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Taiwan and the Regional Comprehensive Economic Partnership | Some Political- Economy and Strategic Considerations



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Table of Abbreviations

AANZFTA	Australia - New Zealand Free Trade Agreement
ANZTEC	New Zealand Taiwan Economic Cooperation Agreement
ACFTA	ASEAN-China Free Trade Agreement
ACIA	ASEAN Comprehensive Investment Agreement
AIFTA	ASEAN India Free Trade Agreement
AJFTA	ASEAN Japan Free Trade Agreement
AKFTA	ASEAN-Korea Free Trade Area
APEC	Asian Pacific Economic Cooperation Forum
ASEAN	Association of South East Asian Nations
ASTEP	Singapore Taiwan Economic Cooperation Agreement
CSSTA	Cross-Straight Services Trade Agreement
CSIPA	Cross-Straight Investment Protection Agreement
CTC	Change in Tariff Classification
ECFA	Cross-Strait Economic Cooperation Framework Agreement
EFTA	European Free Trade Area
ERIA	Economic Research Institute for ASEAN and East Asia
EU	European Union
FDI	Foreign Direct Investment
FTA	Free Trade Area or Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade in Services
HSBC	Hong Kong Shanghai Banking Corporation
MAC	Mainland Affairs Council
MFN	Most Favoured Nation
MRA	Mutual Recognition Agreement
MOFAT	Ministry of Foreign Affairs and Trade (New Zealand)
NAMA	Non Agricultural Market Access
OECD	Organization for Economic Cooperation and Development
P4	Pacific Four (Brunei Darussalam, Chile, Singapore, and New Zealand)
PRC	Peoples' Republic of China
PTA	Preferential Trading Arrangements
PSRs	Product Specific Rules
RCEP	Regional Comprehensive Economic Partnership Agreement
ROOs	Rules of Origin
RVC	Regional Value Content
SPS	Sanitary and Phytosanitary
TBT	Technical Barrier to Trade
USD	United States Dollars
WTO	World Trade Organization

I. Executive Summary

RCEP negotiations were formally launched by the heads of state of ASEAN Members and ASEAN FTA's trade partners (Australia, China, India, Japan, Korea and New Zealand) in November 2012 at the ASEAN summit in Cambodia. From the outset, leaders declared that RCEP would be "a modern, comprehensive, high-quality and mutually beneficial economic partnership agreement¹ establishing an open trade and investment environment in the region to facilitate the expansion of regional trade and investment and contribute to global economic growth and development".²

Negotiations commenced in early 2013 with a somewhat optimistic target for completion of the talks for the end of 2015. Up to the time of writing, five rounds of negotiations have been conducted, with a sixth round currently scheduled for early December 2014. Although some progress has been achieved, the lack of any draft negotiating texts to date is a somewhat conspicuous sign that forward momentum at these talks may have been lagging to date.

Given the huge disparities that exist between the various ASEAN+1 FTAs, and the inevitable differences in the levels of ambition for the RCEP negotiations that these differences engender, we conclude that it is indeed questionable whether the RCEP negotiations will ever effectively culminate in a completed trade agreement. Moreover, we believe that even if the RCEP talks eventually succeed in producing a trade agreement, we are doubtful as to its trade liberalizing impact, given that it is likely to represent a lowest common denominator agreement. Given the presence of India in these negotiations, which is currently very poorly disposed to the prospect of increased trade and investment liberalization, we see very little chance in a finished agreement or at least not one that represents any genuine and tangible progress towards achieving greater, deeper or stronger economic integration among the participating economies.

Given the lack of any positive outlook for RCEP, we also question Taiwan's motives in wanting to accede. We conclude that Taiwan has some very real concerns and imperatives when it comes to avoiding being excluded from preferential market access schemes, but we find that Taiwan can achieve substantively similar or better outcomes through a process of bilateral engagement with selected trade and investment partners. This seems to be an approach already embarked upon by Taiwan given its recent and successful policy of concluding PTAs with New Zealand and Singapore.

We also conclude that the apparent choice between engaging more closely with China or trying to keep China at arm's length is a false choice and that for Taiwan to gain more distance in its economic and commercial relationship with the Mainland, it will first have to get closer to China by ratifying the Cross-Straights services agreement and completing, in good faith, the process of closer economic cooperation and integration it first embarked upon several years ago. There is only one way to go for now with China and that is forward.

For reasons we outline below we find that Taiwan's position is actually stronger than many observers (including many in Taiwan) currently believe, and that Taiwan has a number of strengths that it has

¹ A note on terminology: We have generally favored use of the generic term "PTA" (preferential trading arrangement) over other variants such as "EPA" (economic partnership agreement), "EIA" (economic integration agreement) or "ECA" (economic cooperation agreement). Where this paper uses the more common "FTA" (free trade agreement), it generally refers to an agreement that includes this wording in its title. Although some scholars may hold differing views on this point, there is essentially little substantive difference between these different terms in practice.

² See "Regional Comprehensive Economic Partnership (RCEP) Joint Statement The First Meeting of Trade Negotiating Committee" dated Friday, 10 May 2013, available at: <http://www.asean.org/news/asean-statement-communicues/item/regional-comprehensive-economic-partnership-rcep-joint-statement-the-first-meeting-of-trade-negotiating-committee> (visited on 10 October 2014).

hitherto failed to exploit. Being small, rich, industrialized, democratic, economically inclusive and highly skilled is hardly a bad starting point from which to engage the region and the world.

II. Setting the Stage | A review of the RCEP negotiations

A. Background

RCEP negotiations were formally launched by the heads of state of ASEAN Members and ASEAN FTA's trade partners (Australia, China, India, Japan, Korea and New Zealand) on 20 November 2012 at the ASEAN summit in Cambodia. The leaders declared their commitment that RCEP would be "a modern, comprehensive, high-quality and mutually beneficial economic partnership agreement establishing an open trade and investment environment in the region to facilitate the expansion of regional trade and investment and contribute to global economic growth and development".³ The leaders also endorsed the Guiding Principles for the RCEP negotiations (the "Guiding Principles"), which provide a roadmap for the negotiators to achieve the ambitious goals set by leaders when the talks were originally launched.⁴

The idea of RCEP is not necessarily new. ASEAN put forward an RCEP proposal following the conclusion of the study processes that accompanied the ASEAN+3 and ASEAN+6 negotiations. As such, RCEP builds on the pre-existing initiatives of the East Asia Free Trade Area (ASEAN+3) and the Comprehensive Economic Partnership in East Asia (ASEAN+6).

Significantly, the RCEP agreement envisages having an open accession clause.⁵ This clause should theoretically allow any ASEAN FTA partners and external economic partners (such as, say, Taiwan) who did not participate in the RCEP negotiations, to accede subsequently to the agreement, once the RCEP negotiations themselves have been completed.

B. Progress of RCEP Talks

RCEP negotiations commenced in early 2013 with the announced target completion date set (perhaps somewhat optimistically) for the end of 2015. To date, five rounds of negotiations have been conducted, with a sixth round currently scheduled for 1-5 December 2014 in Greater Noida (close to New Delhi), India. Although some progress has been achieved, the lack of any draft negotiating texts is a somewhat conspicuous sign that forward momentum at these talks may have been lagging to date.

First round

The first round of RCEP negotiations was held in Brunei Darussalam from 9-13 May 2013. In this round, the first meeting of the Trade Negotiating Committee was held, convening under three newly established working groups (trade in goods, services and investment). The scope and method of negotiations were also discussed. For example, a joint statement of the First Meeting of the Trade Negotiating Committee, for instance, states that the provisions of RCEP will be expected to facilitate trade and investment, to improve transparency in trade and investment and to facilitate the engagement of its participating members to global and regional supply chains.⁶ It will also include reasonable forms of flexibility provisions taking into account the different levels of development from participating countries including special and differential treatment and additional flexibility for least-developing countries. Negotiations for RCEP are also to recognize the centrality of ASEAN in the emerging regional economy and the

³ <http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/RCEP/jointdec.php>

⁴ The Guiding Principles are available at: <http://www10.iadb.org/intal/intalcdi/PE/CM%202013/11581.pdf>

⁵ See the Guiding Principles, as cited immediately above.

