Party No. 2 on Competition and Regulation**

**STANDARD SETTING**

**-- Chinese Taipei --**

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*The attached document is submitted to Working Party No. 2 of the Competition Committee FOR DISCUSSION under item III of the agenda at its forthcoming meeting on 14 June 2010.*

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## **1. Introduction**

1. In preparing the present submission, the Fair Trade Commission (hereinafter “the FTC”) consulted with various government agencies, including the national standard-setting authority, the Bureau of Standards, Metrology & Inspection under the Ministry of Economic Affairs (hereinafter “the BSMI”), and the competent authorities responsible for the development and administration of interface standards, food standards, environmental standards, and standards for the building trade. After a preliminary review, the FTC decided to focus on issues related to environmental standards and to take the incense stick as an example for illustration, as well as case examples of how the FTC deals with issues related to food standards and telecommunications standards.

2. This paper will illustrate the issues related to the current state of Chinese Taipei’s standardization promotion efforts, the operations of standard-setting bodies, the status quo for national standards in practice, and national standards and international standards.

## **2. Standards**

3. In accordance with Article 3, Subparagraph 1 of the Standards Act, the term “standard” means a document, approved by a recognized body and established by consensus through the participation of the industry, government, academia, and R&D sectors, that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes or services.

4. The purpose of the standards is to develop and encourage the use of common and uniform standards with a view to promoting public welfare by facilitating standardization, improving the quality of products, processes and services, enhancing the efficiency of production, and maintaining rationalization for production, marketing and consumption. There are five categories of standards when classified by application hierarchy, including international standards (e.g., ISO, IEC), regional standards (e.g., EN), national standards (e.g., CNS, JIS), group standards (e.g., IEEE, UL) and company standards.

5. National standards are developed to achieve the goals of protection of lives and property of citizens, safeguarding a healthy environment, and the maintenance of free and fair trade to promote the development of domestic industry. National standards are established or adopted by the standards authority (i.e., BSMI) pursuant to fair, open and transparent processes for easy reference by the general public, domestic industries and agencies (organizations).

## **3. Current state of Chinese Taipei’s standardization promotion efforts**

6. The term “industry standards” refers to the process by which domestic professional groups or trade associations, societies, and associations engage in establishing and implementing standards for securing their members’ common interests. Industry standards play an important role in enhancing the industrial structure. The development of industry standards can provide a platform where standards can be prepared in a short time to take account of the rapid changes and innovation of scientific technologies to increase the market competitiveness of industries. The industry standards adopted as national standards ensure that standards are responsive to domestic demands.

7. Since Chinese Taipei’s economy has primarily relied on the success of small and medium-sized enterprises, we usually face the situation where there is a lack of industry organizations that are capable of developing a consensus for industrial technical standards to implement group standards. Currently, Chinese Taipei’s standardization policy in addition to the development of national standards also focuses on assisting the industry and associations to promote group standards, and on harmonizing national standards with international standards. Current practices include implementation of the Chinese National Standards

Mark (CNS Mark) product certification system and subsidizing organizations promoting standardization activities, awarding standardization efforts, and organizing standardization activities related to education and training.

#### **4. The operations of standard-setting bodies**

8. Article 2 of the Standards Act stipulates that the standards authority is the Ministry of Economic Affairs (hereinafter “the MOEA”). The BSMI under the MOEA is in charge of the implementation of standardization matters. Where standardization activities involve other government agencies, the MOEA shall consult and coordinate with relevant government agencies.

9. The implementation of national standards and the CNS Mark product certification system aims to enhance the product quality and technical standards of industry. There are 26 categories of national standards. To review and make suggestions on matters relevant to national standards, Chinese Taipei has established both the National Standards Review Council and the National Standards Technical Committees in accordance with Article 6 of the Standards Act.

10. The National Standards Review Council is divided into three groups of electromechanics, materials science and consumer issues, and its main assignment is to examine the proposals of national standards, approve drafts of national standards, confirm national standards, review the CNS Mark product items and provide recommendations regarding standardization promotion, standards policy, standards regulations and amendments. There are 26 National Standards Technical Committees which are in charge of drawing up and reviewing national standard drafts. These Committees are also responsible for interpreting national standards.

