



協合國際法律事務所  
LCS & PARTNERS

台北市信義路五段8號5樓(新光曼哈頓大樓)  
5F., No. 8, Sec. 5, Sinyi Rd.  
110 Taipei, Taiwan (R.O.C.)  
Tel: 886-2-2729-8000 Fax: 886-2-2722-6677

## US – Taiwan Trade Agreement: A Regulatory Harmonization Framework that Warrants Further Attention

May 29 2023

### *Introduction*

Last week, the Office of the United States Trade Representative (USTR) announced that American Institute in Taiwan (AIT) and Taipei Economic and Cultural Representative Office in the United States (TECRO) had concluded the negotiation of the first trade agreement under the U.S.-Taiwan Initiative on 21st Century Trade.<sup>1</sup>

This is the first bilateral trade agreement since the promulgation of the Taiwan Relations Act in 1979. Unlike bilateral trade agreements in the 20<sup>th</sup> century that aimed at lowering or eliminating the tariffs on the trade of goods, this US-Taiwan bilateral trade agreement (USTW) touches on the non-tariff measures (NTM) of bilateral goods and service trade.

Under USTW, the major responsibility of the parties is to simplify, modernize, and to the extent possible, harmonize the NTMs, including custom administration, authorization, and technical standards. Other than the NTMs, the parties also make commitments to strengthen the anti-corruption measures.

### *Custom Administration*

For the first part of USTW, the parties agree to enhance the transparency of the rule-making process and enforcement of the customs administration. The main commitments of the parties include (i) online publication of rules and advance notice of rule-making, (ii) introduction of e-filing and e-invoicing system, (iii) harmonizing the regulations on Authorized Economic Operator, (iv) establishment of a single window of inquiry, and (v) provision of expedited custom procedures.

In short, the obligations of the parties under the USTW are to simplify, expedite and streamline the custom procedure for the trade of goods. In the past, NTMs, such as rules of origin and tariff classification has been a heated issue in international trade law. Although USTW does not provide substantive rules on many debated NTM issues such as red tape and rules of origin, it does provide a procedural framework upon which each party is able to seek remedy.

---

<sup>1</sup> <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/may/ustr-announcement-regarding-us-taiwan-trade-initiative>

### *Regulatory Processes*

USTW also provides that the parties shall adopt a transparent process of regulation development. The provisions are mostly in line with the spirit of the United States Administrative Procedure Act of 1946, as interpreted by the executive and judicial branches of the United States. Therefore, this part of USTW seems to impose obligations on the Taiwan side.

For regulators in Taiwan, they need to change the rulemaking process so as to meet the “reasonableness requirements.” And more importantly, these procedural requirements apply to *all* regulatory processes. For example, parties have to ensure that the rulemaking process (i) provides opportunities for the public to comment, (ii) is based on high quality information, (iii) has input from expert advisory bodies and (iv) is subject to future regulatory assessment and improvement.

### *Services Domestic Regulations*

Other than addressing the procedural issues, another major topic in the USTW is the provisions regarding service authorization measures (e.g., licensing and permitting). Similar to other bilateral trade agreements or regional trade agreements, this section does not apply to governmental procurement and subsidies.

Similar to the commitments to the regulations with respect to trade of goods, the parties commit to streamline and simplify the service authorization process. Specifically, the parties commit to introduce the e-application system and provide assistance to small and medium size businesses.

Another noteworthy point is that there are some provisions tailored-made for the authorization of supply of financial services. The parties will require the financial regulators to address the substantive comments received from interested persons. These provisions will further enhance the transparency of the rulemaking process of the regulators.

### *Conclusion*

With the conclusion of negotiations and the execution of USTW, we anticipate an increase in the volume and value of trade between the two countries. Nonetheless, many of the parties’ obligations under USTW would require amendments to existing laws, and it remains to be seen as to how the USTW will crystallize and be implemented in national laws. Also, this first batch of agreement also leaves out taxation and tariffs: two of the major concerns for the business community. We anticipate that the issue of taxation (particularly double taxation) will be dealt with in the coming batches of agreements.

This development shall be especially of interest to traders, high-tech sector, financial sector and energy sector. For traders and high-tech sectors, USTW provides a smoother custom clearance process and more certainty to the business. For financial and energy sectors, they are heavily regulated and could benefit from the improvement of regulatory processes. For any further inquiry, please contact LCS & Partners; we will be happy to assist you.

Contact Person: Alex Yeh [alexveh@lcs.com.tw](mailto:alexveh@lcs.com.tw) ; Kai-Hua Yu [kaihuayu@lcs.com.tw](mailto:kaihuayu@lcs.com.tw)