⁶ <http://www.asean.org/news/asean-statement-communicues/item/regional-comprehensive-economic-partnership-rcep-joint-statement-the-first-meeting-of-trade-negotiating-committee>

interests of ASEAN's FTA partners in supporting and contributing to economic integration, development and cooperation. In general, the first round was about laying the foundations and setting both the tone (level of ambition) and direction (substantive scope) for any progress to be made during subsequent rounds.

Second Round

The second round was hosted by the Australian government and was held from 23-27 September 2013 in Brisbane, Australia. The talks focused primarily on trade in goods, services and investment. The structure and elements of a services chapter were discussed with the initial exchange of views on possible market access commitments in areas of interest to participants. As regards trade in goods, there were dedicated sessions for custom procedures, rules of origin and initial exchanges on the modalities for tariff negotiations and on non-tariff barriers.⁷ Sub-working groups on custom procedures and rules of origin were established. There were also discussions on economic and technical cooperation, competition, intellectual property, dispute settlement and other issues.⁸

Third Round

The third round was held in Kuala Lumpur, Malaysia from 20-24 January 2014. In the context of trade in goods, discussions focused on the modalities of tariff negotiations, non-tariff measures, technical regulations and conformity assessment procedures, SPS measures, customs procedures, trade facilitation and rules of origin.⁹ Regarding trade in services, talks centered on the structures and elements of a services chapter, market access interests and other relevant issues. Similarly on investment, discussions focused on investment modalities, as well as the structure and elements of an investment chapter.¹⁰ In this round, working groups were established to work on intellectual property, competition, economic and technical cooperation, as well as dispute settlement.

Fourth Round

The fourth round was held in Nanning, China from 31 March-4 April 2014. In this round, participants discussed the development and possible elements of the different chapter texts. On trade in goods, the discussions continued on the modalities to be used for tariff negotiations, non-tariff measures, technical regulations and conformity assessment procedures, SPS measures, customs procedures, trade facilitation and rules of origin. In terms of trade in services, participants discussed the scope of provisions, the approach to scheduling market access commitments, and a number of other issues. On Investment, participating countries held detailed discussions on the elements of an investment chapter including investment modalities.¹¹ The new established working groups on intellectual property, economic and technical cooperation also started their work during this round. There were also expert meetings to discuss dispute settlement and broader legal and institutional issues.

Fifth Round

The fifth round was held in Singapore between 21 and 27 June 2014. Negotiators continued to work towards developing frameworks in the core areas of goods, services and investment. On trade in goods, further convergence was achieved for example in the area of modalities for tariff negotiations. Formal

⁷ <http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/RCEP/>

⁸ <https://www.dfat.gov.au/media/releases/department/2013/dfat-release-20131003.html>

⁹ http://www10.iadb.org/intal/cartamensual/Cartas/PDF/210/en/MonthlyNewsletter210_Regional%20And%20Global%20Overview_Art3.pdf

¹⁰ <http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/RCEP/>

¹¹ <http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/RCEP/>

negotiations were launched in the areas of standards, technical regulations and conformity assessment procedures, SPS measures, customs procedures and trade facilitation, as well as rules of origin. On trade in services, some progress was made on key issues such as the structure and elements of a services chapter and the scheduling of commitments. In the context of investment liberalization, negotiators made progress regarding the approach to be taken when scheduling commitments.

The Economic and Trade Ministers from RCEP's participating countries met in Nay Pyi Taw, Myanmar on 27 August 2014 for a second RCEP Ministerial Meeting to assess the progress of the negotiations to date.¹² At this meeting, the Ministers lauded the progress made in the core areas of goods, services and investment and other areas such as economic and technical cooperation, intellectual property, competition and legal and institutional issues. They also welcomed the establishment of the additional working and sub-working groups and encouraged continued engagement among all participants to achieve meaningful progress in the negotiations.

C. Areas of Negotiation

RCEP will cover trade in goods, trade in services, investment, economic and technical cooperation, intellectual property, competition, dispute settlement and other issues to be identified during the course of negotiations. RCEP attempts to converge existing ASEAN bilateral FTAs with the six partners for the purpose of eliminating the confusion caused by having too many bilateral trade agreements, known as the noodle bowl effect. RCEP will adopt the familiar ASEAN principle of progressive liberalization. Because it seeks to harmonize and consolidate the existing albeit diverging level of trade and investment liberalization already agreed between ASEAN and its FTA partners, it is not hard to predict what the eventual outcomes of the RCEP negotiations will be across the different negotiating areas. We conduct a comparative review of these different outcomes below. Special and differential treatment in one form or another is likely to be extended to Viet Nam, Laos, Cambodia and Myanmar to various degrees.

Tariff Reduction and Elimination

Despite the fact that their relative incidence on trade flows has been steadily declining for the last six decades, the reduction and eventual elimination of tariffs nevertheless remains a core element of any FTA. One study, conducted by ERIA¹³ (see table 1) demonstrates that ASEAN trade partners, with the exception of India (where the corresponding figure is 78.8%), have committed to eliminate tariffs on more than 90% of tariff lines. Likewise, ASEAN Members such as Brunei, Cambodia, Malaysia, Philippines and Singapore have expressed a strong commitment to eliminate tariffs on more than 90% of tariff lines on average. The remaining ASEAN Members such as Indonesia, Lao, Myanmar and Vietnam have pledged to do so on more than 80%, but less than 90% of tariff lines. Whereas the lesser-developed ASEAN Members such as Cambodia, Lao, Myanmar and Vietnam have been granted more time to implement their commitments, other ASEAN Members and China and Korea already achieved their tariff targets for ACFTA and AKFTA in 2012.

¹² [http://www.miti.gov.my/cms/storage/documents/9e1/com.tms.cms.document.Document_62da14c4-c0a81573-2265b1bd-](http://www.miti.gov.my/cms/storage/documents/9e1/com.tms.cms.document.Document_62da14c4-c0a81573-2265b1bd-a1c81f1a/1/Joint%20Media%20Statement%20of%20the%20Second%20Regional%20Comprehensive%20Economic%20Partnership%20%28RCEP%29%20Ministerial%20Meeting.pdf)

[a1c81f1a/1/Joint%20Media%20Statement%20of%20the%20Second%20Regional%20Comprehensive%20Economic%20Partnership%20%28RCEP%29%20Ministerial%20Meeting.pdf](http://www.miti.gov.my/cms/storage/documents/9e1/com.tms.cms.document.Document_62da14c4-c0a81573-2265b1bd-a1c81f1a/1/Joint%20Media%20Statement%20of%20the%20Second%20Regional%20Comprehensive%20Economic%20Partnership%20%28RCEP%29%20Ministerial%20Meeting.pdf)

¹³ Yoshifumi Fukunaga and Ikumo Isono, Taking ASEAN+1 FTAs towards the RCEP: A Mapping Study, ERIA Discussion Paper Series, ERIA-DP-2013-02, 2013, available at: http://www.eria.org/publications/discussion_papers/taking-asean1-ftas-towards-the-rcep-a-mapping-study.html (visited on 1 October 2014).

Table 1 shows a comparison of tariff elimination commitments across the various ASEAN+1 agreements.

Table 1: Tariff Elimination Coverage by Country under the ASEAN+1 FTAs

	AANZFTA	ACFTA	AIFTA	AJCEP	AKFTA	Average
BRN	99.2%	98.3%	85.3%	97.7%	99.2%	95.9%
CAM	89.1%	89.9%	88.4%	85.7%	97.1%	90.0%
IDN	93.7%	92.3%	48.7%	91.2%	91.2%	83.4%
LAO	91.9%	97.6%	80.1%	86.9%	90.0%	89.3%
MLS	97.4%	93.4%	79.8%	94.1%	95.5%	92.0%
MYA	88.1%	94.5%	76.6%	85.2%	92.2%	87.3%
PHI	95.1%	93.0%	80.9%	97.4%	99.0%	93.1%
SGP	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
THA	98.9%	93.5%	78.1%	96.8%	95.6%	92.6%
VTN	94.8%	n.a.	79.5%	94.4%	89.4%	89.5%

AUS	100.0%					
CHN		94.1%				
IND			78.8%			
JPN				91.9%		
KOR					90.5%	
NZ	100.0%					
Average	95.7%	94.7%	79.6%	92.8%	94.5%	

Source: Fukanaga and Isono (2013)

It is expected that RCEP negotiations will seek to achieve tariff elimination across an average of 95% of tariff lines with shorter implementation periods than those currently envisaged under the various ASEAN+1 arrangements.¹⁴ Despite this relatively high level of ambition, agricultural products are likely to make up the bulk of those tariff lines singled out for exclusion from tariff elimination commitments in the form of special or sensitive product designations. By way of example, Indonesia's list of highly sensitive and sensitive products in the context of ACFTA includes rice, clove and sugar. The Philippines also carved out live animals, meat and edible meat offal, fish, edible vegetables from tariff reduction or elimination commitment by including them on its sensitive and highly sensitive list in the context of AKFTA.

