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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

Kong from July 1, 1997. According to the Basic Law of the Hong Kong Special Administrative Region,³ which serves as the constitutional document of the Hong Kong Special Administrative Region (“HKSAR”), the HKSAR is a local administrative area directly under the Central People’s Government of China, exercising a high degree of autonomy and enjoying executive, legislative and independent judicial power.⁴ Similarly, as agreed by China and Portugal in the Sino-Portuguese Joint Declaration,⁵ China resumed the exercise of sovereignty over Macau from December 20, 1999. According to the Basic Law of the Macau Special Administrative Region,⁶ which serves as the constitutional document of the Macau Special Administrative Region (“MSAR”), the MSAR is also a local administrative region directly under the Central People’s Government of China, enjoying the same level of autonomous power with the HKSAR.⁷

Unlike the HKSAR and the MSAR, Taiwan is not a SAR of China. Although there are some disputes concerning the legal status of Taiwan,⁸ it is widely recognized that Taiwan is part of China. As James Crawford pointed out, the international community generally accepts that Taiwan is part of China and Taiwan never separates from China officially.⁹ Until now, very few states have established official diplomatic relationships with Taiwan, while the overwhelming majority of states deny the statehood of Taiwan under international law. For example, the Joint Communiqué on the Establishment of Diplomatic Relations of January 1, 1979, which established official relations between the United States and China, clearly states that: “The United States of America recognizes the Government of the People’s Republic of China as the sole legal Government of

Kingdom of Great Britain and Northern Ireland and the Government of the People’s Republic of China on the Question of Hong Kong, was signed on December 19, 1984 in Beijing.

- 3 The Basic Law of the Hong Kong Special Administrative Region, formally known as the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China, was adopted on April 4, 1990 by the Seventh National People’s Congress (“NPC”) of the People’s Republic of China, and went into effect on July 1, 1997. For details, see HKSAR BASIC LAW (1994), available at <http://www.fmprc.gov.cn/eng/wjb/zzjg/tyfls/tyfl/2626/t15466.htm> (last visited on Mar. 10, 2011).
- 4 HKSAR Basic Law arts. 2 & 12.
- 5 The Sino-Portuguese Joint Declaration, formally known as Joint Declaration of the Government of the People’s Republic of China and the Government of the Republic of Portugal on the question of Macao, was signed on April 13, 1987 in Beijing.
- 6 The Basic Law of the Macau Special Administrative Region, formally known as the Basic Law of the Macao Special Administrative Region of the People’s Republic of China, was adopted on March 31, 1993 by the Seventh NPC of the People’s Republic of China, and went into effect on December 20, 1999. For details, see MSAR BASIC LAW (1993), available at <http://www.fmprc.gov.cn/eng/wjb/zzjg/tyfls/tyfl/2626/t15467.htm> (last visited on Mar. 10, 2011).
- 7 MSAR Basic Law arts. 2 & 12.
- 8 For example, the Democratic Progressive Party in Taiwan asserted that “Taiwan is an independent sovereign state.” See Chi Chung, *International Law and the Extraordinary Interaction Between the People’s Republic of China and the Republic of China on Taiwan*, 19 IND. INT’L & COMP. L. REV. 233, 241 (2009); MICHAEL S.T. GAU, *GOVERNMENTAL REPRESENTATION FOR TERRITORIES IN INTERNATIONAL CIVIL AVIATION ORGANIZATION: A CASE STUDY* (1997).
- 9 See JAMES CRAWFORD, *THE CREATION OF STATES IN INTERNATIONAL LAW* 219 (2d ed. 2006).

China. Within this context, the people of the United States will maintain cultural, commercial, and other unofficial relations with the people of Taiwan. The Government of the United States of America acknowledges the Chinese position that there is but one China and Taiwan is part of China.”

It is worthy to note that laws in both the mainland and Taiwan admit that Taiwan is a part of China in different manners. Article 1 of the Act Governing Relations between Peoples of the Taiwan Area and the mainland Area of Taiwan provides that: “This Act is specially enacted for the purposes of ensuring the security and public welfare in the Taiwan Area, regulating dealings between the peoples of the Taiwan Area and the mainland Area, and handling legal matters arising therefrom before national unification,”¹⁰ which undoubtedly means that the mainland and Taiwan are part of a nation, i.e. China. Article 2 of the Anti-Secession Law of China provides clearly that: “There is only one China in the world. Both the mainland and Taiwan belong to one China.”¹¹

In a word, the mainland, Hong Kong, Macau, and Taiwan are part of China under different statutes. Hong Kong and Macau are Special Administrative Regions of China, while Taiwan is a region of China before national reunification.

B. They Are WTO Members

Sovereignty is not a precondition for the General Agreement on and Tariffs and Trade (“GATT”) and WTO membership. Article XXXIII of the GATT provides that: “A government not party to this Agreement, or a government acting on behalf of a separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement, may accede to this Agreement, on its own behalf or on behalf of that territory, on terms to be agreed between such government and the CONTRACTING PARTIES.” There is no direct definition of a separate customs territory. According to Article XXIV of the GATT, however, a customs territory shall be understood as any territory with respect to which separate tariffs or other regulations of commerce are maintained for a substantial part of the trade of such territory with other territories. The concept of “separate customs territory” was first designed for the colonial government authorities, which did not achieve full independence.¹² The WTO inherited this concept even though there are no

¹⁰ Act Governing Relations between Peoples of the Taiwan Area and the mainland Area of Taiwan was promulgated by Presidential Order on July 31, 1992 and implemented from September 18, 1992 by the Order of the Executive Yuan.

¹¹ The Anti-Secession Law was adopted at the Third Session of the Tenth National People’s Congress of the People’s Republic of China on March 14, 2005 and went into effect immediately.

¹² EDMOND MCGOVERN, *INTERNATIONAL TRADE REGULATION: GATT, THE UNITED STATES AND THE EUROPEAN COMMUNITY* 12-13 (2d ed. 1986).

longer colonies in the world. Article XII of the Agreement Establishing the World Trade Organization provides that: "Any state or separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement and the Multilateral Trade Agreements may accede to this Agreement, on terms to be agreed between it and the WTO. Such accession shall apply to this Agreement and the Multilateral Trade Agreements annexed thereto." The provisions do not explicitly require a separate customs territory to obtain authorization from its sovereign State to accede to the WTO.

