Taiwan-Japan Bilateral Investment Arrangement (BIA)

MOEA

26 October, 2011

Summary

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Taiwan's ECA Policy and its Implementation

1. Policy Goal of Golden Decade – Robust Economy：

- Active Participation in Regional Economic Integration to Achieve the Objective of "Building Up Taiwan While Linking with the Asia-Pacific Region and Deploying Globally"
- Enhance Economic and Trade Liberalization
- Making Taiwan the Best Gateway to Asian Market
- Creating the Conditions for Participating in the TPP

2. The Implementation of the ECA Policy：

- 4 FTAs, ECFA, Taiwan-Japan BIA were Concluded
- Negotiations Related to ECA with Singapore and ECFA followed-up Agreements are under Way
- ECA with India and Philippines are under Joint Feasibility Study

Negotiating history

1. Negotiations started 2010.

   Preliminary consensus on draft text reached July 2011.

2. Several more discussions held to finalize wording.

   Final draft Arrangement confirmed 15 September 2011.

3. BIA consists of 26 Articles and 2 Annexes detailing each party's respective non-conforming measures.

4. Negotiating teams:

Taiwan delegation headed by the Association of East Asian Relations with representatives from MOFA, MOI, MOEA, MOTC, MOJ, MOE, DOH, FSC, COA, CBC, CCA, NCC, PCC.

Japan delegation headed by the Interchange Association, with representatives from Japan's Ministry of Economy, Trade and Industry, Ministry of Finance, Ministry of Agriculture, Forestry and Fisheries, Ministry of Land, Infrastructure, Transport and Tourism, and Ministry of Internal Affairs and Communications.

Signing of the Taiwan-Japan BIA

- Signed: 22 September, 2011, 3pm
- Location: Tauran Room 1, Ambassador Hotel, Taipei
- Representatives:

  Mr. R.T. Peng
  Chairman of the Association of East Asian Relations

  Mr. Mitsuo Ohashi
  President of Interchange Association, Japan

Taiwan-Japan BIA content

1. Definition of “Investment” and “Investor”:

Broad definition of “Investment” adopted, covering FDI, concessions, IPRs, technologies, debts and leases of direct investment, portfolio investment, harvesting of natural resources (agriculture, forestry and fisheries) and all assets with characteristics of investment.

Enterprises owned by governments, non-profit enterprises and trust funds all included.

2. National Treatment:

NT provided to investors and investment of both parties.
Scope - the operation, management, maintenance, use, enjoyment and sale or other disposal of investments.

Taiwan-Japan BIA content (cont):

3. Most Favoured Nation treatment:

Investors of either party and their investments shall be accorded treatment no less favourable than that accorded by either party in like circumstances to investors of any other countries or regions.

4. Performance requirement:

Requirements such as minimum export percentage, local content, local purchase, foreign exchange flows, specific technology transfer, area restrictions shall not be imposed or enforced on either party as a condition for investment activities of an investor of the other party.

5. Members of the Boards of Directors:

Either party shall not impose requirement to appoint, as executives, managers or members of boards of directors, individuals of any particular nationality.

Taiwan-Japan BIA content (cont):

6. Annexes: Non-Conforming Measures (NCM)

List of measures not conforming to National Treatment, Most Favoured Nation Treatment, Performance and Board of Directors Requirements, as exceptions to BIA.

7. NCMs in the Taiwan-Japan BIA:

Annex I:

a. NCMs in standstill: lists industries, related obligations and laws, as well as content and purpose of measures discussed. (e.g. Restrictions regarding Japan investment in energy distribution services and Japan-funded inland waterway/near-sea maritime services)

b. Both parties have agreed to work towards elimination of such measures.

Annex II:

Industries reserved for possible future NCMs (e.g. Taiwan has reservations on gaming services. Aerial transportation, fisheries industry and financial services are exempted from MFN)

Taiwan-Japan BIA content (cont):

8. **Transfer of funds:**
   Except for bankruptcy, insolvency or protection of creditors' rights, or criminal or penal offences, all transfers relating to investments of either party of an investor of other party allowed freely into and out of that party without delay.

9. **Transparency:**
   Laws, regulations, administrative procedures and administrative rulings and judicial decisions of general application shall be promptly published, or otherwise made publicly available, and allow reasonable opportunities for comment from stakeholders prior to entering into effect. Both parties to establish respective windows for inquiry.

10. **Entry and sojourn:**
    Where a natural person of either party applies for entry of the other party for purpose of investment activities therein, the application of such natural person shall be given sympathetic consideration, in accordance with applicable laws and regulations of other party.