The key issue on tariffs is of course the extent of tariff elimination that will be acceptable to all parties. For example, parties to more liberal bilateral FTAs with ASEAN, like New Zealand or Australia, are unlikely to be willing to accept anything less than total tariff elimination on 90 to 95 percent of tariff lines, with relatively short phase in periods (maximum ten years), and carve outs or special product designations on not more than 5 percent of tariff lines per RCEP contracting party. Anything less than this and RCEP is unlikely to be worth the effort for these two countries. On the other hand, India, which has only liberalized an average of 78.8 percent of tariff lines, while offering considerably less to some of its ASEAN partners (e.g. only 48.7 percent of tariff lines vis-à-vis Indonesia), is likely to approach the whole RCEP

¹⁴ MBC Research Report "A Powerhouse Merger in RCEP", July 2013.

process with considerably less ambition. Whether or not such hugely diverging levels of ambition can find any sort of landing zone is something that remains to be seen, but experience would suggest this is highly unlikely, and certainly not within the relatively short timeframe (2015) within which these talks are supposed to be completed.

Rules of Origin

Rules of origin play an inordinately important role in the context of any preferential trade agreement.¹⁵ These rules and the trade costs that demonstrating compliance with them ultimately determine the extent to which the preferential market access on offer is availed of by potential suppliers in the beneficiary countries. A recent study by The Economist Intelligence Unit and sponsored by HSBC showed that many suppliers, specifically small and medium sized enterprises, found demonstrating compliance with ROOs and thus entitlement to the benefits from preferential market access was overly complex and that the costs of doing so often actually outweighed the benefits that preferential market access promised.¹⁶

It is safe to assume that the RCEP negotiations will build on the different ROO compromises already hammered out in one or more of the ASEAN+1 FTAs. As a general rule, the ASEAN+1 FTAs rely on various configurations of four basic rules to determine the origin of the product: Wholly-Obtained (WO), Regional Value Content (RVC), Change in Tariff Classification (CTC) and Product Specific Rules (PSRs). The most commonly adopted method is “RVC at least 40% or Change of Tariff Classification” (see Table 2). This method is adopted in AANZFTA, ACFTA, AKFTA and AJFTA. ASEAN's +1 FTA while India on the other hand (AIFTA) is significantly more restrictive in that it requires a dual ruling: “RVC at least 35% and Change in Tariff Sub-Heading”. The challenge in RCEP will be to plurilateralize one or more of the more liberal and open ROO regimes instead of that chosen in ASEAN's +1 FTA with India. Only by doing so will RCEP result in more trade liberalization rather than less, and thereby meet the criteria set out in GATT Article XIV for such preferential trading arrangements to be deemed legal under WTO rules.

SPS/TBT, Trade Remedies and Intellectual Property

SPS/TBT, trade remedies and intellectual property chapters are likely to take the respective WTO disciplines as their starting point for RCEP negotiations. The SPS chapter would establish a framework related to sanitary and phytosanitary measures and their scientific and objective justification. The TBT chapter would most likely confirm the existing rights and obligations under the WTO TBT Agreement. The Intellectual property chapter will likely incorporate those commitments that RCEP contracting parties have already agreed to under the WTO TRIPS Agreement, probably without going much beyond these rules since no single party to RCEP is really one of the major global exporters of intellectual property (although more developed countries such as Japan and Korea have a stronger interest here than most of the developing countries at the table). The trade remedies chapter is likely to continue to allow contracting parties to avail themselves of these instruments subject to the same terms and condition that apply under the respective WTO agreements (GATT 1994 Art. VI, Anti-dumping, Subsidies and Countervailing Duties, as well as GATT 1994 Art. XIX and the Safeguards Agreement).

¹⁵ See for example, Stefano Inama, *Rules of Origin in International Trade*, Cambridge University Press, 2009.

¹⁶ This is especially the case now that MFN rates have themselves come down considerably after more than 60 years of multilateral trade negotiations. See The EIU and HSBC, *FTAs in South-east Asia: Towards the next generation*, 2014, available at: https://globalconnections.hsbc.com/downloads/ftas_in_southeast_asia.pdf (visited on 1 October 2014).

Dispute Settlement Mechanism

A dispute settlement clause is potentially important as an instrument for dealing with non-compliance or any disputes that may arise over the interpretation or implementation of a future RCEP agreement. Dispute settlement procedures in most FTAs either adopt a political model which convenes ministers or other appointed representatives to meet and attempt to resolve any implementation issues, or a more legalistic model, that provides recourse to formal dispute resolution procedures that typically resemble international arbitration proceedings in one form or another.¹⁷ The RCEP dispute settlement mechanism that ultimately emerges would likely be in line with the WTO and ASEAN+1 FTAs procedures (see table 2). Consultations are required as the first step to initiating formal dispute settlement proceedings. If consultations fail, the parties to the dispute can request the establishment of an arbitral tribunal to make findings on the matter at issue. The findings are binding on parties to the dispute. So far, the codified system of ASEAN dispute settlement procedures and those agreed under the various ASEAN+1 arrangements have remained somewhat of a dead letter, for various reasons.¹⁸ This reluctance to use these procedures is likely to remain the dominant cultural response even within RCEP if it should ever be concluded. This will be all the more true for future trade disputes that involve both an alleged breach of WTO and RCEP rules, to the extent that when given a choice, most countries will choose to litigate at the WTO.

Competition Policy

Provisions on competition policy have increasingly become an important part in regional trade agreements. The significance of competition policy provisions as a means to enhance regional economic integration, to underpin foreign investments in the region and to increase further economic growth has been widely recognized.¹⁹ Increasingly, competition rules are seen as a natural reinforcing element to national treatment obligations in that they further level the playing field between entrenched domestic operators and foreign entrants.²⁰

Provisions on competition law and policy are common in FTAs between developed countries. Under the ASEAN+1 FTAs, it is only AANZFTA that provides a modest chapter on competition policy. Although ASEAN Members under the 2007 ASEAN Economic Community (AEC) blueprint have committed to introduce domestic competition laws and policies by 2015, progress so far has been patchy. Of eleven ASEAN Members, some five (Brunei, Cambodia, Lao, Myanmar, Philippines) have either failed to enact or implement domestic rules on competition, although legislative drafts of these rules are slowly working their way through the respective lawmaking procedures.²¹ It is probably reasonable to expect that the competition policy chapter that may or may not eventually emerge under RCEP will likewise only contain some fairly modest obligations. It might refer to the existing competition policy under AANZFTA which sets out some basic principles, highlights the importance of competition policy and establishes a broad framework for collaboration and cooperation related to competition law, policy and enforcement without explicitly prescribing substantive obligations and measures to be taken to implement these

¹⁷ See Amelia Porges, *Chapter 22 Dispute Settlement*, in: Jean-Pierre Chauffour and Jean-Christophe Maur (eds.), *Preferential Trade Agreement Policies for Development: A Handbook*, World Bank Group, 2011, pp. 467 - 501.

¹⁸ See Gino J Naldi, *The ASEAN Protocol on Dispute Settlement Mechanisms: An Appraisal*, in: *Journal of International Dispute Settlement*, 2014, Vol. 5 Issue 1, pp. 105–138

¹⁹ See: <http://cogitasia.com/competition-policy-for-a-prosperous-asean-economic-community/> (visited on 27 November 2014)

²⁰ See Kamala Dawar and Peter Holmes, *Chapter 16 Competition Policy*, in: Jean-Pierre Chauffour and Jean-Christophe Maur (eds.), *Preferential Trade Agreement Policies for Development: A Handbook*, World Bank Group, 2011, pp. 347 - 366.