The mainland formally became a WTO member under the name of China on December 10, 2001. Hong Kong, a British colony then, became a contracting party of the GATT as a separate customs territory on April 23, 1986, and was an original member of the WTO. Since July 1, 1997, Hong Kong has become a SAR of China and continued to be a member of the WTO under the name of 'Hong Kong, China.' Similarly, Macau, a Portuguese colony then, became a contracting party of the GATT as a separate customs territory on January 11, 1991 and was also an original member of the WTO. Since December 20, 1999, Macao has become a SAR of China and continued to be a member of the WTO under the name of 'Macau, China.' It is worth noting that both Hong Kong and Macau retained the status of separate customs territories after China resumed the exercise of sovereignty over them. Article 116 of the Basic Law of the Hong Kong Special Administrative Region provides that: "The HKSAR shall be a separate customs territory, and may, using the name 'Hong Kong, China,' participate in relevant international organizations and international trade agreements (including preferential trade arrangements). Export quotas, tariff preferences and other similar arrangements, which are obtained or made by the HKSAR or which were obtained or made and remain valid, shall be enjoyed exclusively by the Region." Article 112 of the Basic Law of the Macau Special Administrative Region has the same provision.

Using the name of "the separate customs territory of Taiwan, Penghu, Kinmen and Matsu" ("Chinese Taipei"), Taiwan formally became a WTO member on January 1, 2002. Although Taiwan is not recognized as a sovereign state, but a part of China, it does not prevent Taiwan from being a WTO member as a separate customs territory. There was a question whether Taiwan needed authorization from China to join the WTO. As mentioned before, Article XII of the Agreement Establishing the World Trade Organization does not explicitly require such authorization. However, it is evident that without authorization (whether expressed or implied), a region of a sovereign state could never become a separate customs territory under the WTO, let alone a WTO member. To be a separate customs territory, a region must possess full autonomy in the conduct of its external commercial relations and of the other matters provided for in

multilateral agreements.¹³ The decisive criterion for autonomy is the *de facto* and *de jure* right to act on its behalf and to fulfill its obligations.¹⁴ Obviously, without China's authorization, Taiwan does not own such *de facto* and *de jure* right. All the states with formal diplomatic relations with China have the obligations only to maintain unofficial relations with Taiwan.

Historically, Taiwan was authorized before it successfully acceded to the WTO. In 1986, China notified the GATT of its hope to resume its status as a GATT contracting party. In 1992 when Taiwan applied to join the GATT, China published a statement, which officially agreed that Taiwan could apply to join the GATT in the name of a separate customs territory after China had rejoined the GATT.¹⁵ At the meeting of September 1992, the GATT's Council of Representatives decided to establish a separate working party to examine the request for accession of Taiwan. The Chairman said he had carried out extensive consultations on the subject of establishing a working party. He noted that all contracting parties had acknowledged the view of China that Taiwan, as a separate customs territory, should not accede to the GATT before the China itself.¹⁶ China failed to rejoin the GATT before the date of entry into force of the Agreement Establishing the World Trade Organization and had to accede to the WTO. Therefore, Taiwan also looked to accede to the WTO. Finally, on December 10, 2001 China formally became a member of the WTO. Immediately after that, Taiwan, using the name of "the separate customs territory of Taiwan, Penghu, Kinmen and Matsu," formally became a member of the WTO.

III. Contents of the CEPAs and the ECFA

A. Contents of the CEPAs¹⁷

Since both the Hong Kong and Macao SARs are highly open economic entities, the share much in common. The mainland and Hong Kong CEPA is virtually the same as

¹³ Agreement Establishing the World Trade Organization art. XII, available at http://www.wto.org/english/docs_e/legal_e/04-wto.pdf (last visited on Mar. 28, 2011).

¹⁴ RUDIGER WOLFRUM, PETER-TOBAIS STOLL & KAREN KAISER, WTO: INSTITUTIONS AND DISPUTE SETTLEMENT 146 (2006).

¹⁵ ZHAO WEITIAN, THE LEGAL SYSTEM OF THE WORLD TRADE ORGANIZATION 43 (2000).

¹⁶ WTO Press Release, *WTO Successfully Concludes Negotiations on China's Entry*, Sept. 17, 2001, available at http://www.wto.org/english/news_e/pres01_e/pr243_e.htm (last visited on Dec. 24, 2010).

¹⁷ For information about the CEPAs, see Department of Taiwan, Hong Kong, and Macau Affairs at the Ministry of commerce of the People's Republic of China ("MOFCOM"), *The Special of the CEPAs* (only available in Chinese), available at <http://tga.mofcom.gov.cn/subject/cepanew/index.shtml> (last visited on Jan. 1, 2011).

the one between the mainland and Macao.

The mainland and Hong Kong CEPA consists of a preamble, six chapters, 23 articles, and six annexes.¹⁸ Table III-1 shows the contents as follows.

Table III-1: The Mainland and Hong Kong CEPA

6 Chapters	General Principles; Trade in Goods; Origin; Trade in Services; Trade and Investment Facilitation; and Other Provisions.
23 Articles	Objectives; Principles; Inception and Development; Non-application of Specific Provisions in China's WTO Accession Legal Documents; Tariffs; Tariff Rate Quota and Non-tariff Measures; Anti-dumping Measures; Subsidies and Countervailing Measures; Safeguards; Rules of Origin; Market Access; Service Suppliers; Financial Cooperation; Cooperation in Tourism; Mutual Recognition of Professional Qualifications; Measures; Areas of Cooperation; Exceptions; Institutional Arrangements; Miscellaneous; Annexes; Amendments; and Coming into Effect.
6 Annexes	Annex 1 Arrangements for Implementation of Zero Tariff on Trade in Goods; Annex 2 Rules of Origin for Trade in Goods; Annex 3 Procedures for the Issuing and Verification of Certificates of Origin; Annex 4 Specific Commitments on Liberalization of Trade in Services; Annex 5 Definition of 'Service Supplier' and Related Requirements; and Annex 6 Trade and Investment Facilitation.

