

REGIONAL FOCUS & CONTROVERSIES

The Cross-Strait Economic Cooperation Framework Agreement: Deliberation on Economic, Political and Legal Aspects

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After careful deliberation and through rounds of talks, the Chinese mainland and Taiwan signed the Cross-Straits Economic Cooperation Framework Agreement in 2010. This agreement is viewed by many across the straits and around the world as an agreement with great implications not only for economic issues, but also for political interactions between the two sides. Moreover, as the two sides of the ECFA are WTO members, legally, the relevant rules concerning free-trade agreement under the WTO regime are applicable to the ECFA. This article will give a brief analysis on the economic, political and legal aspects of the ECFA.

Keywords

ECFA, Cross-Strait Economic Cooperation, Early Harvest Planning, WTO Framework

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1. Introduction

On June 29, 2010, Mr. Chen Yunlin, Chairman of the mainland's Association for Relations across the Taiwan Straits ("ARATS") and Mr. Chiang Pin-kung, Chairman of the Taiwan-based Straits Exchange Foundation ("SEF") signed the Cross-Straits Economic Cooperation Framework Agreement ("ECFA"). The ECFA is an agreement which aims at institutionalizing economic cooperation across the Taiwan Strait. As a critical legal measure to the future interaction across the straight, it would facilitate and regularize economic cooperation and trade exchanges between two sides.

The idea of a cross-Strait economic pact dates back to April 2005 when Hu Jintao, general secretary of the Communist Party of China ("CPC") Central Committee, and Lien Chan, then chairman of the Kuomintang ("KMT") Party in Taiwan, jointly issued the "common aspiration and prospects for cross-Strait peace and development"¹ in Beijing. In this document, the two parties proposed to jointly promote all-round economic exchanges between the mainland and Taiwan and establish a cross-Strait economic cooperation mechanism. It was confirmed that the consensus will be built into the KMT's policy as a keynote of Premier Ma Ying-jeou's "regional leader campaign."

On December 31, 2008, Hu Jintao delivered a speech at a meeting in commemoration of the 30th anniversary of the "Message to Compatriots in Taiwan."² He put a clear position in this speech that the mainland and Taiwan could sign a "comprehensive economic cooperation agreement" and build a unique mechanism to achieve mutual benefit. Not surprisingly, this proposal was well received by Ma Ying-jeou. "Since to a large extent, our success in the [regional leader] election can be attributed to our party's policy in handling the cross-straight relations, it's quite natural that we will stick to our words," said Mr. Chiang Pin-kung in an interview by *Caijing Magazine*.³ After several rounds of talks, negotiators were finally able to ink the deal in Chongqing,

¹ As a legal mechanism, the Cross-Straits Economic Cooperation Framework Agreement ("ECFA") has at three antecedents: the creation of the Cross-Strait Common Market Foundation in 2000 by the current vice regional leader of Taiwan, Vincent Siew; the formal accession of the two side across the strait to the WTO in 2001; and the signing of Closer Economic Partnership Arrangement ("CEPA") by the mainland with Hong Kong and Macau, respectively. See generally Terry Cooke, *Cross-Strait Matrix: the Economic Cooperation Framework Agreement*, 9 CHINA BRIEF 7 (2009), available at http://www.jamestown.org/single/?no_cache=1&tx_ttnews%5Btt_news%5D=35041&tx_ttnews%5BbackPid%5D=7&cHash=f0b872132a (last visited on Jan. 6, 2011).

² Hu Jintao, Chinese President, Address at the ceremony commemorating the 30th anniversary of the announcement of Message to Compatriots in Taiwan (available only in Chinese), available at http://news.xinhuanet.com/newscenter/2008-12/31/content_10586495.htm (last visited on Jan.18, 2011).

³ Hu Caiping, *Jiang Bingkun: ECFA Taiqian Muhou* [Chiang Pin-Kung Talks as an Insider on the ECFA Negotiation] (available only in Chinese), *CAIJING*, July, 5, 2010, available at <http://magazine.caijing.com.cn/templates/inc/chargecontent2.jsp?id=110473226&time=2010-07-05&cl=106&page=1> (last visited on Jan. 28, 2011).

which was the country's wartime capital during the War of Resistance against Japanese Aggression from 1937 to 1945, where the two parties took more than 60 years to reunite.

The main objective of this research is to review the ECFA. This article is composed of four sections. Part II will overview the ECFA, including its highlights, major contents, and arrangement for future negotiations. Part III will discuss the economic and political implications of the ECFA for Taiwan's economic growth, alongside cross-strait industrial cooperation. Part IV will preview the subsequent negotiation process in each sector of the ECFA including investment, trade in goods, trade in services, and dispute settlement. Part V will finally examine the ECFA's consistence with the WTO regime.

2. The ECFA: An Overview

A. Highlights of the ECFA

The provisions of the ECFA basically cover major cross-strait economic activities, making it a comprehensive economic agreement possessing cross-strait characteristics, devoid of political arrangements.⁴ The ECFA consists of the preamble, 5 chapters, 16 articles and 5 annexes. The five chapters are the General Principles, Trade and Investment, Economic Cooperation, Early Harvest, and Other Provisions. The headers of the sixteen articles are the Objectives, 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. The five appendixes are titled as follows: Product List and Tariff Reduction Arrangements under the Early Harvest for Trade in Goods, Provisional Rules of Origin Applicable to Products under the Early Harvest for Trade in Goods, Safeguard Measures between the Two Parties Applicable to Products under the Early Harvest for Trade in Goods, Sectors and Liberalization Measures under the Early Harvest for Trade in Services, and Definitions of Service Suppliers Applicable to Sectors and Liberalization Measures under the Early Harvest for Trade in Services.