²¹ See See: <http://www.aseancompetition.org/aegc/aegc-members> (visited on 27 November 2014)

principles. A push for a more ambitious competition policy will potentially slow down the RCEP negotiations and is only likely to distract the parties from more important and fundamental issues.²²

Economic and Technical Cooperation

The Guiding Principles provide that economic and technical cooperation “will be an integral part of the agreement to support the ASEAN Member States and maximize their benefits from the implementation of the agreement.” In other words, one of the RCEP’s primary objectives is capacity building. Developed economies can help developing and least developed countries to implement and benefit from the agreement to achieve sustainable development and deeper integration. Economic and technical cooperation is a way to bridge the differences and gap between Members. The economic and technical cooperation elements in RCEP will cover the areas that mutually agreed by negotiating parties. The agreement will try to promote competition, economic efficiency, consumer welfare and the elimination of anti-competitive practices while at the same time considering the differences in capacity and national regimes of Members.²³ Integrating capacity building and technical assistance provisions into trade agreements has become a fairly common feature of PTAs involving developed and developing country parties, particularly in chapters relating to intellectual property or SPS. But this trend took a considerable leap forward during the recently negotiated WTO Trade Facilitation Agreement where the obligation to implement certain provisions was linked to the receipt of technical assistance and capacity building directed at aiding developing countries to do just that.²⁴

Trade in Services

The Guiding Principles state that “[r]ules and obligations on trade in services under the RCEP will be consistent with the General Agreement on Trade in Services (“GATS”) and will be directed towards achieving liberalization commitments building on the RCEP participating countries’ commitments under the GATS and the ASEAN + 1 FTAs. “Put differently, the Guiding Principles provide two baselines for the negotiators to be followed: (1) commitments taken by RCEP participants under their GATS schedule of commitments; and (2) commitments under the ASEAN+1 FTAs.²⁵

The GATS provides four modes of supply for the delivery of services: (1) cross-border supply; (2) consumption abroad; (3) commercial presence; and (4) presence of a natural person. Mode 1 includes cross-border services through the medium of computer and technology. Mode 3 is often linked to investment activity. Mode 4 has significantly become an important sector of liberalization for emerging economies that have a strong presence of professional, technical, middle and low to medium-skilled professionals such as Indonesia, China, Philippines, Malaysia and India.²⁶ It is likely that Mode 4 market access will be the key area of discussion among the RCEP participants, although some RCEP members with relatively closed labor markets will be unwilling to cede much ground in this area (Indonesia, China, Australia, New Zealand and India to name just a few).

ASEAN Members have already committed to progressively liberalize trade in services among themselves under the ASEAN Framework Agreement for Services (AFAS). It has been committed under the ASEAN

²² <http://www.corrs.com.au/thinking/insights/competition-provisions-in-international-trade-agreements-the-cart-before-the-horse/>

²³ See http://www.ciis.org.cn/english/2013-12/06/content_6518129.htm

²⁴ See International Trade Center, WTO Trade Facilitation Agreement: A Business Guide for Developing Countries, 2013, available for download at: <http://www.intracen.org/news/ITC-publishes-business-guide-on-new-WTO-trade-facilitation-agreement/> (visited on 27 November 2014), particularly pp. 22 *et seq.*

²⁵ The Guiding Principles.

²⁶ See R.V. Anuradha “Liberalization of Trade in Services under RCEP: Mapping the Key Issues” 8 AJWH 401 at 408-409.

Single Market Vision for 2020 that ASEAN countries will remove substantially all barriers in four service sectors (air transportation, electronic commerce, healthcare and tourism) by 2010 and in logistics services by 2015. In contrast, ASEAN Members have adopted the “ASEAN minus X” rule in their ASEAN+1 FTAs. This means that ASEAN Members can agree and select certain sectors for liberalization without having to extend such concessions to other non-ASEAN Members. Thus, ASEAN Members' level of commitments across the ASEAN+1 FTAs are not uniform.²⁷ The highest level of commitments is under the AFAS, followed by the AANFTA and AKFTA. The least coverage is under ACFTA (see table 2). To achieve deeper integration under the RCEP, ASEAN Members will need to reassess the “ASEAN minus X” rule. Additionally, three aspects related to regulatory frameworks in services delivery (“Domestic Regulations”, “Recognition” and “Transparency”) have been addressed in many FTAs. ASEAN and ASEAN+1 FTAs have taken a course that reiterates the GATS approach with regard to these areas without any significant additional disciplines.²⁸ Other FTAs by non-ASEAN Members, however, have addressed these areas in more detail. Thus, it is expected that RCEP negotiators will attempt to develop more detailed rules on regulatory frameworks governing trade in services, although doubts remain as to how successful this might be given the strong divergence that exists among RCEP contracting parties in these areas.

Investment

The Guiding Principles state that the primary objective of RCEP in the area of investment is to “[create] a liberal, facilitative, and competitive investment environment in the region.” Therefore, the negotiation under the RCEP “will cover the four pillars of promotion, protection, facilitation and liberalization.”²⁹ ACFTA and ACIA, for example, cover a provision that regulates the investment promotion objective.³⁰ Article 20 of ACFTA requires the parties to “corporate in promoting and increasing awareness of ASEAN-China as an investment area” through, *inter alia*, organizing investment promotion activities and seminars or briefings on investment opportunities and on investment laws, regulations and policies. It is highly likely that RCEP will include very similar provisions.

Investment protection is an integral part of any investment agreement. Such protection is provided to protect investors against unfavorable treatment, expropriation or nationalization of their investments, restrictions on the reparation of profits, capital gains, dividends or other income accruing from investments and treatment which is not ‘fair and equitable’. AANZFTA, ACFTA and AKFTA provide such substantive protections with the exception of no “MFN” clause in AANZFTA (see table 2). An MFN clause requires the host state to treat foreign investment no less favorably than investment from any third country.

Recognizing the right of host states to regulate certain matters related to public purposes is also important.³¹ The AKFTA Investment Agreement, for example, provides a general exception clause that is similar to Article XX of the General Agreement on Tariffs and Trade (GATT). RCEP is likely to incorporate the investment protection and general exception clauses already contained in the ASEAN investment agreements as a baseline.

²⁷ Anuradha (2013), at 410.

²⁸ Anuradha (2013), at 412-415.

²⁹ The Guiding Principles.

³⁰ Article 20 of ACFTA and Article 24 of ACIA.

³¹ See Michael Ewing-Chow and Geraldine R. Fischer, *ASEAN IIAs: Conserving Regulatory Sovereignty While Promoting the Rule of Law?*, in: *Transnational Dispute Management*, Vol. 8, issue 5, December 2011 available at: <http://cil.nus.edu.sg/wp/wp-content/uploads/2010/08/MichaelEwingChow+GeraldineFischer-ASEAN-IIAs.pdf> (visited on 10 October 2014).

ASEAN's +1 FTA with China contains provisions on investment facilitation. These provisions require Members to cooperate in matters including: (1) creating the necessary environment for all forms of investment; (2) streamlining and simplifying the procedures for applications and approvals; (3) establishing one-stop investment centers; (4) promoting dissemination of investment information; (5) strengthening investment databases for policy formation; (6) consulting investment matters with the business community; and (7) providing advisory services to economic operators in other contracting parties.³²

Table 2 (next page) provides an overview and comparison of the different rules-based commitments made under the different ASEAN+1 FTAs. Stark levels of divergence are apparent in areas such as services and investment. ASEAN's +1 FTA with Japan contained little more than so-called built in agenda commitments, which is simply a loosely formulated agreement to start negotiations on these issues at some point in the future. India has finally signed the long-pending FTA in services and investment with nine ASEAN countries.³³ To date, Philippines is the only ASEAN Member that has not put the ink on these two pacts. However, it gave assurances to India that the internal process for signing the agreement is in progress and is expected to be completed soon.³⁴ India has proposed a circulation process for signing an agreement with ASEAN Members. Under this process, each Member would sign the agreement separately and the agreement would enter into force upon being signed by the last Member to do so.³⁵

This is yet another area of difficulty facing the RCEP talks when clearly ASEAN seems to have adopted a differentiated approach towards its various +1 FTA partners in the past. A harmonized approach may prove very difficult, particularly when it comes to "putting the tooth paste back in the tube" where relatively forward-looking and generous commitments have already been offered to one FTA partner but have not been extended to another - for which there were obvious political economy imperatives at the time. The question is now whether these political economy imperatives have now subsided or whether they can be overcome with the promise of new or better export opportunities or other similar inducements.