#### **5. The status quo for national standards in practice**

11. Article 4 of the Standards Act states, “national standards are implemented on a voluntary basis. Where all or part of a national standard has been referenced in regulations by the competent authorities of jurisdiction over specific business, such regulations shall apply.” Thus, “standards,” as referred to in the Standards Act, are mostly used on a voluntary basis for commercial transactions, product manufacturing specifications and quality management, whereas observance of “technical regulations” is mandatory when used by the government in acts of state, and are usually involved in regulating health, safety and environmental protection for humans and plants as well as animals, subject to enforcement activities by the competent authorities.

12. National standards must naturally be established in accordance with the demands of government policy, economic development, and industry development. Therefore, the development and implementation of national standards proceeds according to its own schedule, with voluntary adoption by industry and agencies after the completion of the establishment or amendment processes. The industrial competent authorities may incorporate all or part of a national standard into their regulations, and where urgent or timely of policy considerations are involved, the competent authority should take immediate and appropriate administrative measures.

13. Chinese Taipei’s national standard system is divided into three categories, including national standards, group standards, and company standards.

14. In accordance with Article 7 of the Standards Act, the procedures for the development of National Standards involves six stages:

- Submitting a proposal: Any person, institution or group may submit proposals for development, amendment or withdrawal of national standards to the BSMI.
- Drafting: Drafting of national standards may be conducted by National Standards Technical Committees, or commissioned to professional institutions, groups, schools, manufacturers or experts. Where international standards exist or their completion is imminent, they or the relevant parts of them shall be used as a basis for drafting national standards.
- Soliciting comments: Interested parties, members of related Technical Committees, members of the National Standards Review Council, experts, manufacturers, institutions, groups and schools are notified of the draft national standards for commenting. The comment period shall be at least 60 days and a notice announcing the period of commenting shall be published. However, the comment period may be shortened if any urgent problems related to safety, health or environmental protection arise.
- Review: Drafts of national standards are reviewed by related Technical Committees by taking into account comments received and relevant documentation. Final drafts will be prepared after the review.
- Final review: The final drafts of national standards are approved by the National Standards Review Council. Modifications are limited to editorial changes except when the technical content is internally inconsistent or contradicts policies, regulations or other national standards.
- Approval and promulgation: The approved national standards are submitted to the Ministry of Economic Affairs by the BSMI for publication.

15. Throughout the national standard-setting process, Chinese Taipei wants to ensure that all relevant stakeholders can become aware and enjoy meaningful participation to share their views, in the hopes of meeting the requirements of industry. The national standards are developed or amended by consensus through fair, open, and transparent procedures and meet the requirements of the Agreement on Technical Barriers to Trade of the World Trade Organization (WTO/TBT) in terms of their preparation, the adoption and application of standards and conformity to assessment procedures.

## **6. National standards and international standards**

16. With the rapid development of the economy and trade, there is an increasing demand for standards throughout all business sectors. Any existing incompatible standards for similar technologies in different countries or regions can easily create technical barriers to trade. In industries which are output-oriented, there has been a trend towards gradually becoming aware of the consistency of use of global standards to help rationalize the world trade order and lower barriers caused by differences between standards and thus further promote the speedy development of international standards.

17. To reduce the differences among national standards in different countries and promote trade facilitation processes, the Code of Good Practice for the Preparation, Adoption and Application of Standards under the WTO/TBT Agreement requires that a standardizing body shall use international standards, or the relevant parts of them, as a basis for the standards it develops if they exist or their completion is imminent. With a view to bringing national standards into line with international standards, since 1995 Chinese Taipei has continued to adhere to the WTO/TBT Agreement and the Sub-Committee on Standards and Conformance of the Asia-Pacific Economic Cooperation (APEC/SCSC) requirements and to accelerate the harmonization of our national standards (CNS) with international standards. The harmonization efforts include an assessment of the applicability of international standards, the adoption of

international standards, the elimination of any differences with the international standards, participation in international standardization activities, and cooperation with regional professional organizations.