B. Major Contents of Early Harvest Planning and its Implementation

In the area of trade in goods, the mainland will reduce tariffs on 539 Taiwanese originating products (10 categories), including agricultural products, chemical products, machinery products, electronic products, auto parts and components, textile products,

⁴ See English version of the ECFA and its annexes, available at <http://tga.mofcom.gov.cn/aarticle/subject/ecfa/subjectii/201009/20100907153618.html> (last visited on Jan.27, 2011).

light industry products, metallurgical products, instruments and apparatuses, and medical products. In exchange, Taiwan will cut tariffs on 267 products originating from the mainland. The tariffs of products from the mainland are categorized as follows: petrochemical products, machinery products, textile products, and other products. Both parties will realize zero-tariff on early harvest products by three stages within two years following the implementation of the early harvest plan.⁵

In the area of trade in services, the mainland promises to implement more liberalized policy measures for 11 service types, such as accounting, auditing and bookkeeping, computer and related services, research and development, convention services, specialty design, audiovisual services, hospital services, aircraft repair and maintenance services, insurance, banking, and other financial services. In return, Taiwan promises to further liberalize 9 service types such as research and development, convention services, exhibition services, specialty design services, audiovisual services, brokerage services, sporting and other recreational services, computer reservation system, and banking services to the mainland.⁶

During the implementation period of the early harvest plan, the mainland will gradually reduce or cancel tariffs on 539 Taiwanese products, and expand the scale of liberalization for service providers from Taiwan in 11 areas under trade in services. The implementation of the above-mentioned liberalization measures will exceed the current level of liberalization. All relevant agencies will amend relevant accommodating measures pursuant to the covenants under the ECFA to ensure prompt implementation of early harvests.⁷

C. Arrangements for Subsequent Negotiations

After the ECFA is signed, both sides across the strait will continue to push for subsequent negotiations for single item agreements. The negotiations for single item agreements on trade in goods, services, investment, and dispute settlement will commence within six months after the effective date of the ECFA, and be completed as promptly as possible.

D. Arrangements for Economic Cooperation

In the area of economic cooperation, both parties have agreed to focus on subjects including, but not limited to, intellectual property rights protection and cooperation,

⁵ ECFA annex I.

⁶ *Id.* annex IV.

⁷ Interview with Jiang Zengwei, Vice Minister of the MOFCOM, SINA, July 1, 2010, available at <http://news.sina.com.cn/c/2010-07-01/204820591693.shtml> (available only in Chinese) (last visited on Dec. 8, 2010).

financial cooperation, trade promotion and facilitation, customs cooperation, e-commerce cooperation, discussion on the overall arrangements and key areas for industrial cooperation, promotion of cooperation in major projects, promotion of small and medium-sized enterprises cooperation between both sides, and promotion of the mutual establishment of offices by economic and trade bodies of the two parties.⁸

E. Dispute Resolution

Under the ECFA, the parties will engage in consultations on the establishment of appropriate dispute settlement procedures within six months after the entry into force of the ECFA. They will also reach an agreement in order to settle any dispute arising from the interpretation, implementation, and application of this Agreement. Before the above mentioned dispute settlement agreement enters into force, any dispute over the interpretation, implementation, and application of the ECFA will be resolved through consultations by the two parties, or in an appropriate manner by the Cross-Strait Economic Cooperation Committee.⁹

F. Institutional Arrangements

Under the ECFA, the two sides across the strait will set up a Cross-Strait Economic Cooperation Committee consisting of designated representatives to take charge of matters that may arise under the Agreement. The major responsibilities of the committee include concluding consultations necessary for the attainment of the objectives of the agreement, monitoring and evaluating the implementation of the agreement, interpreting the provisions of the agreement, notifying important economic and trade information, and settling any dispute over the interpretation, implementation, or application of the agreement before the formal dispute settlement agreement becomes effective. The committee may, according to its needs, set up working group(s) to handle matters in specific areas pertaining to the agreement. The two sides have jointly established the committee on January 6, 2011.¹⁰

G. Implementation of the Early Harvest Planning

Taiwan's legislature ratified the ECFA on August 17, 2010.¹¹ Following the fulfillment of

⁸ ECFA, *supra* note 5, art. 6.

⁹ *Id.* art.10.

¹⁰ See *Mainland, Taiwan Establish Economic Co-op Committee*, CHINA DAILY, Jan, 6, 2011, available at http://europe.chinadaily.com.cn/business/2011-01/06/content_11810115.htm (last visited on Jan. 23, 2011).

¹¹ Under Taiwan local laws, the ECFA would take effect only after approved by the regional legislature. See *Taiwan Regional Legislature Passes ECFA*, CHINA DAILY, Aug, 18, 2010, available at http://www.chinadaily.com.cn/2010-08/18/content_11167040.htm (last visited on Jan. 22, 2011).

relevant procedures, the agreement entered into force on September 12, 2010.¹² In October 2010, the mainland opened five service sectors such as accounting, computer services, convention services, research and development, and film industry. Another six mainland service sectors - design, hospitals, maintenance of civil aviation planes, banking, securities, and insurance - were subsequently opened on January 1, 2011. On the same day, the two sides started comprehensively implementing the early harvest program.¹³

3. Economic and Political Implications

As the first agreement between the two sides across the straits to be submitted to Taiwan's legislative assembly for approval, the ECFA is regarded by many as boasting great economic and political implications.

A. Economic Implications

(1) *Impetus for Taiwan's Economic Growth*

Under the early harvest program, which will first benefit some goods and services, Taiwan receives more favorable treatment than was granted to the mainland. Within two years, the mainland would remove tariffs on 539 items worth \$13.84 billion. In contrast, Taiwan would only remove tariffs on 267 items valued at \$2.86 billion.¹⁴ Noticeable is that the goods on which the mainland will reduce tariffs are expected emanate from the hardest-hit industries under the ASEAN-China agreement.¹⁵

Moreover, in a bid to please politically-sensitive Taiwanese farmers, the deal includes 18 categories from the farming and fishing sectors, even though the mainland has promised not to push Taiwan for freer trade of its own agricultural goods.¹⁶ During the negotiation process, which gave full recognition to Taiwan's economic and social situation, the mainland seriously fulfilled its pledge give full consideration to the interests of Taiwan compatriots, particularly farmers. As a demonstration of sincerity and goodwill, the pact does not cover the introduction of the mainland labor to Taiwan,

¹² See Landmark Cross-Strait Economic Pact to Take Effect Sunday, CHINA DAILY, Sept. 11, 2010, available at http://www.chinadaily.com.cn/china/201009/11/content_11289621.htm (last visited on Jan.15, 2011).

¹³ See Mainland, Taiwan Reduce Import Tariffs to Implement ECFA, CHINA DAILY, Jan. 2, 2011, available at http://europe.chinadaily.com.cn/2011-01/02/content_11785962.htm (last visited on Jan. 3, 2011).