On trade in goods, the mainland should apply zero import tariffs to 273 products originating from Hong Kong and end import tariffs for other products originated from Hong Kong no later than January 1, 2006[AW1]. Hong Kong should continue to apply zero import tariffs to all products with the mainland origin. Neither side should apply non-tariff measures inconsistent with the WTO rules to products imported and originating from the other side. The mainland should not apply tariff rate quota to products of Hong Kong origin. Neither side should apply anti-dumping measures or countervailing measures to products originated from the other side.¹⁹

On trade in services, the mainland should [AW2]open up 18 service industries to Hong Kong.²⁰ The liberalization measures should apply to some industries as follows:

¹⁸ MOFCOM, *The mainland and Hong Kong CEPA* (only available in Chinese), available at <http://tga.mofcom.gov.cn/aarticle/subject/cepnew/subjectaa/200612/20061204078587.html> (last visited on Mar. 10 2011).

¹⁹ The mainland and Hong Kong CEPA ch. 2.

²⁰ They include as follows: management consulting, convention and exhibition, advertising, accounting, construction and real estate, medical and dental, distribution, logistics, freight forwarding, storage and warehousing, transport, tourism, audio-visual, legal, banking, securities, insurance, and value-added telecommunications services.

the abolition of the equity investment restrictions to allow a sole proprietor; reduction of the minimum registered capital requirements of qualifications; and the relaxation of geographic and business scope restrictions.²¹

On trade and investment facilitation, the mainland and Hong Kong have reached agreement on seven fields: trade and investment promotion; customs clearance and management of clearance facilitation; the development of small and medium enterprises; cooperation in Chinese traditional medicine and medical products sector; electronic business; transparency in laws and regulations; commodity inspection and quarantine, and food safety and quality and standardization. In the meantime, the two sides have agreed to cooperation in finance and tourism areas as well as mutual recognition of professional qualifications.²²

B. Content of the ECFA²³

The ECFA is composed of a preamble, five chapters, sixteen articles, and five annexes. Table III-2 below shows the contents.²⁴

Table III-2: Contents of the ECFA

5 Chapters	General Principles; Trade and Investment; Economic Cooperation; Early Harvest; and Other Provisions.
16 Articles	Objects; Cooperation Measures; Trade in Goods; Trade in Services; Investment; Economic Cooperation; Early Harvest for Trade in Goods; Early Harvest for Trade in Services; Exceptions; Dispute Settlement; Institutional Arrangements; Documentation Formats; Annexes and Subsequent Agreements; Amendments; Entry into Force; and Termination.
5 Annexes	Annex 1 Product List and Tariff Reduction Arrangements; Annex 2 Provisional Rules of Origin Applicable to Products; Annex 3 Safeguard Measures between the Two Parties; Annex 4 Sectors and Liberalization Measures; and Annex 5 Definitions of Service Suppliers.

Source: Compiled by the author

²¹ *Supra* note 19, ch. 4.

²² *Id.* ch. 5.

²³ For details, see The Special of the CEPAs, *supra* note 17.

²⁴ MOFCOM, *the Mainland and Taiwan Economic Cooperation Framework Agreement* ("ECFA") (only available in Chinese), available at <http://tga.mofcom.gov.cn/aarticle/subject/ecfa/subjectii/201007/20100707004065.html> (last visited on Mar. 10, 2011).

On trade in goods, the mainland will reduce import tariffs on 539 products originated from Taiwan, mainly in ten sectors.²⁵ Taiwan will also reduce import tariffs on 267 products originated from the mainland, mainly in the following three sectors as petrochemical products, engineering products, and textile products. Both parties will reduce import tariffs on those products respectively to zero in three phases within two years after the entry into force of the early harvest list. On trade in services, the mainland will open eleven sectors to Taiwan service providers.²⁶ In return, Taiwan will open nine sectors to mainland service providers.²⁷

C. Differences between the CEPAs and the ECFA

There are 12 main textual differences between the mainland and Hong Kong CEPA and the Cross-Strait ECFA.²⁸ The differences between the CEPA and the Cross-Strait ECFA are due to the fact that while both Hong Kong and Taiwan are parts of China, Hong Kong is a SAR of China, but Taiwan is still not reunified with the mainland. Therefore, the ECFA is much more political than the CEPA. There are furious controversies in Taiwan over the ECFA. The opposition Democratic Progressive Party and other pro-independence groups even believe that the ECFA is a cover for unification with the mainland. Considering such circumstance, the two sides of the ECFA would rather set up free trade arrangements step by step dealing with easier issues in the beginning. Second, Hong Kong is a free port without barriers on trade; it does not charge tariff on importation or exportation of goods keeping licensing of imports and exports to a minimum. Licensing is only imposed when there is a genuine need to fulfill obligations undertaken by Hong Kong to its trading partners to meet public health, safety or internal security needs.²⁹ Therefore, the CEPA focuses much more on reducing or eliminating trade barriers of the mainland towards the other side than the ECFA.

²⁵ They are as follows: agricultural products, chemical products, engineering products, electronic products, automobile components and parts, textile products, light industrial products, metallurgical products, instrument and meter products, and medical treatment products.

²⁶ They are as follows: the sectors of accounting, auditing and bookkeeping, computer services, natural science and engineering research and development services, conference services, professional design services, films, hospital services, aircraft maintenance services, insurance, banking services, and securities and futures.

²⁷ They are as follows: the sectors of research and development services, conference services, exhibition services, special product design services (except interior design), films, brokerage services, sport and leisure services, computer reservation system services for air transports and banking services.

²⁸ The differences may be shown in the Annex.

²⁹ Government of the Hong Kong Special Administrative Region ("Gov. HK"), Trade and Industry Department, available at <http://www.tid.gov.hk/english/aboutus/tradepolicy/trpolicy.html> (last visited on Jan. 24, 2011).