³² Article 25 of ACIA.

³³ <http://investmentpolicyhub.unctad.org/News/Database/Archive/201>

³⁴ <http://investmentpolicyhub.unctad.org/News/Database/Archive/201>

³⁵ http://articles.economicstimes.indiatimes.com/2014-08-27/news/53284865_1_india-asean-fta-asean-members-services-and-investments

Table 2 Other coverage of ASEAN plus one

Scope	AANZFTA	ACFTA	AKFTA	AJFTA	AIFTA
ROO	Regional Value Content (RVC) at least 40% of its content or Change of Tariff Classification (CTC) at four-digit level; Product Specific Rules (PSRs)	40% RVC or PSRs for certain products	40% RVC or CTC; PSRs	40% RVC or CTC; PSRs	35% RVC and a change in tariff sub-heading
Dispute Settlement	Yes (Choice of forum; Consultations, good offices/mediation/conciliation, arbitral tribunals) except for settlement of disputes arising under Chapters SPS, E-Commerce, economic co-operation, competition)	Yes (Consultations, mediation/conciliation, arbitral tribunals)	Yes ((Consultations, good offices/mediation/conciliation, arbitral panels)	Yes (Consultation, mediation/conciliation, arbitral tribunals)	Yes under ASEAN-India Dispute Settlement Mechanism Agreement (Consultations, good offices/mediation/conciliation, arbitral panels)
Competition Policy	Yes, containing basic principles and co-operation between parties. Consultation and Dispute Settlement chapter does not apply for the Competition Chapter	–	–	Build-in agenda	Build-in agenda
Trade in Services	Yes, such commitments include the following: Business (professional, computer and related services, research and development, real estate, rental and others), communication (telecommunication), distribution (wholesale, retail and franchising), construction and engineering, education, environmental, financial, social and health-related, tourism and travel-related and transport.	Yes, such commitments include the following: computer and related services, real estate, business, construction and engineering, environmental, recreational, cultural and sporting services and transport services	Yes, such commitments include selected sectors under the ASEAN Frameworks Agreement on Services such as: computer and related services, business, construction and engineering, distribution, educational environmental, financial, recreational, cultural and sporting services and transport services	Build-in agenda	Signed but not effective yet
Investment	Yes (investment chapter), such commitments include the following: National Treatment (no MFN), Fair and Equitable Treatment, prohibition of specific requirements, compensation for losses, transfers, expropriation and compensation, investment disputes.	Yes (investment agreement), such commitments include the following: National Treatment, MFN, fair and equitable treatment, compensation for losses, transfers, expropriation (except for land and compulsory license), investment disputes	Yes (investment agreement), such commitments include the following: National Treatment, MFN, Fair and Equitable Treatment, prohibition of specific requirements, compensation for losses, transfers, expropriation and compensation, investment disputes	Build in agenda	Signed but not effective yet

Source: compiled by the authors

To strengthen the pillar of trade liberalization, the RCEP participants would need to curb barriers and non-conforming measures as well as to create an appropriate environment that will promote easier FDI to flow into the respective territories.

Table 3 below provides a summary of likely outcomes across the various substantive areas of the RCEP negotiations.

Table 3: RCEP substantive areas/anticipated outcomes

Expected Coverage	Expected Contents
Market access and tariff elimination	Yes (at least 95%)
Rules of origin	Harmonising the existing ROO rules in the ASEAN+1 FTAs
Trade facilitation	Yes
SPS	Reaffirming WTO SPS Agreement
TBT	Reaffirming WTO TBT Agreement
Trade remedies	In accordance with WTO rules on trade remedies
Intellectual property	Incorporating WTO TRIPS Agreement
Trade in services	Four modes of GATS, AFAS and ASEAN+1 FTAs
Investment	ACIA and ASEAN+1 FTAs
Dispute settlement and institutional issues	Reflecting WTO dispute settlement mechanism

Prognosis of the Trade Liberalizing Impact of RCEP

The analysis above is of course predicated on the assumption that the RCEP negotiations will eventually culminate in a successful agreement. This is by no means a foregone conclusion. What is more, even if the RCEP talks do result in an agreement at some point, it is likely to represent a lowest common denominator approach that will contribute little towards liberalizing trade and investment beyond what some ASEAN+1 FTAs have already achieved.

Generally speaking, a mega-regional agreement like RCEP only succeeds where the requisite leadership is in evidence. Leadership in this sense means at least one participating country, and preferably the one with the biggest market, leads the way in creating forward momentum for the talks, in garnering enthusiasm for their eventual success, and - most importantly - in bridging any seemingly irreconcilable gaps between different participants' negotiating positions. Whereas this kind of leadership has only partially been on display by the United States in the TPP talks, it is very much an open and unresolved question as to whether China or another big market like Indonesia or India will ever be willing to take up the gauntlet to galvanize forward momentum for the RCEP talks and overcome negotiating hurdles between participants with what can only be described as gaping chasms between their respective levels of ambition.

III. Modalities to Membership | The Road to Joining RCEP Now or in Future

Currently, the negotiating parties for RCEP are the 10 ASEAN Member States plus their FTA partners (China, Japan, South Korea, Australia, and New Zealand). This section assesses the likelihood of Taiwan ever being able to accede to RCEP.

A. Preconditions to Membership

The matter of participation in RCEP negotiations was addressed in the Third round of negotiations – 20-24 January, in Kuala Lumpur, Malaysia, which culminated in the publication of the Guiding Principles and Objectives for Negotiating the Regional Comprehensive Economic Partnership (“RCEP Guiding Principles and Objectives”). The RCEP Guiding Principles and Objectives address the issue of joining the negotiations in the following terms:

“Any ASEAN FTA Partner that did not participate in the RCEP negotiations at the outset would be allowed to join the negotiations, subject to terms and conditions that would be agreed with all other participating countries...”

There are thus two cumulative preconditions for other parties to join the RCEP negotiations, namely such party must have an FTA with ASEAN (i.e. be an ASEAN FTA Partner) and then the potential candidate must satisfy the terms and conditions that are agreed by the 16 participating countries. This latter requirement points to a kind of bilateral negotiating process by means of which the candidate country or economy essentially agrees market access (and perhaps any other) terms with each individual RCEP contracting party.

Although it is entirely possible in theory that Taiwan may one day join RCEP, it is for all practical purposes highly unlikely that Taiwan or any other ASEAN trading partner from either the Asian region or beyond will be able to join RCEP before the negotiations have officially been completed. Although this date has been scheduled for 2015, the RCEP negotiations are almost certainly likely to drag on for considerably longer. Indeed, given the very real differences that exist between the different negotiating parties to RCEP, one could be excused for asking whether it is likely the negotiations might ever be successfully concluded at all (see above).

If one does assume, however, for the sake of argument, that RCEP has a reasonable chance of being concluded either in 2015 or shortly thereafter, then other countries and economies from within and outside the region will be entering accession negotiations with RCEP as an existing trading block, and it is the prospects of this particular scenario that are discussed below.

B. Accession Formalities and Dynamics

The Guidelines state that the agreement that ultimately emerges from the negotiations is to be one characterized by open membership:

“The agreement shall have an open accession clause to enable participation of any of the ASEAN FT partners should they not be ready to participate at the outset as well as any other external economic partners.”

The choice of words "external economic partners" would seem to indicate that the drafters of this clause envisaged RCEP taking on members in future that were not necessarily states, thus leaving the door open

for entities like Hong Kong or Taiwan to join the trading block, presumably as full partners. Unlike the Trans-Pacific Partnership negotiations, which themselves morphed from the very humble and modest beginnings of the P4 to embrace a whole slew of very sizeable economies even before the talks were nearing completion, the RCEP negotiations are likely to remain limited to the current clutch of negotiating partners until such time as they have been finalized and the results of the negotiations ratified by all participating countries.