¹⁴ Xie Yu & Ma Wei, *Cross-Straits Trade Deal to Cut Tariffs, Open Markets*, CHINA DAILY, June 30, 2010, available at http://www.chinadaily.com.cn/cndy/2010-06/30/content_10037494.htm (last visited on Dec.28, 2010).

¹⁵ *A Different Kind of Free-Trade Protests*, THE ECONOMIST, June 28, 2010, available at http://www.economist.com/blogs/newsbook/2010/06/trade_and_politics_between_china_and_taiwan (last visited on Dec. 23, 2010).

¹⁶ *Id.*

either.¹⁷

The ECFA is expected to boost the bilateral trade up to about \$110 billion a year - made up of some \$80 billion in goods flowing to the mainland and \$30 billion to Taiwan.¹⁸ According to statistics released by both sides, the mainland has been Taiwan's largest trading partner and export market since 2007.¹⁹ A brochure released by Taiwanese authorities said the signing of the ECFA "brings more benefits to Taiwan than the mainland," given the large size of the latter's economy.²⁰

According to statistics disclosed during a regular press conference held in 2011 by Yang Yi, the State Council's Taiwan Affairs Office spokesman, the total amount of tariff reduction in relation to products is estimated to reach \$472 million. Given that the figure was calculated based upon products imported in 2009, and that the cross-Straits trade increased quickly in 2010, the exact amount of duty reductions might be larger. Among the products, the tariff on 18 Taiwanese farm products will be cut from 10 to 5 percent in 2011, which will greatly benefit Taiwanese farmers, Yang said. Taiwan's regional authorities expect to boost trade in the export-dependent economy by 5%, raise economic growth by about 1.6%, and create about 260,000 jobs.²¹

(2) *Promoting the Industrial Integration across the Straits*

The ECFA, whose explicit objective is economic cooperation, may influence the scope of industrial co-operation. Mutual complement has long been an innate driving force in the industrial co-operation across the straits, and so far the two sides have already co-operated with each other in areas such as Chinese herbal medicine, solar photovoltaic system, communication, LED lighting, information service, wind power generation, logistics, automobile, precision machinery, etc.²² It is anticipated that in the post-ECFA

¹⁷ *ECFA to Promote Cross-Strait Industrial Integration*, PEOPLE'S DAILY, July 2, 2010, available at <http://english.peopledaily.com.cn/90001/98986/7050742.html> (last visited on Jan. 7, 2011).

¹⁸ Xie Yu & Ma Wei, *supra* note 14.

¹⁹ Chinataiwan, *Chinese Mainland, Taiwan Sign Landmark Economic Pact*, June 30, 2010, available at http://www.chinataiwan.org/english/specialreports/sr/CrossStraitTalks/2690/111/201006/t20100630_1434176.htm (last visited on Dec. 30, 2010).

²⁰ *Taiwan Small Biz Owners Welcome ECFA Tariff Reductions*, CHINA DAILY, Dec. 31, 2010, available at http://www.chinadaily.com.cn/china/2010-12/31/content_11784051.htm (last visited on Jan. 6, 2010).

²¹ Cindy Sui, *Trade Deal Casts Shadow on Taiwan*, ASIA TIMES, Aug. 5, 2010, available at <http://www.atimes.com/atimes/China/LH05Ad01.html> (last visited on Dec. 27, 2010).

²² See e.g., *The Two Sides across the Straits Held Symposium on Herbal Medicine in Taipei* (available only in Chinese), available at <http://www.teseyao.com/yaowen/LiangAnZhongCaoYaoLunTanZaiTaiBeiJuBan> (last visited on Dec. 21, 2010); Fujian Television, *The Two Sides across the Straits Held Pre-Bid Meeting for Solar Photovoltaic Projects* (available only in Chinese), available at <http://energy.nmgnews.com.cn/system/2009/04/09/010204857.shtml> (last visited on Dec. 19, 2010); Xinhua News Agency, *Potentials of the LED and Photovoltaic Industries in Fujian* (available only in Chinese), available at <http://finance.sina.com.cn/roll/20070706/01431522223.shtml> (last visited on Dec. 22,

era, industrial relations across the straits will become more frequent, deeper, and focused. In this new strategy of co-operation, modern services and agriculture are expected to attract renewed attention. The 6th Cross-Straits Economic, Trade, and Cultural Forum was held under the theme “Strengthen the Co-operation in New Industry and Enhance the Competitiveness of the Two Sides across the Strait” on July 10, 2010, immediately after the signature of ECFA. While the 17th CPC Congress emphasized the development of modern service industry in the mainland where there is great potential, and where Taiwan is advantageous in terms of capital, skill, management, and operation, further mutual access to the service market has been made a reality by ECFA. As to the agriculture industry, after adequate deliberation, the ECFA further opens the mainland market to agricultural products from Taiwan. This initiative could bring cooperation to a new era through optimizing the configuration in research and development, production, purchase, and sales.²³

The ECFA may also change the way in which both sides interact. Taiwan exports most of its products to the mainland, and also derives its largest trade surplus from there. The mainland is also the largest host region of Taiwan’s outbound investment. The focus of the two sides’ economic cooperation has long been comparable to “investment-driven trade.” The largest share of investment from Taiwan goes to the mainland’s export-oriented electro-information industry. During this complementary process, not only were both sides able to achieve better configuration of resources and mutual benefits, but also do they suffer from certain side effects such as the over-concentration of investments within certain regions (more than 80% of investments go to the coastal areas) and industries (more than 60% of investments go to the electro-information industry), the high dependence on exports (more than 80% of products are export oriented), the dullness of co-operation modes (investment driven trade), etc.²⁴ As the mainland economy develops and their economic cooperation deepens, problems such as the rapid escalation of costs, the shortage of land storage, and the waning of favorable policies may gradually surface. These weaken the impetus in economic cooperation and reduce the efficiency in the configuration of production factors. The

2010); Huaxia, *Strengthen the Cooperation between New Industries across the Straits* (available only in Chinese), available at <http://huaxia.com/tslj/jjsp/2011/03/2335091.html> (last visited on March 17, 2011).

²³ Zhangli, *ECFA Qianding Hou Liangan Jingmao Guanxi Zouxiang*, 7 *LIANG’AN GUANXI* 17-18 (2010) [Trends in the Cross-Straits Trade after the Signature of the ECFA, 7 *RELATIONS ACROSS TAIWAN STRAITS* 17-18 (2010)].