IV. Nature of the CEPAs and the ECFA

A. The CEPAs and the ECFA Are RTAs under the WTO

RTAs constitute an exemption from the Most-Favored Nations (“MFN”) principle. Article XXIV of the GATT provides three types of RTAs: Customs Unions (“CU”), Free trade Areas (“FTA”), and interim agreements necessary for the formation of a CU or of a FTA.³⁰ A CU may be defined as the substitution of a single customs territory for two or more customs territories, so that duties and other restrictive regulations of commerce may be eliminated with respect to substantially all the trade either between the constituent territories of the union, or at least in products originating in such territories. Moreover, substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union.³¹ A FTA shall be understood as a group of two or more customs territories in which the duties and other restrictive regulations of commerce are eliminated on substantially all the trade between the constituent territories in products originating in such territories.³²

Since the mainland, Hong Kong, Macau, and Taiwan are members of the WTO, the CEPAs and the ECFA are definitely RTAs under the WTO.³³ Judging from the provision of Article XXIV:8 of the GATT, the CEPAs are FTAs rather than CUs because the CEPAs do not require the mainland and Hong Kong or Macau to apply substantially the same duties and other regulations of commerce to territories not included in the CEPAs.³⁴ On the other hand, the ECFA is an interim agreement necessary for the formation of a FTA rather than a FTA or CU because, like the CEPAs, the ECFA does not require the mainland and Taiwan to apply substantially the same duties and other regulations of commerce to territories not included in the ECFA. However, the ECFA is a framework agreement which aims to gradually reduce or

³⁰ GATT art. XXIV: 5.

³¹ *Id.* art. XXIV: 8(a).

³² *Id.* art. XXIV: 8(b).

³³ Although the terms ‘RTA’ or ‘FTA’ cannot be found in the CEPAs and the ECFA, the designation given to an agreement is legally irrelevant *per se*. See JAN KLABBERS, *THE CONCEPT OF TREATY IN INTERNATIONAL LAW* 42 (2006).

³⁴ In some scholars’ views, the CEPA (the Mainland and Hong Kong CEPA) is not a FTA, but rather a new type of regional trade agreement under the WTO framework, as so-called creation. See Wang Wei, *Regional Integration: Comparative Experiences: CEPA: A Lawful Free Trade Agreement under “One Country, Two Customs Territories?”*, 10 L. & BUS. REV. AM. 647 (2004). However, as mentioned before in the text, Article XXIV of the GATT only provides three types of RTAs: CU, FTA, and interim agreements necessary for the formation of a CU or of a FTA. This provision is binding on China without doubt. Moreover, as a WTO member, China does not own the power to create a new type of RTA alone under the WTO framework.

eliminate tariff and non-tariff barriers to trade in a substantial majority of goods between the two Parties.³⁵

B. The CEPAs and the ECFA Are Not Treaties

The Vienna Convention on the Law of Treaties defines ‘treaty’ as “an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.”³⁶ Although the convention does not exclude non-state subjects from concluding treaties,³⁷ it is generally acknowledged that the subjects of concluding treaties are states and international organizations.³⁸ However, recent practices have indicated that non-sovereign entities could conclude treaties to the extent authorized by their sovereign states. For example, after its handover to China in 1997, Hong Kong concluded and effectuated many treaties on its own in such sectors as civil aviation, investment, taxation, etc.³⁹ The legal ground of Hong Kong’s capacity to conclude treaties is its external autonomy authorized by the Basic Law of the Hong Kong Special Administrative Region, which clearly provides that the HKSAR may, using the name ‘Hong Kong, China,’ participate in relevant international organizations and international trade agreements.⁴⁰

There is no doubt that Hong Kong, Macau, and Taiwan have certain capacities to conclude treaties. Like Hong Kong, Macau also enjoys its external autonomy authorized by the Basic Law of the Macau Special Administrative Region.⁴¹ Unlike Hong Kong and Macau, there is no provision in the Constitutional Law of China which authorizes external autonomy to Taiwan. However, China’s approval of Taiwan’s entry into WTO as a separate customs territory has indicated that Taiwan at least is able to conclude treaties concerning matters provided for in the Agreement Establishing the World Trade Organization and the Multilateral Trade Agreements, though not expressly authorized by China.⁴² The capacity of Hong Kong, Macau, or Taiwan to conclude treaties is,

³⁵ ECFA art. 2.

³⁶ The Vienna Convention on the Law of Treaties art. 2(1)(a), May 23, 1969, 1155 U.N.T.S. 331.

³⁷ The Vienna Convention on the Law of Treaties provides that: “The fact that the present Convention does not apply to international agreements concluded between States and other subjects of international law or between such other subjects of international law, or to international agreements not in written form, shall not affect: (a) the legal force of such agreements.” *Id.* art. 3.

³⁸ ANTHONY AUST, *MODERN TREATY LAW AND PRACTICE* 47 (2000).

³⁹ Gov. HK, *Treaties and International Agreements*, available at <http://www.legislation.gov.hk/choice.htm> (last visited on Dec. 24, 2010).

⁴⁰ HKSAR Basic Law art.116.

⁴¹ MSAR Basic Law art.137.

⁴² According to the Article II: 2 of the Agreement Establishing the World Trade Organization, the agreements and

nonetheless, limited; they cannot conclude treaties beyond authorization of China. Taiwan is a good example in this regard. To date, Taiwan has not successfully concluded even one RTA with foreign states which regard Taiwan as part of China.

As discussed above, the CEPAs and the ECFA are RTAs, which would be consistent with the WTO rules. However, being RTAs under the WTO does not mean that they are definitely treaties. There is no regulation in the WTO rules which stipulates the legal status of RTAs. Moreover, there is no international law allowing two regions under one state to conclude treaties. On the contrary, Article 2 of the Vienna Convention on the Law of Treaties provides that a treaty is an international agreement. That is to say, only an agreement concluded between two nations, two non-sovereign entities which belong to different nations, or a non-sovereign entity and a foreign nation could be called a treaty. Since the CEPAs and the ECFA are agreements between different customs territories of a nation, i.e. China, which are not international at all, they are not treaties.