18. In response to international trends, to guide industry to enhance product quality and technical standards, eliminate trade barriers in international markets, and promote industrial development and trade liberalization, Chinese Taipei has actively promoted internationalization of national standards in many areas, such as information technology and communications, electrical and electronic safety, the ISO 9000 series of quality management system, the ISO 14001 environmental management system, the ISO/IEC 17800 information security management system and other related areas, to ensure that the direction and content of our national standards in these areas have been synchronized with the relevant international standards.

## **7. Incense stick standards**

19. Chinese traditionally pay homage to their ancestors by burning incense sticks and paper money to ensure that the dead ancestors are comfortable in the after-life. Worshippers also visit temples by burning incense sticks and paper offerings to pray to the Buddha for help or for other reasons.

20. The production of incense sticks in Chinese Taipei involves mostly individuals or cottage industries, and the production technology employs traditional techniques. In order to maintain this industry's unique value and protect the industry's traditional characteristics, Chinese Taipei has developed national standards for incense sticks. Currently, there are no international standards for incense sticks, and the BSMI considers the situation of the incense stick industry and then develops incense stick standards, inspection for VOC and PAH tests for incense stick burning and paper money standards, so as to protect the value of those traditional products and consumers health. These standards have been developed to reduce the potential harm to consumer health from hazardous materials by establishing limits for toxic heavy metals, formaldehyde, VOC and PAH, so that manufacturers can avoid the addition of unsafe materials during incense manufacturing.

21. In addition, the Incense Environmental Safety Association has established a National Committee for Incense Inspection and Certification, which has been developing an "Incense ISA Certification" system for the marketing of incense in Chinese Taipei. If the incense conforms to the incense quality requirements of national standard CNS 15047 through inspection, the "Excellent Quality Incense ISA certification" mark is granted to incense products that comply with relevant Chinese National Standards. Manufacturers print and affix such marks on their product's packaging, so that consumers easily identify certified products and can be protected by purchasing incense stick products of excellent quality.

## **8. Selected cases handled by the FTC**

### **8.1 Case 1**

22. The FTC was informed that there were only two firms granted the mineral water GMP (Good Manufacturing Practice) certification and that these certification standards created market entry barriers so that other firms without GMP certification were prevented from selling their bottled mineral water to schools and institutions. To further identify the fact, the FTC forwarded a written request to the relevant government agencies engaged in promoting the "food GMP certification system" for an explanation. The FTC found that:

23. To encourage food manufacturers to strengthen self-management systems and to ensure product quality, health and safety, the Ministry of Economic Affairs issued the "Food GMP Promotion Program" in 1989. Then the Industrial Development Bureau and Bureau of Commodity Inspection which are under the Ministry of Economic Affairs, the Central Bureau of Standards (now it is referred to as the Intellectual

Property Office), the Environmental Protection Administration, and the Council of Agriculture jointly implemented the above-mentioned program and established the “food GMP certification system”. However, the “food GMP certification system” was implemented by enterprises on a voluntary basis. Moreover, the food GMP was regulated so as to consist of general sections and specific sections according to the nature of the product and the actual need.

24. The food GMP certification system for mineral water plants prescribed the following benchmarks: (i) “mineral water plants infrastructure, production and testing equipment” certification was based on the “construction and equipment standards for food factories” regarding beverage plants infrastructure, production and testing equipment regulations; (ii) the “water quality and water environment” certification adopted the criteria from the relevant regulations on the “drinking water quality standards;” and (iii) the “basic requirements for mineral water products” were set in accordance with the certification provisions for mineral water (packaged) with the national standards No. CNS12700 as their benchmark.

25. After investigation, the FTC made the decision that the implementation of the “Food GMP Promotion Program” can improve the quality of mineral water, and help consumers identify excellent quality products in order to protect the interests of producers and consumers, all of which show that the standard is designed to protect the public interest. In addition, the implementation of the food GMP certification system applicable to the mineral water plants was undertaken by various government agencies, all of which were entrusted with such authority by law, and were is not subject to the jurisdiction of the Fair Trade Act. Moreover, the food GMP certification system requirements impose no restrictions on schools and institutions that would force them to only sell GMP food products, but rather institutions and schools can freely decide whether to sell the GMP food products. Therefore, there is insufficient evidence that there has been any restriction on market entry through implementation of the food GMP certification applicable to the mineral water plants.