²⁴ See e.g. *Taiwan Entrepreneurs on the Mainland* (available only in Chinese), available at http://www.china.com.cn/overseas/txt/2008-10/24/content_16661662.htm (last visited on Jan. 4, 2011); *Current State and Future Trends of Taiwan-Oriented Investments on the Mainland* (available only in Chinese), available at <http://www.huaxia.com/tslj/wzzdlj/2007/09/72506.html> (last visited on Jan. 7, 2011); Zhu Lei, *Accelerate Industrial Cooperation and Transformation across the Straits in the Post-ECFA Era* (available only in Chinese), available at http://www.chinataiwan.org/jinrong/zjzl/201006/t20100612_1411872.htm (last visited on Jan. 8, 2011).

key to such a dilemma is to adjust the way in which cooperation is conducted so as to achieve a better configuration of these factors. In this regard, the signature of ECFA represents a good opportunity in several respects: (1) with deepening co-operation, the overall advantage for cross-Strait economies will be effectively explored, and the level and scope of cooperation will further be enhanced and expanded; (2) vertical industrial cooperation can be facilitated through further expansion of the manufacturing service functions; (3) through constructing comprehensive service platforms for mainland investment in Taiwan, new frontiers for co-operation can be developed; and (4) the effective connection of Taiwan and the Asian-Pacific regional economy can benefit from the signature of the ECFA, and greater potential for economic development can be explored through Taiwan's experience in venturing in international markets and the mainland's capital advantage.²⁵

The implications of the ECFA for industrial integration across the straits have been expected by senior government officials and top negotiators. ARATS President Chen Yunlin said in an interview with Xinhua that the agreement would help the mainland and Taiwan deal jointly with increasingly difficult competition in the world economy, and witness mutual benefits as the economic advantages complement each other.²⁶ Chiang Pin-Kung, chairman of the SEF, said that the ECFA would not only be a milestone in the development of cross-Strait economic relations but also a giant leap for both sides toward economic integration and globalization.²⁷ A similar view is held by Jiang Zengwei, vice minister of the Ministry of Commerce of the mainland. In an interview on July 1, 2010, Jiang indicates that in addition to boosting trade through mutual tariff reductions, the ECFA will also benefit cross-Strait industrial integration. Related industries in Taiwan and the mainland China will be able to form industry chains with lower costs, secure higher positions in the international division of labor among industries, cope with severe international competition, and seize higher market shares.²⁸

B. Political Implications

(1) Implications for Taiwan's Possible FTA Negotiations

On January 1, 2010, ASEAN officially entered into a free trade relationship with China,

²⁵ Sheng Jiuyuan, *ECFA dui Liang'an Jingji Hezuo de Yingxiang: Jinzhan yu Qianjing*, 4 SHILIE JINGJI YU ZHENGZHI LUNTAN 25, 32-34 (2010) [Influences of the ECFA on the Economic Cooperation across the Straits: Progress and Prospective, 4 F. WORLD ECON. & POL. 25, 32-34 (2010)].

²⁶ See *Mainland, Taiwan Sign ECFA*, XINHUA, June 29, 2010, available at <http://english.cri.cn/6909/2010/06/29/1461s579863.htm> (last visited on Jan. 13, 2010).

²⁷ *Id.*

²⁸ *Supra* note 17.

known as “ASEAN Plus One” (“ASEAN+1”). This new economic free trade zone includes a population of nearly two billion people. With this new relationship, China has eliminated 90% of import tariffs with Indonesia, Myanmar, Malaysia, the Philippines, Singapore, and Thailand. The other 10% of the import tariffs will be eliminated gradually due to the fact that they deal with industries that are highly sensitive, such as textile and electronics. The rest of the ASEAN member countries will enjoy the same privilege as of 2015. In addition, ASEAN also plans to construct free trade arrangements with Japan and South Korea. Along with its free trade with China, this arrangement is known as “ASEAN Plus Three” (“ASEAN+3”). The ASEAN+1 and ASEAN+3 arrangements prevent Taiwan’s businesses from competing effectively in the Asian market, potentially causing eventual regional marginalization.²⁹ It is due to the sensitive political status that Taiwan has been left out of this wave of regionalism.

Economies elsewhere have also predicated a possible FTA-like agreement with Taiwan on political accords or understanding between Taiwan and the mainland. Mauro Petriccione, Director of the Directorate General of Trade at the European Commission, once pointed out that a political agreement would be needed when the EU could begin negotiations for a trade agreement with Taiwan. In the meantime, the two sides are limited to set priorities and resolve a number of issues, *e.g.*, to make progress in the areas of procurement, standards, investment, etc.³⁰

Thus, unsurprisingly, the ECFA is seen by Taiwan’s local administration as part of an overall focus on regional trade.³¹ Regional leader Ma Ying-jeou said that signing the agreement would also enable Taiwan to negotiate free-trade agreements with other countries, which it was thus far unable to do due to objections from Beijing.³²

It should be emphasized that Taiwan’s expectation is not explicitly accommodated within the ECFA. Although President Hu Jintao once suggested that an economic cooperation agreement would serve “to connect the mutual development of the economies across the strait to the Asian-Pacific regional economic cooperation regime,” Taiwan’s requirement in the ECFA to clearly mention trade with third countries was dropped due to strong opposition from the mainland.³³ If, as the mainland indicated,

²⁹ Chi-An Chou, *A Two-Edged Sword: The Economic Cooperation Framework Agreement Between the Republic of China and The People’s Republic of China*, 6 B.Y.U. INT’L L. & MGMT. REV. 1, 8-9 (2010).

³⁰ European Chamber of Commerce Taipei (“ECCT”), *Monthly luncheon on ECFA, FTAs*, available at http://www.ecct.com.tw/index.php?option=com_content&task=view&id=692&Itemid=213 (last visited on Jan. 9, 2011).

³¹ Bryce Wakefield, *Taiwan, ECFA, and the Politics of Free Trade*, available at <http://wilsoncenter.org/ondemand/index.cfm?fuseaction=home.play&mediaid=E4B6ED7C-AB05-E7FE-EB38846B1B96ECA0> (last visited on Jan 3, 2011).

³² Sui, *supra* note 21.