C. The CEPAs and the ECFA Are Administrative Agreements of China

After excluding the possibility of the CEPAs and ECFA being treaties, it is evident that they are merely interregional agreements within one state. Although some scholars take the view that the CEPAs and the ECFA are domestic laws, few can tell what kind of domestic laws they are.⁴³ From the author's point of view, the CEPA and the ECFA are administrative agreements of China. Theoretically, an administrative agreement is an accord concluded by two or more administrative authorities based on the principle of voluntary, equal-cooperation and mutual consensus.⁴⁴ Although there is no specific provision regarding 'administrative agreement' in the legislation of China, administrative agreements are already widely used in the practice of domestic regional economic integration in China, such as the agreements concluded by regional governments in the Yangtze River Delta Region, covering Jiangsu Province, Zhejiang Province, and the Municipality of Shanghai. Besides, the concept of an administrative agreement is not a new one. For example, the 'interstate compact' is a similar concept in the United States, namely an agreement concluded between two or more States.⁴⁵

associated legal instruments included in Annexes 1, 2 and 3 (referred to as "Multilateral Trade Agreements") are binding all members.

⁴³ See Wang Wei, *supra* note 34; Customs Yuan Faqiang & Ma Zhiyao, *Jurisprudential Thoughts about the "Comprehensive Economic Cooperation Agreement" between the Two Sides of Taiwan Strait*, 5 PRESENT DAY L. SCI. 48 (2009).

⁴⁴ He Yuan, *On Administrative Agreement*, 3 ADMIN. L. REV. 46 (2006).

⁴⁵ F. ZIMMERMAN, INTERSTATE COOPERATION: COMPACT AND ADMINISTRATIVE AGREEMENTS 1 (2002).

The CEPAs and the ECFA actually belong to the same type of administrative agreement, which is concluded between the central government representing the mainland and a regional government representing Hong Kong, Macau or Taiwan. In China, the central government is supreme and any regional governments exercise the powers delegated by the central government. It is still possible, however, for Hong Kong, Macau or Taiwan to conclude administrative agreements with the central government. Hong Kong and Macau exercise a high degree of autonomy, which constitutes a legal ground to negotiate equally with the central government in the autonomous fields. As for Taiwan, it is still not reunified with the mainland and in fact may exercise a higher degree of autonomy than Hong Kong or Macau does.

V. Consistency with the WTO Rules

RTAs constitute an exception to the MFN obligation because they involve preferential treatment for contracting parties not granted to all WTO members. To be valid under the WTO rules, they must meet certain requirements, which are mainly set out in the GATT XXIV.⁴⁶ The GATT XXIV stipulates three substantive requirements and one procedural requirement concerning FTAs and interim agreements leading to the formation of FTAs. The substantive requirements are as follows. First, the duties and other regulations of commerce maintained in each of the constituent territories and applicable at the formation of such FTA or the adoption of such interim agreement to the trade of contracting parties not included in such area or not parties to such agreement shall not be higher or more restrictive than the corresponding duties and other regulations of commerce existing in the same constituent territories prior to the formation of the FTA.⁴⁷ Second, duties and other restrictive regulations of commerce shall be eliminated on substantially all the trade between the constituent territories in products originating in such territories.⁴⁸ Third, any interim agreement shall include a plan and schedule for the formation of an FTA within a reasonable length of time.⁴⁹ The

⁴⁶ Although the paragraph 2(c) of the Enabling Clause permits preferential arrangements among developing countries, it is irrelevant to the topic at issue because the CEPAs and the ECFA are not agreements between developing countries. See GATT, *Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries* ("Enabling Clause"), Nov. 28, 1979, GATT Doc. L/4903, available at http://www.wto.org/english/docs_e/legal_e/enabling1979_e.htm (last visited on Apr. 9, 2010).

⁴⁷ GATT art. XXIV: 5(b).

⁴⁸ *Id.* art. XXIV: 8(b).

⁴⁹ *Id.* art. XXIV: 5(c).

procedural requirement is that any contracting party deciding to enter into an FTA or an interim agreement leading to the formation of an FTA, “shall promptly notify the CONTRACTING PARTIES and shall make available to them such information regarding the proposed union or area as will enable them to make such reports and recommendations to contracting parties as they may deem appropriate.”⁵⁰

The CEPAs are consistent with those requirements.⁵¹ First, the duties and other regulations of commerce in the mainland, Hong Kong and Macau to the trade of other WTO members are not higher or more restrictive than those prior to the formation of the CEPAs. Second, although it is unclear what is the real meaning of the expression “substantially all the trade,” the CEPAs satisfies this requirement because Hong Kong and Macau apply zero tariff to all imported goods from the mainland, and the mainland applies zero tariff to the import of those goods from Hong Kong and Macau.⁵² Third, China and Hong Kong notified the CEPA to the WTO (Committee on Regional Trade Agreements and the Council for Trade in Services) on December 27, 2003. On the same day, China and Macao gave a similar notice to the WTO.⁵³

The ECFA’s consistency with the WTO rules may be a little controversial. Because the ECFA is an interim agreement leading to the formation of an FTA, which aims to gradually reduce or eliminate tariff and non-tariff barriers to trade in a substantial majority of goods between the two parties, and was concluded just on June 29, 2010, it is still early to draw a definitive conclusion whether duties and other restrictive regulations of commerce will be eliminated on “substantially all the trade” within “a reasonable length of time.”⁵⁴ Generally, “a reasonable length of time” does not exceed 10 years.⁵⁵ However, the issue may be theoretical rather than practical for the following three reasons. First, it is unclear what is the real meaning of the expression “substantially all the trade.”⁵⁶ Therefore, no clear criteria could be used in practice.

⁵⁰ *Id.* art. XXIV: 7(a).

⁵¹ One scholar asserted that: “Where antidumping and countervailing measures are regarded as measures to get rid of distortion to the market, CEPA’s provision of non-application of such measures will violate the basic WTO principles of non-discrimination and most favored nation (“MFN”),” see Wang Guiguo, *CEPA: A Critical Visit*, H.K. L. 1 (Sept. 2003) available at http://www.hk-lawyer.com/InnerPages_features/0/1057/2003/9 (last visited on Mar. 25, 2011). However, as mentioned before in the text, RTAs constitute an exemption from the MFN principle. Therefore, CEPA’s provision of non-application of such measures is consistent with the WTO rules.

⁵² The Mainland and Hong Kong CEPA art. 5; the Mainland and Macau CEPA art. 5.

⁵³ WTO, *Regional Trade Agreement Database*, available at <http://rtais.wto.org/ui/PublicMaintainRTAHome.aspx> (last visited on Dec. 25, 2010).

⁵⁴ GATT arts. XXIV: 8(b) & XXIV: 5(c).