Although the language that addresses accession in the RCEP Guidelines does not provide any further details as to the technical procedures or mechanisms that will govern this process, it is safe to say that the underlying dynamic will essentially feature a series of bilateral market access negotiations with each existing and interested RCEP contracting party and will also involve the applicant having to commit to implementing all of the Agreement's rules in such chapters as investment, trade facilitation and services. If other chapters like TBT, SPS and Intellectual Property set out obligations that go above and beyond the existing WTO disciplines, then the applicant will of course have to commit to implementing and abiding by these rules too.

Because the agreement that ultimately results from the RCEP talks is likely to represent somewhat of a lowest common denominator approach, given that the levels of ambition and the respective dispositions towards trade and investment liberalization of the different participating economies are so diverse, it is not likely to be too difficult (in terms of political-economy concessions and regulatory reforms) for future economic partners to accede to RCEP provided they already have relatively open and liberal trade regimes. This will certainly be true of Taiwan, as well as Hong Kong.

What may ensue from such accession talks is that existing members could feel tempted to use them as an opportunity to seek solutions to long-standing and hitherto unresolved market access issues or other unrelated bilateral bones of contention. This has been a fairly common feature of WTO accession negotiations, and was also on display as the Japanese sought admission to the ongoing TPP negotiations.³⁶ In the case of Taiwan, one such issue might be the long-standing ban it has had in place against some 800 agricultural products from Mainland China. This is the sort of issue that Mainland China might leverage in the context of a bilateral market access negotiation as part of accession talks to RCEP, although it obviously has other *fora* in which it could and probably would be more likely to seek to resolve such grievances, not least of which is its existing trade negotiations with Taiwan (discussed in the next chapter).

³⁶ For a discussion of how this happens in the context of WTO accession, see Simon Lacey, *The view from the other side of the table : WTO accession from the perspective of WTO members*, published in: Simon Lacey and Jeremy Streatfield (eds), "New reflections on international trade : essays on agriculture, WTO accession and systemic issues"; London : Cameron May, 2008, p. 75-98; For an example of how the Japanese experienced this when seeking admission to the TPP negotiations, see an article on the concessions, extracted by the US in relation to its beef exports to Japan published by Bloomberg News on 22 January 2013 *Japan Plans to Relax Restrictions on U.S. Beef Imports on Feb. 1*, available at: <http://www.bloomberg.com/news/2013-01-22/japan-plans-to-relax-restrictions-on-u-s-beef-imports-on-feb-1.html> (visited on 1 October 2014).

C. Taiwan's Position on RCEP and Similar Initiatives (TPP)

Taiwanese officials have been reported as openly advocating to be admitted to RCEP³⁷, although this is likely to prove difficult for the reasons given above. Given the lack of any official relationship between Taiwan and ASEAN, it is unlikely that Taiwan will become an FTA partner of ASEAN anytime soon. This will certainly preclude it from participating in RCEP in the immediate future but may not be a hurdle to Taiwan acceding once RCEP has been formally established. Similarly, policymakers in Taiwan have also not been shy about their ambitions to participate in the TPP³⁸, although this seems to be something that is precluded by the generally prevailing view among some important TPP Members following Japan's admission in 2013, that there should be no more candidates admitted to the talks until these have been completed.³⁹

Policymakers in Taiwan, including the highest levels of the current political leadership, have certainly recognized the imperative of not being excluded from the process of regional economic integration.⁴⁰ What seems to be lacking is some sort of policy consensus within Taiwan on the best approach to engage with its trading partners in and beyond the region. Clearly the level of engagement Taiwan would ideally like to have with its regional trading partners, and the possibilities effectively open to it are two different things. The challenge for Taiwan here, like in so many of its relationships, is to exploit the limited policy space it does enjoy in order to maximize the possible outcomes that can be achieved. For it to do this it must understand both what its ultimate objective is and where it can push the limits of the constraints - real or imagined - subject to which it operates.

Taiwan's ultimate objective is less about being a party to RCEP or the TPP *per se*, but rather about avoiding exclusion from the preferential trading relationships that these initiatives embody. Of course, simply becoming an RCEP contracting party or a member of the TPP is the simplest way to avoid such isolation, but the simplest way is not always the way open to Taiwan and may not even be the best way forward for it. The various scenarios open to Taiwan are discussed in more detail in the next chapter.

At the time of writing, Taiwan has succeeded in concluding some seven preferential trading agreements, namely with Panama (2004), Guatemala (2005), Nicaragua (2008), El Salvador (2008), Honduras (2008), and then more significantly and recently with New Zealand and Singapore (both 2013). The significance of the last two agreements lies in the fact that Singapore and New Zealand both recognize Mainland China diplomatically (and thus by definition support the One China Policy), and both are negotiating parties to both RCEP and the TPP. Finally, both Singapore and New Zealand have also concluded separate PTAs with Mainland China in the recent past, before concluding their respective PTAs with Taiwan, meaning that Mainland China was not explicitly opposed to either country doing so.

³⁷ <http://wtocenter.vn/news/taiwan-wants-join-rcep-kmt-official-tells-china-president>; Minister reiterates Taiwan is working to join regional partnership, http://www.taiwannews.com.tw/etn/news_content.php?id=2091134

³⁸ See for example the 25 March 2015 Report by the Ministry of Economic Affairs entitled "Current Status of Taiwan's efforts in joining the Trans-Pacific Partnership (TPP)" which outlines a detailed strategy for Taiwan to accede to the TPP talks.

³⁹ This was for example the response that South Korea received when it expressed its desire to join the talks, see: USTR, "Statement by U.S. Trade Representative Michael Froman on Korea's Announcement Regarding the Trans-Pacific Partnership," press release, November 29, 2013, <http://www.ustr.gov/about-us/press-office/press-releases/2013/November/Froman-statement-TPP-Korea>.

⁴⁰ Ma highlights improved cross-strait relations, <http://taiwantoday.tw/ct.asp?xItem=213039&ctNode=445>

In addition to those agreements already concluded, Taiwanese officials have gone on record as actively seeking to conclude additional bilateral PTAs with South Korea⁴¹, Brunei Darussalam,⁴² and Australia. In addition to this, feasibility studies have already been completed for potential PTAs with Israel, Indonesia, the Philippines, Malaysia and India.⁴³

For their part, some of Taiwan's potential PTA partners have expressed various levels of support for it being able to eventually join RCEP, although given the constraints to doing so discussed above, such support is likely to prove moot in the short term, but may prove more useful in the long term if it can be sustained. Indonesia, a pivotal member of ASEAN, has stated that it will support Taiwan's accession bid to RCEP in light of the mutual economic benefits that it considers would accrue under such an outcome.⁴⁴ The Philippines on the other hand, seems to sitting firmly on the fence when it states that it will not reject Taiwan's application to join RCEP, but has at the same time not said that it would be openly supportive of it either.⁴⁵

RCEP contracting parties will of course decide on the basis of their own self-interest as to whether or not they will support any future bid by Taiwan to join RCEP.⁴⁶ In doing so, they will weigh the economic benefits that a PTA with Taiwan would bring against any possible negative externalities of opening their market to what is ultimately a fairly small economy that nevertheless enjoys a whole range of highly competitive export sectors. In making such an evaluation, they will of course also have to consider any potential downsides that may or may not ensue in their relationship with Mainland China. For its part, China seems to have tentatively and very quietly signaled that it is not opposed to countries entering into some sort of PTA with Taiwan, provided they have first concluded an FTA with China. This is likely to be the primary and decisive factor for determining the parameters of Taiwan's policy space, in the sense that it may only have the option of concluding PTAs with partners who have already completed negotiations with Mainland China, and what's more only once Taiwan has itself demonstrated its commitment to continuing the process of closer economic cooperation with Mainland China, discussed in the next section.