³³ Wang Jianmin, *ECFA Re Zhong De Leng Sikao*, 14 SHIJI ZHISHI 48 (2010) [Clam Reflections in the ECFA Wave, 14 WORLD AFF. 48 (2010)].

the ECFA is purely an economic agreement and involves no political implications, the difficulties in signing FTA-like agreements with other countries that currently challenge Taiwan will still exist after the ECFA is signed.³⁴

Thus, to some ECFA critics, the absence of any guarantee that Beijing will not block Taiwan from signing FTA-like agreements with other countries implies an erosion of Taiwan's 'sovereignty.'³⁵ For without the conclusion of FTA-like agreements with other major trading partners, Taiwan will be locked into the "Greater China Economic Zone" in the short run, and get siphoned into the mainland's political orbit over the long term.³⁶ Critics also point out that Ma, probably with prodding from the mainland, cancelled a planned FTA-like agreement task-force, after the ECFA was signed.³⁷ However, it should be noted that Beijing has not expressed objections towards a subsequent joint statement between Taiwan and Singapore. They were negotiating a "World Trade Organization-consistent economic agreement," the wording of which was almost certainly designed to avoid sovereignty implications.³⁸ Commentators thus concluded that Beijing has opened a small door for Taiwan on regional trade. Beijing will not oppose trade agreements with other regional partners like Singapore, as long as they do not invite questions about Taiwan's autonomy.³⁹ Some analysts said that: "...so long as Taipei refrains from using nomenclature to describe itself as a state, Beijing might quietly permit Taiwan's third-party FTA-like agreements to go ahead, while decrying them for official purposes."⁴⁰ Thus, Beijing seems to treat Taiwan's FTA-like agreement negotiations on a special case rather than delivering a wholesale 'yes.'

There might be a certain tactic agreement between the two sides. Before his departure for the ECFA's signature in Chongqing, Chairman Chiang of the SEF said that the ECFA would reduce barriers to signing FTA-like agreements with other countries.⁴¹ In this regard, Beijing's stance is, at least to some extent, based on pragmatism considering that its resistance to such deals would aggravate anti-mainland sentiments within Taiwan.⁴² In addition, the opposition Democratic Progressive Party ("DPP") is betting that the mainland would continue pressing other countries not to sign trade pacts⁴³ so as to reap political benefits.

³⁴ Chou, *Supra* note 29, at 20.

³⁵ Peter C.Y. Chow, *ECFA Will End Our Political Autonomy*, TAIPEI TIMES, Apr. 12, 2010, available at <http://www.taipetimes.com/News/editorials/archives/2010/04/12/2003470372> (last visited on Jan. 15, 2011).

³⁶ Wakefield, *supra* note 31.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Supra* note 15.

⁴¹ *Id.*

⁴² Wakefield, *supra* note 31.

⁴³ Economist, *supra* note 15.

It may not be possible to consider a similar ECFA between Taiwan and ASEAN, having regard to the political implications. Nevertheless, Taiwan could seek to conclude deals with individual ASEAN countries, based on the WTO framework and other templates emerging from its discussions with Singapore.⁴⁴

(2) *Cushion for Negatively Affected Industries in the Island*

In order to advance his trade policy beyond the “we-have-no-other-choice argument,” Ma Ying-jeou must add substance to the reassurances he delivered while arguing for the signature of the ECFA. This includes information about the content of the ECFA, balanced projections of gains and losses, assurances that back-up plans and other trade pacts are in the works, programs for retraining and support in industries negatively affected, and some indication that security concerns will be addressed.⁴⁵

Ma has pledged to take a gradual approach to tariff reductions on sensitive products, and to set aside New Taiwan Dollar 3 billion (US \$93 million) over the next 10 years in order to help industries and workers vulnerable to the mainland competition. He also insisted that, as a result of the ECFA, more jobs be created and that in the long run, the trade deal would be favorable for Taiwan.⁴⁶

(3) *Termination Clause*

The conditions for the termination clause are not mentioned in the ECFA. As such, under the current situation, both sides could require negotiations for termination without any condition, making the agreement vulnerable.⁴⁷

The risk would be greater if the DPP, which is a stubborn opponent of the ECFA, came to power in the future. Optimistically, as the DPP has little choice, it may need to adjust its policy. Many of its constituents, including fruit exporters and industries in the south where the DDP’s supporters concentrate, need to trade with the mainland.⁴⁸ Toll taken at a demonstration in the southern city of Kaohsiung, an opposition stronghold, before the signing of the agreement greatly shrank by over 80% in comparison with those of previous protests. This is viewed by political analysts as a possible indication that Taiwan accepted the deal publicly, and wanted to know more details. An official of

⁴⁴ Rodolfo C. Severino, *ECFA Not the Way for Taiwan, ASEAN*, ASEAN STUDIES CENTRE (“ASC”), Aug. 31, 2010, available at <http://www.iseas.edu.sg/viewpoint/rcs31aug10.pdf> (last visited on Jan. 24, 2011).

⁴⁵ Editorial, *Politics after ECFA Debate*, TAIPEI TIMES, May 10, 2010, available at <http://www.taipetimes.com/News/editorials/archives/2010/05/10/2003472604> (last visited on Jan. 19, 2011).

⁴⁶ Sui, *supra* note 21.

⁴⁷ Lin Zujia, *ECFA: A Long Way to Go*, NATIONAL POLICY FOUNDATION (“NPF”), Dec. 22, 2010, available at <http://www.npf.org.tw/post/3/8541> (last visited on Dec. 28, 2010).

⁴⁸ Sui, *supra* note 21.

the opposition party, which organized the demonstration, even indicated that the deal itself may not be a main concern for some of those attending the protest.⁴⁹

DPP officials have not flatly ruled out the possibility of meeting officials in the mainland in the near future. On its side, Beijing has long said it is open to negotiating with political parties and individuals in Taiwan, so long as they are not bent on advocating for independence of the island. The DPP also needs China's cooperation in the economy to win elections, as economic issues are the "bread and butter" for voters. The DPP's Chen Shui-bian won a historic victory in the 2000 regional leader election to end the KMT's rule of five decades. He defeated again his KMT challenger in the 2004 reelection, mainly by using anti-China rhetoric and putting forward Taiwanese independence as a major theme in his election strategy. However, it is hardly expected that the DPP can adopt this slogan again for the future election.⁵⁰

4. Subsequent Negotiations

In the sixth round of talks held at the end of 2010, the two sides agreed to continue discussing an investment protection agreement at the seventh round of talks scheduled in 2011. Besides, they agree to 'actively' negotiate, among other topics in future talks, commodity and service trade, dispute settlement and economic cooperation. It is hoped that the investment protection agreement, an important part of the follow-up negotiations after the signing of the ECFA, will be signed during a new round of talks in 2011.