⁵⁵ See *Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade* 1994 para. 3, available at http://www.wto.org/english/docs_e/legal_e/10-24.pdf (last visited on Mar. 28, 2011).

⁵⁶ According to the Appellate Body in the Turkey-Textiles case, the expression “substantially all the trade” “is something considerably more than merely some of the trade,” but “is not the same as all the trade.” Obviously, this is not a clear

Second, no FTAs were actually rejected by the WTO in the past. Third, taking account of the special relationship between the mainland and Taiwan, and the ECFA's limited influence on other WTO members, it seems that no WTO members would have an interest in the ECFA's consistency with the WTO. The ECFA has not been notified to the WTO. The GATT has no time frame for the notification.

VI. Implementation of the CEPAs and the ECFA

A. Current Implementation of the CEPAs

Following the CEPA, a closer trade relationship has been built between the two customs territories. For the implementation of CEPA, both sides have signed several Supplements.⁵⁷

Supplement I to the CEPA deals with the following: (a) the rules of origin for imported goods of Hong Kong origin;⁵⁸ (b) the specific contents concerning the specific commitments on liberalization of trade in services;⁵⁹ and (c) amendments to Annexes to the CEPA.

Supplement II deals with the following: (a) the rules of origin for goods of Hong Kong origin;⁶⁰ (b) the specific contents concerning the commitments on liberalization of trade in services under the CEPA;⁶¹ and (c) financial cooperation.⁶²

Supplement III deals with the following: (a) additional commitments relevant to the professional services of the construction sector;⁶³ (b) the specific contents concerning the

guideline. See Appellate Body Report, Turkey- Restrictions on Imports of Textile and Clothing Products ("Turkey – Textiles"), ¶ 48, WT/DS34/AB/R, (adopted Nov. 19, 1999).

⁵⁷ Supplements I, II, III, IV, V, VI, and VII were signed in 2004, 2005, 2006, 2007, 2008, 2009 and 2010, respectively. For detail of the Supplements, see the Special of the CEPAs, *supra* note 17.

⁵⁸ Annex 1 of this Supplement, which was drawn up pursuant to Annex 2 of the CEPA "Rules of Origin for Trade in Goods," are set out in Annex 2 of this Supplement. Annex 1 of this Supplement is a supplement to Table 1 of Annex 1 of the CEPA.

⁵⁹ Annex 3 of this Supplement.

⁶⁰ Consultations were completed by both sides in 2005 are listed in Annex 1 of this Supplement. Annex 1 of this Supplement is a supplement to Table 1 of Annex 2 of the CEPA and both sides agreed to amend the detailed implementation procedures in Article 5 of Annex 1 of the CEPA.

⁶¹ Annex 2 of this Supplement.

⁶² It is provided that the mainland shall allow qualified Mainland securities companies which belong to the pilot innovation type to set up subsidiaries in Hong Kong in accordance with the relevant requirements. In addition, the mainland shall allow qualified Mainland futures companies to operate futures business in Hong Kong including the setting up of subsidiaries.

⁶³ Generally it includes as follows: first, to allow Hong Kong service suppliers to set up wholly-owned construction

commitments on liberalization of trade in services;⁶⁴ and (c) the agreement on the protection of intellectual property in the area of trade and investment facilitation under the CEPA.

Supplement IV provides that both sides will establish a working group to study and take forward matters in connection with registration and practice for construction sector professionals after they have acquired qualifications through mutual recognition. In addition, competent authorities or professional bodies of both sides will commence exchanges on the mutual recognition of qualifications of registered electrical exploration and design engineer, and registered public facility exploration and design engineers. These bodies will also start technical exchanges on registered geotechnical exploration and design engineer and land surveying.

Supplement V contains the following: (a) the Annex of this Supplement is a supplement and amendment to Table 1 of Annex 4 of the CEPA (The mainland's Specific Commitments on Liberalization of Trade in Services for Hong Kong); (b) as for trade and investment facilitation, the two sides will adopt measures to further strengthen cooperation in the area of electronic commerce, the protection of intellectual property, and branding; and (c) in the field of professional qualifications, the two sides will adopt measures to further promote mutual recognition of professional qualifications in the accounting sector and the construction sector.

Supplement VI lays down the following: (a) since October 1, 2009 the mainland has further relaxed market access conditions in 20 areas. The two sides agree to take forward the work on mutual recognition of professional qualifications (supervision engineering) between supervision engineers of the mainland and building engineers of Hong Kong, and recognition of Hong Kong architects for obtaining qualification of supervision engineers of the mainland; (b) it will allow Hong Kong banks to open branches in neighboring Guangdong Province more easily and qualified securities firms in Hong Kong and the mainland will also be allowed to establish joint businesses in Guangdong; and (c) mutual recognition for professional qualifications includes the sections of taxation, construction, real estate, and printing.

Supplement VII includes the following: (a) from January 1, 2011, the mainland began further relaxation of the market access conditions in 14 areas;⁶⁵ (b) qualified future

engineering cost consulting enterprises in the mainland; second, when applying for qualification, the performance of the Hong Kong service suppliers in both Hong Kong and the mainland is taken into account in assessing their qualification in the mainland.

⁶⁴ The Annex of this Supplement.

⁶⁵ Building, medical treatment, analysis of technical inspection and goods inspection, professional design, audio visual, distribution, banking, securities, social services, tourism, entertainment, air transportation, professional technicians vocational qualification examinations and individually-owned businesses on the basis of the commitments on opening of trade in services under the CEPA and the Supplements.

companies in the mainland are supported to set up subsidiaries in Hong Kong to conduct business; and (c) in order to promote cooperation in the area of trade and investment facilitation, both sides agree to add supplements on industrial and education cooperation into the area of trade and investment facilitation under CEPA and cooperation on traditional Chinese medicine industry into the specific contents in the area of industrial cooperation.