⁴¹ <http://www.chinapost.com.tw/taiwan/foreign-community/2014/07/17/412569/Taiwans-new.htm>, Taiwan's new envoy to S. Korea to push for trade pact

⁴² Taiwan seeks Brunei help to join trade pacts, <http://www.bt.com.bn/business-national/2014/06/13/taiwan-seeks-brunei-help-join-trade-pacts>

⁴³ Taiwan The risk of marginalization - European Parliament

⁴⁴ <http://www.chinapost.com.tw/taiwan/foreign-affairs/2014/02/19/400955/Indonesia-to.htm>

⁴⁵ <http://www.chinapost.com.tw/taiwan/foreign-affairs/2014/02/25/401441/Manila-neutral.htm>

⁴⁶ Services pact will not hinder regional integration, <http://taiwantoday.tw/ct.asp?xItem=214661&ctNode=1733>

IV. The Bilateral Approach to Regional Economic Integration

This chapter discusses the state of Taiwan's economic relations with a number of RCEP economies and how these ties could be leveraged in order to better position Taiwan to join the RCEP process or achieve an alternative albeit equally beneficial set of outcomes (such as individual PTAs with each and every one of the RCEP negotiating parties).

A. The Peoples' Republic of China

The PRC is clearly Taiwan's most important economic partner in terms of both outward and inward trade and investment flows. As the largest single economy within RCEP, the PRC is also unambiguously "the elephant in the room" in the sense that it is ultimately the PRC's position on whether or not to engage with Taiwan in the context of RCEP that is most likely to influence and ultimately characterize the position of other RCEP negotiating partners on this same issue.⁴⁷

Box 1 below shows the direction of Taiwanese merchandise trade, whereby the position enjoyed by the PRC is evident, especially when combined with the respective shares for Hong Kong, China (SAR).

Box 1 Direction of merchandise trade, 2013.

Figure 1.1 Exports (f.o.b.)

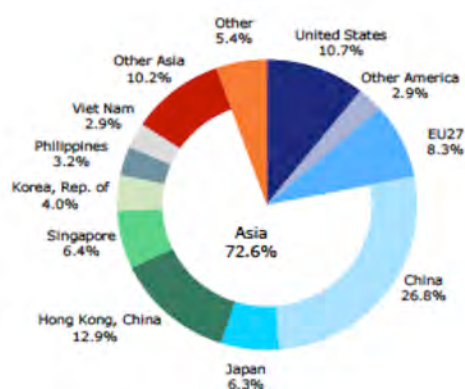
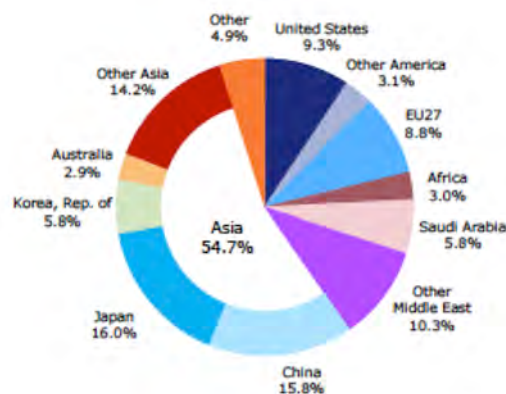


Figure 1.2 Imports (c.i.f.)



Source: WTO Trade Policy Review of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, 2014, Report by the Secretariat.

Total trade between the two economies for the most recently reported period (2013) is estimated to be worth some USD 165 billion⁴⁸, with Taiwan consistently running a sizeable trade surplus, reported to be valued at USD 39.2 billion in 2013.⁴⁹

Also with regard to investment flows, Taiwan is a net exporter, whereby, again, the PRC is easily the largest single destination for outbound FDI, receiving an estimated 84% of aggregate investment outflows from Taiwan.⁵⁰ In fact, this figure, which is already very high, may in reality be even higher, since anecdotal evidence suggests that many Taiwanese investors choose to enter the PRC market through a

⁴⁷ This is not unlike the position enjoyed by the United States in the context of the Trans-Pacific Partnership in the sense that it is only after receiving an informal "nod" from the US that new countries tend to be allowed to join the negotiations.

⁴⁸ William T. Wilson, *Market Solutions Should be Central to U.S.'s Taiwan Policy*, published as part of the Heritage Foundation Backgrounder series, No. 2930, August 2014.

⁴⁹ JoAnn Fan, *Congressional Testimony: Cross Straits Economic and Political Issues*, June 5, 2014, available at: <http://www.brookings.edu/research/testimony/2014/06/05-cross-strait-economic-issues-fan> (visited on 25 September 2014), p. 2 (of the downloadable PDF version of the article).

⁵⁰ WTO Trade Policy Review of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, 2014, Report by the Secretariat, p. 22.

Hong-Kong incorporated entity.⁵¹ Taiwan's Mainland Affairs Council (MAC) estimates that Taiwan's outbound investment to the PRC was worth some USD 9.1 billion in 2013, down from an all-time high of USD 14.3 billion in 2011.⁵²

In short, the PRC is Taiwan's most important trade and investment partner, a position which it assumed relatively recently but which it looks set to maintain over the long term, particularly in light of the increasing amount of trade and investment liberalization taking place between the two economies under the auspices of the Cross-Strait Economic Cooperation Framework Agreement (ECFA) and its various follow-up agreements.

The ECFA, as its name suggests, is a framework agreement intended to form the basis for a process of closer economic integration between the two economies. It reads much like a statement of intent or a memorandum of understanding that two parties would conclude that were contemplating entering into one or several more detailed and comprehensive agreements in the near future. The 2010 ECFA and the ambitious program of rapidly implementing tariff reductions under its so-called Early Harvest provisions, seem to have reinforced the existing trends of growing trade and investment between the two economies.

The most immediate effect of the ECFA was its early harvest program (mentioned immediately above), which provides for tariff reductions on some 539 tariff lines of goods from Taiwan, covering an estimated 16% of Taiwan's exports to the Mainland and worth up to USD 14 billion annually. Under the Early Harvest program of tariff reductions, The Mainland will benefit from tariff cuts on 267 tariff lines of constituting an estimated 11% of its exports to Taiwan and worth up to USD 3 billion annually.⁵³

Negotiating and ratifying the various follow-up agreements that the ECFA envisages has proven politically sensitive. Four such agreements are envisaged, namely 1) the Cross-Straight Merchandise Trade Agreement (CSMTA)⁵⁴; 2) the Cross-Straight Services Trade Agreement (CSSTA); 3) the Cross-Straight Investment Protection Agreement (CSIPA)⁵⁵; and 4) an agreement on dispute settlement procedures to govern economic relations under ECFA.

The CSIPA was the first of the above-mentioned follow-on agreements to enter into force in February 2013. In many respects it reads largely like any other bilateral investment agreement with the exception of robust investor-state dispute settlement provisions, which it lacks for the obvious political reasons. As one commentator has put it, "the CSIPA addressed the need to institutionalize an investment security mechanism and to build investors' confidence, rather than to eliminate all risks for Taiwanese investment".⁵⁶ As such, the CSIPA will provide greater security to the already considerable amount of Taiwanese investment that has found its way to the Mainland, particularly in the manufacturing sector.

Signed in Shanghai in June 2013, the Cross-Straight Service Trade Agreement⁵⁷, commonly abbreviated CSSTA was signed but remains unratified to date, largely due to domestic opposition within Taiwan to doing so. The CSSTA takes a positive-list approach, meaning that the two signatories would only be

⁵¹ Ibid.

⁵² Fan 2014, as cited above p. 2 (of the downloadable PDF version of the article).

⁵³ Ibid, p. 3

⁵⁴ Also translated as the "Cross-Straight Goods Trade Agreement"

⁵⁵ Also known as the Cross-Straight Investment Protection and Promotion Agreement. For an unofficial English language translation, see: <http://www.ecfa.org.tw/EcfaAttachment/InvestDoc/1.%20Cross-Straight%20Bilateral%20Investment%20Protection%20and%20Promotion%20Agreement.pdf> (visited on 25 September 2014).

⁵⁶ Fan 2014, as cited above, at p. 5.

⁵⁷ Sometimes alternatively translated as "Cross-Straight Agreement on Trade in Services".

required to provide market access and national treatment commitments in those sectors and those modes of supply for which they have explicitly scheduled commitments.⁵⁸ The CSSTA reportedly contains provisions on issues such as - *inter alia* - transparency, domestic regulation, unfair competitive practices, the free movement of payments and capital transfers, while also containing the specific commitments of each contracting party.