A. Agreement on Investment

Unlike China's trade agreements with ASEAN countries, which began with trade in goods, moved on to services after two years, and finally moved on to investment, the post-ECFA priority for Taiwan is to secure an agreement on investment protection.⁵¹ Thus, agreements on trade, services, and dispute settlement are likely to follow the investment protection agreement.⁵² According to Chiang, investment protection is the most important issue for Taiwan considering the huge number of its businesses and people in China, and the increasing number of investment disputes.⁵³

⁴⁹ Ralph Jennings, *Taiwanese Show Guarded Acceptance of China Pact*, REUTERS, June 2, 2010, available at <http://www.reuters.com/article/idUSTRE65426720100605> (last visited on Jan. 12, 2011).

⁵⁰ Sui, *supra* note 21.

⁵¹ ECCT, *supra* note 30.

⁵² *Id.*

⁵³ There are approximately 80,000 Taiwan-owned businesses and a million Taiwanese people in China. According to Chiang, the SEF received 428 investment dispute cases from Taiwanese business people in the mainland last year.

During the sixth round of talks, the two sides exchanged views on establishing an investment protection mechanism, improving transparency of investment regulations, reducing restrictions of mutual investment, and promoting investment facilitation. The two sides would continue to discuss, among other topics, definitions of investors, treatment, investment facilitation, compensation for acquisition and damage, loss recovery, subrogation and transfer, as well as dispute settlement.⁵⁴

The critical issue is to the dispute resolution mechanism. According to Shih Yen-shiang, head of Taiwan's Economic Affairs, the two sides could not agree on a mechanism for settling investment disputes and are still in talks on that aspect.⁵⁵ Taiwan has proposed a new dispute resolution mechanism involving international arbitration for helping Taiwanese businesses in China facing disputes over an expropriation of property. However, China has not agreed to Taiwan's proposal asking for more negotiations on the matter.⁵⁶ As to future developments, Shih predicted that the mechanism would be established under the cross-strait economic cooperation committee.⁵⁷

In addition, since the mainland and Taiwan agreed during the latest round of negotiations to hold talks on reducing restrictions on mutual investment, it is very likely that Taiwan will no longer be able to avoid relaxing regulations to allow increased mainland investment in Taiwan. Indeed, it is almost certain that discussions on the planned investment protection accord will include the subject of reducing barriers to bilateral investment. While engaging in negotiations with Taiwan, ARATS President Chen Yunlin and Vice President Zheng Lizhong expressed the hope that Taiwan would open its doors wider for the mainland investors. This suggests the mainland receive reciprocal and equal treatment by Taiwan.⁵⁸ Since this appeal is somewhat against Taiwan's policy toward the mainland oriented investments, however, it can be expected

Therefore, an investment protection agreement was the main item on the agenda for the sixth round of talks between the SEF and its Chinese counterpart, the Association for Relations Across the Taiwan Strait ("ARATS"), before the end of 2010. Also, on the agenda for those talks contained medical and health cooperation. See ECCT, *supra* note 30.

⁵⁴ *Top Negotiators Expected to Sign Cross-Strait Investment Protection Agreement Next Year*, XINHUA, Dec. 22, 2010, available at http://www.chinataiwan.org/english/specialreports/sr/CrossStraitTalks_1/24/236/201012/t20101222_1658478.htm (last visited on Jan.13, 2011).

⁵⁵ Staff writer with CNA, *Investment Protection Deal Delayed: Shih*, TAIPEI TIMES, Dec. 3, 2010, available at <http://www.taipetimes.com/News/biz/archives/2010/12/03/2003489968> (last visited on Jan.15, 2011).

⁵⁶ Lu Xue-hui, et al., *Taiwan and China to Hold Sixth Round of Talks in Taipei on Dec. 20-22*, WANT CHINA TIMES, Dec. 10, 2010, available at <http://www.wantchinatimes.com/news-subclass-cnt.aspx?cid=1101&MainCatID=11&id=20101210000088> (last visited on Jan. 5, 2010).

⁵⁷ *Supra* note 55.

⁵⁸ Chen Xiu-lan, et al., *Thorny Issues Face Next Cross-Strait Talks*, WANT CHINA TIMES, Dec. 23, 2010, available at <http://www.wantchinatimes.com/news-print-cnt.aspx?cid=1101&MainCatID=11&id=20101223000150> (last visited on Jan. 16, 2011).

that negotiations on this issue would not be an easy task. Taiwan is already reluctant to discuss investment promotion.⁵⁹ The two sides are expected to sign an investment protection agreement in the first half of 2011.⁶⁰

B. Trade in Goods

In the next round of talks which opened on February 22, 2011, Taiwan is believed to seek lower tariffs on 6,727 products exported to the mainland. Some of the products are plastics, machine tools and automobiles, which were not included in the ECFA's early harvest list due to objections from the mainland. Now that the free trade agreement between China and the ASEAN has entered its second year of tariff reductions and that Taiwanese firms are facing intensifying competition, the inclusion of these products would represent great benefits. On its side, the mainland will seek tariff cuts on 5,824 products, of which 2,097 are sensitive agricultural and industrial products that Taiwan currently bars from its market. In a bid to achieve the most favorable results in the negotiations, however, Taiwan's authorities have regarded these sensitive products as a threat to domestic producers. It has yet to be determined whether these products are suitable for immediate tariff reductions, phased-in tariff reductions, or no reductions at all.⁶¹ In light of the increasing size and sensitivity, the next round of negotiations on the trade in goods agreement will be a 'strenuous task,' said Chiang Pin-kung.⁶²

C. Trade in Services

As to trade in services, further negotiations will inevitably touch on the issue of opening Taiwan's labor market to white collar workers from the mainland.⁶³ The talks are expected to include demands for easing Taiwan's regulations on allowing mainland workers to work on the island as well allowing law firms, accounting, and medical service providers to operate in Taiwan.⁶⁴ The biggest challenge for Taiwan's government in the service sector will be, thus, to keep its promise of "not opening Taiwan to mainland laborers."⁶⁵

⁵⁹ See *Mainland Presses for Investment Promotion in Talks with Taiwan*, CHINA DAILY, Dec. 15, 2010, available at http://europe.chinadaily.com.cn/business/2010-12/15/content_11707948.htm (last visited on Jan. 14, 2011).