Since the CEPA between Macao and the mainland came into effect in 2004, the mainland authorities have progressively expanded its contents by signing seven supplements in the following years, phasing out market restrictions in various trade and service sectors for Macao investors and companies. The mainland and Macao CEPA supplements are virtually the same as the mainland and Hong Kong CEPA supplements. As stipulated in Supplement II to the Macao CEPA, manufacturing enterprises in Macao could submit detailed list of goods that enjoy zero tariff to Macao Economic Services, and Macao Economic Services shall submit the lists to Ministry of Commerce before March 1 and September 1 annually. In addition, the mainland and Macao have agreed to include new cooperation in the area of intellectual property rights, while the mainland will support and cooperate with Macao to organize large-scale international conventions and exhibitions as indicated in Supplement IV to the Macao CEPA. Under Supplement V to the Macao CEPA, the total areas of cooperation are nine including grand promotions as an additional area. At Supplement VI to the Macao CEPA, both sides have agreed to strengthen exchanges and cooperation in the area of trademarks. Also, Supplement VII to the Macao CEPA mainly comprises measures concerning the facilitation of trade and investment and the liberalization of trade in services. As Macao is charging ahead to be an important player in the New Pearl River Delta Super Zone, it is worthy to notice that the building of the Hong Kong-Zhuhai-Macao Bridge is a significant facet of Macao's promising development in the coming years. The super-bridge project includes an innovative trans-border park in conjunction with the adjacent Zhuhai Municipality and a host of infrastructure and entertainment projects between the east and west banks of the Pearl River Delta, as part of the CEPAs with both Hong Kong and Macao.⁶⁶

For the implementation of the CEPAs, especially its “early and pilot implementation” in Guangdong, the nearest province to Hong Kong and Macau in the mainland, the top leaders of Hong Kong and Guangdong signed the Framework Agreement on Hong

⁶⁶ Reporter, *Macao and Beijing Reach Consensus on CEPA-Macao and Guangdong Reach Consensus on Trans-border Industrial Park*, 26 MACAU NEWS, Oct. 2003, at 2, available at <http://www.wtc-macau.com/news/n26/n26-4page.htm> (last visited on Jan. 3, 2011).

Kong and Guangdong Cooperation in Beijing, on April 7, 2010.⁶⁷ The Agreement aims at giving full advantages to Hong Kong and Guangdong to establish an advanced manufacturing and modern service industry base, respectively. The Agreement is divided into two parts: the main text and the list of annual major initiatives. Its main text contains 11 chapters, covering a wide range of topics, including the preamble, cross-boundary infrastructural facilities, modern service industries, manufacturing industries and innovation and technology, business environment, quality living area, education and talent, major co-operation areas, regional co-operation plans, as well as mechanisms and arrangements. The list of annual major initiatives sets out specific measures for the two sides to implement the Agreement. A similar agreement is expected to be concluded between Macau and Guangdong soon.

B. Current Implementation of the ECFA⁶⁸

Although the ECFA is an interim agreement, cross-straits trade continues to grow with the implementation of the ECFA. Since the ECFA has entered into force, a number of businesses have been involved in the issues concerning the certificate of origin application. Authorities of both sides have taken various measures to ensure the smooth release of products under the ECFA. For example, ECFA goods have been given priority to the inspection and certification via the green channel. In the meantime, negotiations covering commodity trade, service trade, investment and dispute settlement will continue. In particular, inspection services are available for the whole day and staff members are arranged to offer technical guidance to ensure the efficiency of declaration, inspection and clearance. Currently, the implementation of the Early Harvest Program has received strong response from both sides. The Cross-Straits Economic Cooperation Committee was established on January 1, 2011. “The easier issues first, step by step” is the basic strategy for the institutionalization of the Cross-Strait economic relations. It is widely estimated that both the mainland and Taiwan will be able to leverage the ECFA to maintain the stable development of cross-straits ties and put cross-strait trading links on a more systematic footing.⁶⁹

It is significant to note that the implementation of the CEPAs and the ECFA have

⁶⁷ People’s Government of Guangdong Province, *The Framework Agreement on Hong Kong and Guangdong Cooperation* (only available in Chinese), available at http://www.gd.gov.cn/govpub/rdzt/ygazt/yghz/201006/t20100629_123956.htm (last visited on Jan. 3, 2011).

⁶⁸ For details, see *The Special of the ECFA*, *supra* note 17.

⁶⁹ See Taiwan Affairs Office of the State Council PRC, *Hu Jintao, General Secretary of the Communist Party of China (“CPC”) Central Committee, Meets with Kuomintang (“KMT”) Party Honorary Chairman Wu Poh-hsiung* (only available in Chinese), available at http://www.gwytb.gov.cn/speech/speech/201101/t20110123_1724055.htm (last visited on Mar. 12, 2011).

been elevated to national policies of China. Paragraphs 53 and 54 of the Communist Party of China (“CPC”) Central Committee’s Proposal on Formulating the Twelfth Five-year Program (2011-2015) on National Economic and Social Development⁷⁰ provides for “strengthen[ing] the mainland and Hong Kong, Macao exchanges and cooperation, continu[ing] to implement closer economic partnership arrangement,” and “deepen[ing] the cross-strait economic cooperation, carry[ing] out the cross-strait economic cooperative frame agreement.”

VII. Conclusion

China consists of four customs territories, i.e. mainland China, Hong Kong, Macau, and Taiwan. Hong Kong and Macau are SARs of China, while Taiwan is a region of China before national reunification. As sovereignty is not a precondition for the WTO membership, the mainland joined the WTO under the name of China, while Hong Kong, Macau and Taiwan joined the WTO as separate customs territories of China. To strengthen and promote regional economic integration, the mainland, Hong Kong, Macau, and Taiwan have concluded the CEPAs and the ECFA, respectively. The mainland and Hong Kong CEPA is virtually the same as the one between the mainland and Macao, but different from the ECFA. The CEPAs and the ECFA are unprecedented RTAs practices between the customs territories of China in the multilateral trading system. On the one hand, the CEPAs are FTAs, and the ECFA is an interim agreement necessary for the formation of a FTA. On the other hand, the CEPAs and the ECFA are agreements between different customs territories of a nation, i.e. China, which are not international at all. Therefore, they are not treaties but administrative agreements of China. The CEPAs and the ECEA actually belong to the same type of administrative agreement, which is concluded between the central government representing the mainland and a regional government representing Hong Kong, Macau or Taiwan. The implementation of the CEPAs and the ECFA has gone smoothly, and they 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.

Like RTAs, the CEPAs and the ECFA should be consistent with the WTO rules. Otherwise, the contracting members would be violating their WTO obligations.