Taiwan-Japan BIA content (cont):

11. Investment Protection:

1) **Expropriation and compensation:**
Expropriation or any measure equivalent to expropriation shall not be taken with respect to investments of investors of either party, except for a public purpose, in a non-discriminatory manner and upon payment of prompt, adequate and effective compensation.

2) **Minimum treatment:**
Investments of investors of either party shall be accorded treatment in accordance with international law, including fair and equitable treatment and full protection and security.

Taiwan-Japan BIA content (cont):

12. Dispute Settlement

1) An investment dispute, upon consent between the disputing parties, may be submitted to an international conciliation or arbitration, including arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law, arbitration under Rules of Arbitration of the International Chamber of Commerce and any arbitration in accordance with other arbitration rules agreed upon by the disputing parties.
2) The decision or award rendered by arbitral tribunal binding upon the disputing parties
3) The remedy under the decision or award rendered by arbitral tribunal limited to monetary damages or restitution of property.
4) The claim submitted to arbitration considered to arise out of a commercial relationship or transaction for purpose of Article 1 of New York Convention with respect to recognition and enforcement of either party.

13. General exceptions:

Measures of either party not conforming to the Arrangement may be adopted or enforced:

1) to protect human, animal or plant life or health and public morals, or to maintain public order, to prevent deceptive and fraudulent practices or to deal with the effects of a default on contract, and to protect the privacy of the individual
2) government procurement and BOT bids of either party with participation from enterprises from the other party
3) in time of war, or armed conflict, or other emergency.

Taiwan-Japan BIA content (cont):

14. Denial of Benefits:

1) the benefits of this Arrangement may be denied by either party to an investor of the other party that is an enterprise of the other party and to its investments, if that enterprise is owned or controlled by an investor of any other country or region and that enterprise has no substantial business activities of the other party to the Arrangement.
2) Since investment from certain areas is restricted in Taiwan, this article enables Taiwan to deny benefits of this Arrangement to an investor or investment from the restricted area, so as to prevent investors from the said area to avoid Taiwan's restrictions by investing in a Japanese investment or Japanese business institution in Taiwan.

Benefits Brought by Taiwan- Japan BIA:

- Provide Comprehensive Protection to Investors
- Provide Stable, Predictable and Institutional Investing Environment
- Tighten the links of Industrial Supply Chain between Taiwan and Japan
- Provide Access to International Arbitration

Annexes of Taiwan-Japan BIA:

Selected Items of Annex I of Taiwan:

- Land acquisition
- Mining
- Construction services
- Energy distribution
- Education Services
- Transportation-inland and coastal
- Transportation-international maritime
- Transportation-land
- Transportation-aerial
- Transportation-airfield management and operation
- Transportation-airport management and operation
- Communication services-telecoms
- Communication services-broadcasting and television
- Health and social services-Medical and hospital
- Fisheries and aquaculture
- Agriculture, animal husbandry, forestry
- Public lottery
- Recreational, cultural and sport services
- Professional services
- Entertainment services
- Financial service: banking, bonds, futures, insurance

Annexes of Taiwan-Japan BIA:

Selected items from Annex II of Taiwan:

- Social services
- Measure in relation to aboriginal peoples
- Gaming
- Vulnerable populations
- Postal Services
- Measures exempted from MFN: air transportation, fisheries, maritime transportation, financial services

Annexes of Taiwan-Japan BIA:

Selected Items of Annex I of Japan:

- Agriculture, Forestry and Fisheries
- Banking Services
- Heat Supply
- Telecommunications and Internet Based Services
- Drugs and Medicines Manufacturing
- Nationality of a Ship
- Mining
- Oil Industry
- Security Guard Services
- Air Transport Services
- Freight Forward Business
- Railway Transport
- Road Passenger Transport
- Water Transport
- Water supply and Waterworks

Annexes of Taiwan-Japan BIA:

Selected items from Annex II of Japan:

- Transferring or Disposing of the Equity Interests of a State Enterprise or a Governmental Entity
- Postal Services, Betting and Gambling Services, Manufacture of Tobacco Products, and Minting
- Aircraft and Space Industry
- Arms and Explosives Manufacturing Industry
- Energy Industry
- Fisheries
- Broadcasting Industry
- Land Transaction
- Public Law Enforcement and Correctional Services and Social Services

References

For full text of the Arrangement, please visit:

- MOEA: http://www.moea.gov.tw
- Taiwan-Japan BIA: http://www.moea.gov.tw/Tji