⁶⁰ Chen Xiu-lan, et al., *Taiwan Seeks Tariff Reductions For 6,727 Products in ECFA talks*, WANT CHINA TIMES, Jan. 1, 2011, available at <http://www.wantchinatimes.com/news-subclass-cnt.aspx?id=20110101000115&cid=1502> (last visited on Jan. 14, 2011).

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Supra* note 58.

⁶⁵ *Supra* note 60.

D. Dispute Settlement

The agreement on the establishment of a dispute settlement mechanism has been included in the next round of talks between the two sides.⁶⁶ As mentioned above, dispute settlement mechanisms proved to be a tricky issue during the consultation on investment issues. Both sides maintain different positions in dispute settlement; Taiwan favors a third party arbitration approach,⁶⁷ while the mainland would prefer mutual consultation, probably utilizing the Cross-Straits Economic Cooperation Committee as a platform. This opposite viewpoints would be natural considering both the mainland's long litigation-averse inertia and the politically sensitive nature of the issue.

Although the committee may handle economic and trade disputes or offer consulting and conciliatory services, the key point is that if the mainland and Taiwan are to resolve investment and trade disputes on their own, excluding international arbitration and other alternative dispute settlement procedures, they would risk losing a type of firewall protection for themselves. Further, this decision could also become the source of new tensions and conflicts and would not be helpful for the peaceful development of cross-strait relations.⁶⁸

In sum, how to balance considerations between "cross-strait characteristics" and 'international rules' during trade negotiations will be the key to finding the solutions for any arising disputes.⁶⁹

5. Consistence with the WTO Framework

When a WTO member enters into a regional integration arrangement, it departs from the guiding principle of non-discrimination, as namely defined in GATT Articles I and II.

The WTO members are, however, permitted to enter into such arrangements under specific conditions which are spelled out in several sets of rules.⁷⁰ All these constitute exceptions to the non-discrimination principle.

⁶⁶ *Id.*

⁶⁷ This may be attributed to pressures from opponents of the ECFA. Critics urged the Ma administration that the transfer of dispute resolution mechanisms to the ECFA 'cooperation commission' threatened to abandon the hard-won protection afforded by Taiwan's membership in the World Trade Organization, in which Taiwan, under the name of "Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu" is on an equal footing with the mainland. See e.g., Editorial, *Taiwan-China ECFA Needs Renegotiation*, TAIWAN NEWS, Aug. 13, 2010, available at http://www.etaiwannews.com/etn/news_content.php?id=1345399&lang=eng_news&cate_img=46.jpg&cate_rss=news_Editorial (last visited on Jan. 23, 2011).

⁶⁸ Editorials, *Engaging in Cross-strait Trade Talks Based on Int'l Thought*, WANT CHINA TIMES, Dec. 19, 2010, available at <http://www.wantchinatimes.com/news-print-ent.aspx?id=20101219000046&cid=1701> (last visited on Jan. 12, 2011).

⁶⁹ *Id.*

⁷⁰ These include GATT art. XXIV, paras. 4-10 and GATS the enabling clause & art. V. See *The WTO's Rules*, available at http://www.wto.org/english/tratop_e/region_e/regrul_e.htm (last visited on Jan. 13, 2011).

A. Permitted Exception to the Non-Discrimination Principle

(1). Rules providing for the Formation and Operation of Customs Unions and Free-trade Areas Covering Trade in Goods

Within a customs union, other restrictive regulations of commerce are eliminated with respect to either substantially all the trade between the constituent territories of the union, or at least to the trade in products originating in such territories.⁷¹ Within a free-trade area, a group of two or more customs territories will eliminate the duties and, subject to certain exceptions, other restrictive regulations of commerce on substantially all the trade between the constituent territories in products originating from such territories. Provisions of the GATT will not prevent an interim agreement for establishing a customs union or a free-trade area, to the extent that it includes a plan and schedule for the formation of such a customs union or trade area within a reasonable length of time.⁷² According to further clarification, the reasonable length of time mentioned above is to exceed 10 years only in exceptional cases.⁷³ As to proposals that do not fully comply with relevant requirements, the Contracting Parties may nevertheless obtain approval by a majority of two-thirds.⁷⁴ Political implications may be the reason for special treatment.⁷⁵

(2) Economic Integration Clause under the GATS

According to the economic integration clause, the General Agreement on Trade in Service (“GATS”) will not prohibit any agreement aimed at liberalizing trade in services between its members, if such an agreement has substantial sectoral coverage and provides for the absence or elimination of substantially all forms of discrimination in the sectors covered. The latter can be achieved through the elimination of existing discriminatory measures, and/or prohibition of new or more discriminatory measures, either at the entry into force of such an agreement or on the basis of a reasonable time-frame, except for certain measures permitted under relevant articles.⁷⁶

(3) The So-Called Enabling Clause

Under the Enabling Clause adopted on November 28, 1979,⁷⁷ the contracting parties

⁷¹ GATT art. XXIV.

⁷² *Id.*

⁷³ See UNDERSTANDING ON THE INTERPRETATION OF ARTICLE XXIV OF THE GATT 1994, available at http://www.wto.org/english/docs_e/legal_e/10-24.pdf (last visited on Mar. 23, 2011).

⁷⁴ *Supra* note 71.

⁷⁵ *Id.*

⁷⁶ GATT art. V.