⁷⁰ It was adopted at the Fifth Session of the 17th CPC Central Committee which ended on October 18, 2010.

Although the CEPAs are in line with the WTO rules, the ECFA's status under the WTO rules may be a little controversial. In order to ensure it, the mainland and Taiwan should notify the ECFA to the WTO promptly, eliminating duties and other restrictive regulations of commerce on substantially all the trade within ten years.

Annex1: Differences between the mainland-Hong Kong CEPA and the ECFA

Subjects	ECFA	CEPA
1. Document Name	The Cross-Straits Economic Cooperation Framework Agreement	The mainland and Hong Kong Closer Economic Partnership Arrangement
2. The Signers	The ECFA was signed by the Chairman of the Straits Exchange Foundation and the President of the Association for Relations Across the Taiwan Straits.	The CEPA was signed by the Vice Minister of Commerce of China and the Financial Secretary of Hong Kong SAR.
3. Entry into Force	After the signing of the ECFA, the two parties shall complete the relevant procedures respectively and notify each other in writing. The ECFA shall enter into force as of the day following the date that both parties have received such notification from each other. ⁷¹	The CEPA shall come into effect on the day of signature by the representatives of the two sides. ⁷²
4. Principles	The two parties should, in line with the basic principles of the WTO and in consideration of the economic conditions of the two parties, gradually reduce or eliminate barriers to trade and investment for each other, create a fair trade and investment environment, and further advance cross-Straits trade and investment relations. ⁷³	The implementation and amendment of the CEPA shall adhere to the following principles: (1) to abide by the “one country, two systems” principle; (2) to be consistent with the rules of the WTO; (3) to accord with the needs of both sides to adjust and upgrade their industries and enterprises and to promote steady and sustained development; (4) to achieve reciprocity and mutual benefits, complementarity with each other’s advantages and joint prosperity; and (5) to take progressive action, dealing with the easier subjects before the more difficult ones. ⁷⁴

⁷¹ *Supra* note 35, art. 15.

⁷² *Supra* note 19, art. 23.

⁷³ *Supra* note 35, pmb1.

⁷⁴ *Supra* note 19, art. 2.

Subjects	ECFA	CEPA
<p>5. Non-application of Specific Provisions in China's WTO Accession Legal Documents</p>	<p>No such provision.</p>	<p>The two sides recognize that through over 20 years of reform and opening up, the market economy system of the mainland has been continuously improving, and the mode of production and operation of Mainland enterprises is in line with the requirements of a market economy. The two sides agree that Articles 15 and 16 of the "Protocol on the Accession of the People's Republic of China to the WTO" and paragraph 242 of the "Report of the Working Party on the Accession of China" will not be applicable to trade between the mainland and Hong Kong.⁷⁵</p>
<p>6. Trade Remedy Measures</p>	<p>Trade remedy measures, including measures set forth in the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, the Agreement on Subsidies and Countervailing Measures and the Agreement on Safeguards of the WTO, and the safeguard measures between the two parties, are applicable to the trade in goods between the two Parties.⁷⁶</p>	<p>The two sides undertake that neither side will apply anti-dumping measures to goods imported and originated from the other side and the two sides reiterate their observance of the WTO Agreement on Subsidies and Countervailing Measures and Article XVI of the General Agreement on Tariffs and Trade 1994, and undertake not to apply countervailing measures to goods imported and originated from each other.⁷⁷</p>
<p>7. Early Harvest</p>	<p>To accelerate the realization of the objectives of the ECFA, the two parties have agreed to implement the Early Harvest Program on trade in goods and trade in services.⁷⁸</p>	<p>No such provision.</p>

⁷⁵ *Id.* art.4.

⁷⁶ *Supra* note 35, art.3.

⁷⁷ *Supra* note 19, arts. 7 & 8.

⁷⁸ *Supra* note 35, ch. 4.

Subjects	ECFA	CEPA
8. Mutual Recognition of Professional Qualifications	No such provision	The two sides shall encourage mutual recognition of professional qualifications and promote the exchange of professional talents between each other. ⁷⁹
9. The Termination Clause	The party terminating the ECFA shall notify the other party in writing. The two parties shall start consultations within 30 days from the date the termination notice is issued. In case the consultations fail to reach a consensus, the ECFA shall be terminated on the 180 th day from the date the termination notice is issued by the notifying party. Within 30 days from the date of termination of the ECFA, the two parties shall engage in consultations on issues arising from the termination. ⁸⁰	No such provision.
10. Institutional Arrangements	The two parties shall establish a Cross-Straits Economic Cooperation Committee, which consists of representatives designated by the two parties. The Committee may set up working group(s) as needed to handle matters in specific areas pertaining to the ECFA, under the supervision of the Committee. ⁸¹	The two sides shall set up a Joint Steering Committee whose functions include supervising the implementation of the CEPA, interpreting the provisions of the CEPA, etc. ⁸²
11. Dispute Settlement	The two parties shall engage in consultations on the establishment of appropriate dispute settlement procedures no later than six months after the entry into force	No such provision.

⁷⁹ *Supra* note 19, art. 15.

⁸⁰ *Supra* note 35, art.16.

⁸¹ *Id.* art. 11.

⁸² *Supra* note 19, art. 19.

Subjects	ECFA	CEPA
	<p>of ECFA, and expeditiously reach an agreement in order to settle any dispute arising from the interpretation, implementation and application of the ECFA. More significantly, any dispute over the interpretation, implementation and application of the ECFA prior to the date the dispute settlement agreement mentioned above enters into force shall be resolved through consultations by the two Parties or in an appropriate manner by the Cross-Straits Economic Cooperation Committee.⁸³</p>	
<p>12. Amendments</p>	<p>Amendments to the ECFA shall be subject to consent through consultations between, and confirmation in writing by, the two Parties.⁸⁴</p>	<p>The provisions of the CEPA or its Annexes may be amended in writing when the need arises. Any amendment shall come into effect after it has been signed by the duly authorized representatives of the two sides.⁸⁵</p>

Source: Compiled by the author

⁸³ *Supra* note 35, art. 10.

⁸⁴ *Id.* art.14.

⁸⁵ *Supra* note 19, art. 22.