## **8.2 Case 2**

26. In March 2008, Da’an Wenshan Cable Co., Ltd. and 27 other cable TV enterprises applied for approval to jointly develop technology standardized specifications for cable digital set top box (cable STB) in order to be in conformity with the National Communications Commission’s policy for promoting the acceleration of digital cable TV and replace the use of analog systems in the cable TV market with digital transmission technology as well as to meet the demands for various system operators.

27. Article 14 of the Fair Trade Act prohibits enterprises from engaging in concerted actions, save for specific conduct that is listed among the exceptions and is beneficial to the economy as a whole and in the interests of the public at large; for these exceptions to apply, a concerted action must satisfy one of the circumstances listed below: 1) unifying the specifications or models of goods for the purpose of reducing costs, improving quality, or increasing efficiency; 2).....” The intended actions in this case are consistent with the aforementioned circumstances that should have the prior approval of the FTC.

28. After investigation, the FTC found that the cable STB standardized specifications regarding digital set-top box hardware and software specifications were jointly developed by the members of the Taiwan Cable Broadband Industry Association. After confirmation of the content of the specifications, domestic and overseas digital set-top box suppliers were invited for bidding. After consultation with the National Communications Commission, relevant agencies and cable STB enterprises, the FTC made a decision at its Commissioners’ meeting in July 2008 that jointly unifying the technology specifications standard of the cable STB could reduce procurement costs, benefit consumers through lower costs, and yield advantages for the domestic cable television systems industry, digital content industry, and digital set-top box manufacturing industry. After taking these advantages into consideration, and that it was

beneficial to the economy as a whole and in the public interest and had insignificant restrictions on competition or unfair competition, the FTC granted its approval to such companies.

29. However, the FTC observed that the unifying technology standardized specifications may result in competition being restricted as follows: (1) the information is non-transparent: a small number of set-top box manufacturers producing products which meet the standardization specifications may restrict competition among the digital set-top box manufacturers; (2) exercising exclusive intellectual property rights may result in the formation of market entry barriers; and (3) applicants may make use of the opportunity provided by developing standardized specifications, then jointly determine the prices of goods, and limit the terms of quantity, trading territory, or trading counterparts, etc. For these reasons, the FTC imposed certain specific conditions on the approval of concerted actions as follows:

- The applicants shall not engage in any joint procurement with competitors of the digital STB equipment or digital headed equipment.
- The applicants shall not jointly determine the service price, quantity, trading territory, trading counterparts or other trading conditions with respect to digital or analog cable TV systems, and thereby restrict each other's business activities.
- The applicants cannot use built-in IC chips or other components designed to increase the switching costs for subscribers between providers of digital set-top boxes when the applicants purchase the digital set-top boxes with standardized specifications.
- The applicants shall not refuse any cable TV system operators without justification to join or withdraw from the concerted actions; and in the event of any changes in the subjects of concerted actions, the applicants shall submit the documents to the FTC for ongoing supervision; and if the concerted actions result in derivative patent royalties or cost-sharing, there shall be reasonable and non-discriminatory conditions for any new entrants.
- The applicants shall not without justification prevent digital set-top box manufacturers or cable TV system operators from obtaining any relevant information or documents regarding the unifying technology standardized specifications resulting from the concerted actions.
- The applicants shall not prevent any individual applicant from engaging in improvements to the quality of digital set-top boxes, and may not jointly decide the sales price of a digital set-top box by means of a contract, agreement or any other form of mutual understanding.
- The applicants shall not prevent other enterprises from manufacturing and selling cable STB digital set-top boxes which use the technology standardized specifications pursuant to this concerted actions.
- When the applicants hold meetings regarding the establishment of jointly standardized specifications, all meeting minutes and any resolutions adopted shall be provided immediately thereafter to the FTC for ongoing supervision.

30. In addition, to ensure the overall economic benefit, the applicants have expressed their willingness to add an additional two terms or conditions so as to protect consumers' interests. Furthermore, after the applicants have applied to the FTC for approval, up to this date, there shall have been no meetings held by them in relation to the proposed joint technology standardized specifications.