⁷⁷ GATT, Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries (“Enabling Clause”), Decision of Nov. 28, 1979, L/4903 (Dec. 3, 1979), available at <http://www.wto.org/english/>

permit differential and more favorable treatment to and, especially, among developing countries. The clause is still valid and applicable to the following arrangements: (a) preferential tariff treatment accorded by developed contracting parties to products originating in developing countries in accordance with the Generalized System of Preferences; (b) differential and more favorable treatment with respect to the provisions of the General Agreement concerning non-tariff measures governed by the provisions of instruments multilaterally negotiated under the auspices of the GATT; (c) regional or global arrangements entered into amongst less-developed contracting parties for the mutual reduction or elimination of tariffs and, in accordance with criteria or conditions which may be prescribed by contracting parties, for the mutual reduction or elimination of non-tariff measures on products imported from one another; and (d) special treatment of the least developed among the developing countries in the context of any general or specific measures in favor of developing countries.⁷⁸

(4) Other Non-Generalized Preferential Schemes

Other non-generalized preferential schemes, for example, non-reciprocal preferential agreements involving developing and developed countries, require the members to seek a waiver from the WTO rules. Such waivers require the approval of three quarters of the WTO Members.⁷⁹ Examples of such agreements which are currently in force include the US-Caribbean Basin Economic Recovery Act, the CARIBCAN agreement whereby Canada offers duty-free non-reciprocal access to most Caribbean countries, Turkey-Preferential treatment for Bosnia-Herzegovina and the EC-ACP Partnership Agreement.⁸⁰

B. Implications for the ECFA

Traditionally, the core element of regional trade agreements is tariff reduction. Nowadays, however, such agreements under the WTO framework deal not only with more trade regulatory aspects, such as safeguard measures, customs administrations, etc, but are also expanding their coverage to trade in services, investment, competition policies, environmental rules and labor policies.⁸¹

Although the two sides are, largely due to political considerations, reluctant to

docs_e/legal_e/tokyo_enabling_e.pdf (last visited on Mar. 23, 2011).

⁷⁸ *Id.* art. 2.

⁷⁹ Agreement Establishing the World Trade Organization ("WTO Agreement") art. IX.

⁸⁰ The WTO's Rules, *supra* note 70.

⁸¹ Zeng Lingliang, *WTO Kuangjia xia Liang'an Jingji Hezuo Kuangjia Xieding de Falv Dingwei*, 6 SHIDAI FAXUE 12-13 (2009) [The Legal Status of the Economic Cooperation Framework Agreement across the Straits under the WTO Framework, 6 PRESENT DAY L. SCI. 12-13 (2009)].

conclude the economic pact as a regional trade agreement, the ECFA is in essence a regional trade agreement under the WTO framework as the contents rather than the title should be adopted as the main criterion for judgment.⁸²

When entering into free trade agreements all the substantial trades, sector coverage, and transition period requirements are the three main constraints. However, even though the ECFA is merely a framework agreement, these constraints are unlikely to become significant obstacles. First, the framework agreements are explicitly allowed under Article 24 of the GATT and other legal instruments,⁸³ and have become widespread among various contracting parties. Second, the ECFA would not be seriously challenged by the slack discipline in respect of RTAs. Third, the two sides across the straits may apply for a waiver according to Article 24 of the GATT, or Article 9 of the WTO agreement. Moreover, from a historical perspective, regional economic integration arrangements between contracting parties under special political circumstances have not been strongly opposed by other parties.⁸⁴ The GATT takes the trade relations between India and Pakistan into special considerations.⁸⁵ The European Community and later, the European Union's trade policy, the Rome Treaty,⁸⁶ and the Common Agricultural Policy⁸⁷ are another example.⁸⁸ Since 2005, the mainland has unilaterally removed tariff on 15 kinds of fruits imported from Taiwan. Although, this initiative is inconsistent with the MFN principle, it was nevertheless not publicly doubted by other contracting parties.⁸⁹

6. Conclusion

This article has first given an overview of the ECFA, and then explored its economic and political implications in detail. It is concluded that the ECFA will serve to boost Taiwan's economy, and will help promote industrial integration across the straits. On the political side, the ECFA may also pave the way for Taiwan's future negotiations on FTA-like agreements with other trading partners. This paper has also analyzed the prospects for future negotiations and examined the consistency between the ECFA and

⁸² *Id.* See also Liu Bin, *Haixia Liang'an Jinghe Kuangjia Xieyi Ruogan Falv Wenti Xintan*, 5 SHIDAI FAXUE 111, 115 (2010) [Several Legal Issues on ECFA Revisited], 5 PRESENT DAY L. SCI. 111, 115 (2010)].

⁸³ GATS art.V.

⁸⁴ Liu Bin, *supra* note 82.

⁸⁵ GATT art. XXIV, at 11.

⁸⁶ The Treaty Establishing the European Economic Community ("EEC Treaty"), Mar. 25, 1957.

⁸⁷ For compatibility between the Common Agricultural Policy and the GATT, see Silvia Weyerbrock, *Reform of the European Union's Common Agricultural Policy: How to Reach GATT-Compatibility*, 42 EUR. ECON. REV. 375 (1998).

⁸⁸ Liu Bin, *supra* note 82.

⁸⁹ *Id.*

the WTO regime.

The ECFA has multilateral characteristics. Politically, the Agreement is the first cross-Strait accord approved by Taiwan's assembly; it will thus lay a solid foundation for peaceful relation between the two sides in the future.⁹⁰ Economically, the ECFA will cover almost all industries across the strait, enabling both sides to establish a more cohesive economic foundation.⁹¹ Legally, the ECFA is a regional trade agreement. However, it would not be seriously challenged under all the substantial trades, sector coverage and transition period requirements as the WTO regime allows exceptions in an explicit manner, and the above mentioned requirements are not strictly implemented. Moreover, there are possibilities to be a waiver by the WTO members. Special regional economic integration arrangements with political taints are not without precedents.

The future negotiations may not be easy, since the two sides follow the rule called, "the easy things go first, and then the difficult parts follow." However, the mainland and Taiwan would be patient unless the *sui generis* relations are seriously challenged under the WTO framework. In addition, because the opposition DPP in Taiwan is going to have a more favorable attitude towards the cross-Strait economic ties, the ECFA would be stabilized in the long run. If both sides share good faith in such a pro-ECFA environment, they could maximize the potentials of precious and comprehensive economic cooperation.

In light of the ECFA's potential contributions in economic and politic aspects, Mr. Chen Yunlin has made a very pertinent remark to the effect as follows: "Although this is a road where flowers co-exist with thorns, and claps intertwine with difficulties, it is nevertheless a road which represents a historically right direction."⁹²

⁹⁰ Xie Yu & Ma Wei, *supra* note 14.

⁹¹ Xie Yu, *Chongqing, Taiwan share 'political roots'*, CHINA DAILY, June 30, 2010, available at http://www.chinadaily.com.cn/cndy/2010-06/30/content_10037554.htm (last visited on Jan. 7, 2011).

⁹² Caiping, *supra* note 3.