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Unprecedented RTA Practices between the Customs Territories of China

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China consists of four customs territories: the mainland, Hong Kong, Macau, and Taiwan. Each customs territory is an independent member of the WTO as well. To strengthen and promote regional economic integration, the mainland, Hong Kong, Macau, and Taiwan have concluded the CEPAs and the ECFA, respectively. The CEPAs and the ECFA are not only RTAs under the WTO, but also administrative agreements of China, which are unprecedented practices in the Multilateral Trading System. The implementation of the CEPAs and the ECFA go smoothly, and have been elevated to national policies of China, which will significantly promote the joint economic prosperity and development of the mainland, Hong Kong, Macau, and Taiwan.

Keywords

RTA, FTA, CEPA, ECFA, Customs Territories, WTO Rules

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I. Introduction

It is widely recognized that Regional Trade Agreements (“RTAs”) have become a very prominent feature of the Multilateral Trading System. Traditionally, RTAs used to be concluded by states. However, the newly concluded RTAs between different customs territories of the People’s Republic of China (“China”) are unprecedented. China consists of four customs territories: the mainland, Hong Kong, Macau, and Taiwan, all of which are independent members of the World Trade Organization (“WTO”). In order to strengthen and promote regional economic integration, the mainland and Hong Kong Closer Economic Partnership Arrangement (“CEPA”) was signed on June 29, 2003 and came into effect on January 1, 2004; the mainland and Macao Closer Economic Partnership Arrangement (“CEPA”) was signed on October 18, 2003 and entered into force on January 1, 2004; and the mainland and Taiwan Economic Cooperation Framework Agreement (“ECFA”) was signed on June 29, 2010 and came into effect on August 17, 2010.

This article tries to make a legal analysis of the unprecedented RTAs practices among customs territories of China. This paper is composed of six parts. Part II discusses the legal status of the mainland, Hong Kong, Macao, and Taiwan. Part III deals with the contents of the CEPAs and the ECFA. Part IV analyzes the nature of the CEPAs and the ECFA. Part V examines whether the CEPAs and the ECFA are consistent with WTO rules. Part VI investigates the implementation of the CEPAs and the ECFA. Finally, Part VII provides some brief conclusions.

II. Legal Status of the Four Customs Territories

A. They Are Part of China

Under the principle of “One Country, Two Systems,”¹ Hong Kong and Macau are Special Administrative Regions (“SAR”) of China. As agreed by China and the United Kingdom in the Sino-British Joint Declaration,² China regained sovereignty over Hong

¹ Under the principle of “one country, two systems,” the socialist system and policies will not be practised in Hong Kong and Macao. See the Basic Law of the Hong Kong Special Administrative Region (“HKSAR Basic Law”) pmb. (Apr. 4, 1994) and the Basic Law of the Macau Special Administrative Region (“MSAR Basic Law”) pmb. (Mar. 31, 1993). For details, see F. CHING, HONG KONG AND CHINA: ONE COUNTRY, TWO SYSTEMS (1996); ERIC Y.J. LEE, LEGAL ISSUES OF INTER-KOREAN ECONOMIC COOPERATION UNDER THE ARMISTICE SYSTEM 243 (2002).

² The Sino-British Joint Declaration, formally known as the Joint Declaration of the Government of the United