In terms of the effective degree of marketing opening that each contracting party has committed to, Taiwan is reported to have scheduled commitments in up to sixty-four sectors and subsectors, with the corresponding figure for Mainland China being eighty. **Box 2** provides a graphic comparison of some of the sectors in which liberalization commitments were scheduled and juxtaposes those made by Taiwan with those made by Mainland China.

The lion's share of criticism that the agreement has attracted concerns the secretive way in which it was negotiated (trade agreements are best negotiated with the affected industries being able to provide input and feedback as the negotiations progress), as well as the way in which the KMT government first agreed to a line-by-line review of the treaty text in parliament, only to abandon this approach when it felt the process was being bogged down by opposition lawmakers. When the KMT tried to force a vote to ratify the agreement in March 2014, it sparked a small uprising by civil society and student groups who occupied the parliament for 24 days (the Sunflower Student Movement).

Negotiations on the Cross-Strait Merchandise Trade Agreement were suspended in April following the March 2014 protests that accompanied the Taiwanese Government's efforts to ratify the CSSTA. When these negotiations will be resumed remains uncertain at the time of writing.

⁵⁸ This is the same approach as that taken under the WTO General Agreement on Trade in Services - GATS - but the opposite approach to many US FTAs which take a so-called negative list approach, meaning that all service sectors and modes of supply are essentially open unless a specific market access, national treatment or other limitation or restriction is specifically scheduled. The negative list approach generally achieves a greater degree of trade and investment liberalization whereas the positive list approach retains greater policy space for governments. The negative list approach was also taken in Taiwan's economic cooperation agreement with New Zealand (discussed below).

Box 2 Comparison of Commitments Exchanged under CSSTA

Taiwan Opening up to China	China Opening up to Taiwan
<p>Commercial Trade: Computers; car rentals; print advertising; printing</p> <p>Information Technology: Delivery services; regular internet industry.</p> <p>Construction: Construction; refurbishment firms.</p> <p>Distribution: Wholesale (agriculture products excluded); retail (pharmacies excluded).</p> <p>Environmental Protection: Wastewater treatment; garbage disposal.</p> <p>Health and Social: Care homes.</p> <p>Tourism and Travel: Restaurants and hotels may establish offices in Taiwan; up to three travel agencies can set up shop in Taiwan</p> <p>Entertainment, Culture and Sports: Theme parks; gyms (golf courses excluded).</p> <p>Transportation: Cargo delivery; cable cars; bus transfer stations.</p> <p>Finance: China Union Pay bank may establish branches in Taiwan</p> <p>Others: Laundromats; hair and cosmetic firms; online gaming (restricted to research and development); crematoriums and funeral parlors.</p>	<p>Commercial Trade: Printing (under the guidance of Chinese firms).</p> <p>Information Technology: E-shopping industry allowed to operate in China's Fujian Province, although stock holdings may not exceed 55 percent.</p> <p>Construction: Firms with Taiwanese investors can bid for construction contracts</p> <p>Distribution: Taiwanese retailers can establish shop in China if they have less than 30 stores (pharmacies excluded).</p> <p>Environmental Protection: Environmental protection industry "in general".</p> <p>Health and Social: Taiwanese investors can invest independently to set up hospitals in China</p> <p>Tourism and Travel: Tourism "in general".</p> <p>Entertainment, Culture and Sports: Concert halls; theaters; gyms (golf course excluded).</p> <p>Transportation: Taiwanese can own up to 49 percent of Chinese bus corporations.</p> <p>Finance: Taiwanese securities firms with the full range of securities licenses, and holding at least 51 percent of stock in the company, can set up one branch each in Shanghai, Shenzhen and China's Fujian Province.</p> <p>Others: Trademark agencies; funeral parlor industry (crematoriums excluded).</p>

Source: Taipei Times "TSU knocks cross-strait service trade agreement" 23 June 2013, available at: <http://www.taipeitimes.com/News/front/archives/2013/06/23/2003565441> (visited on 1 October 2014).

It is probably fair to say that Taiwan already enjoys an economic relationship with Mainland China that is close and only getting closer. Whether or not this relationship needs to be strengthened further is open to debate but some observers have warned about the dangers of succumbing too thoroughly to the seemingly warm embrace of the Mainland economy.⁵⁹ There is no doubt that Taiwan, like any economy, must hedge its bets and not allow itself to become overly dependent on any one single trading partner. This is all the more so in the case of the Peoples' Republic of China given the very real lack of consensus both these entities enjoy or the nature and extent of Taiwanese sovereignty. Taiwan's leaders have long recognized this reality and in doing so, have sought to conclude free trade agreements with other trading partners both in the region and further afield. Although this policy initially ran into some headwinds, with Taiwan only succeeding in concluding FTAs with a clutch of smaller Latin American economies, it recently

⁵⁹ See among others, Samson Yuen, *Under the Shadow of China: Beijing's policy towards Hong Kong and Taiwan in comparative perspective*, in: "China Perspectives", No. 2014/2, available at: <http://www.cefc.com.hk/article/shadow-china-beijings-policy-towards-hong-kong-taiwan-comparative-perspective/> (visited on 1 October 2014).

achieved a more resounding breakthrough on this front after successfully concluding economic integration agreements with New Zealand and Singapore in 2013. Our discussion now turns to these two economic relationships before we discuss Taiwan's relations with other major ASEAN economies.

B. New Zealand

Taiwan is a relatively important trading partner for New Zealand, ranked eighth overall in terms of an export destination for New Zealand goods and third and fourth for red meat and fruit exports respectively.⁶⁰ Taiwan is also an important market for New Zealand tourism and education services. New Zealand is less important to Taiwan in economic terms however, given that it ranks as only its 40th largest trading partner. Nevertheless, New Zealand's relationship with Taiwan took a very significant step in 2013 when it signed an economic cooperation agreement with Taiwan, making it the first country to do so that did not simultaneously grant Taiwan diplomatic recognition, but had rather reserved such recognition exclusively for Mainland China.⁶¹

The Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Cooperation (ANZTEC, 2013) was signed on 10 July 2013 and came into force two months later on 1 December 2013 after passing through respective ratification procedures in the New Zealand Parliament and the Legislative Yuan. It is a trade agreement in all but name and achieves far-reaching tariff elimination (with a 12-year phase-in period) on 99.88% of New Zealand imports to Taiwan and 100% of Taiwan imports to New Zealand. It can also be characterized as a so-called "21st Century" agreement, containing provisions in a number of areas that go well beyond core WTO disciplines, including trade and labor, trade and environment, competition policy, and electronic commerce.

A number of important differences characterize this agreement from any "normal" trade agreement hitherto negotiated or signed by New Zealand. For one thing, the negotiations on the New Zealand side were not conducted by officials from the Ministry of Foreign Affairs but by someone hired to do so from the private sector.⁶² The signing ceremony was conducted in the absence of official New Zealand government representation and with the relevant Taiwanese government representatives witnessing the event via webcast in Taipei.⁶³ The usual practice in international treaty negotiations is that two equally authentic texts will be issued in the respective official languages of each of the contracting parties, but for ANZTEC, the text is only authentic in English to safeguard the agreement's carefully negotiated wording. In order not to ruffle any feathers on the Mainland, the New Zealand Government is reported to have consulted with and informed PRC authorities in advance of their intentions to initiate negotiations with the Taiwanese, and concluded the New Zealand–Hong Kong, China Closer Economic Partnership Agreement in 2010 in what one observer describes as a "stepping stone" to the subsequent agreement with Taiwan.⁶⁴ The New Zealand Government has also taken a nuanced approach to how the agreement

⁶⁰ ANZTEC fact sheet, available at: http://nzcio.com/webfm_send/75/ (visited on 1 October 2014).

⁶¹ The agreements that Taiwan signed previously with Panama (2004), Guatemala (2006), El Salvador (2008), Honduras (2008) and Nicaragua (2008) were all concluded with countries that still recognized Taiwan as the Republic of China. By according diplomatic recognition to Mainland China, countries implicitly or explicitly confirm their acceptance of the One China Policy, which includes the doctrine that there is only one state called "China", despite the existence of two governments that claim to be "China".

⁶² See *International treaty examination of the Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Cooperation: Report of the Foreign Affairs, Defence and Trade Committee*, p. 3.

⁶³ Jason Young, *Space for Taiwan in regional economic integration: Cooperation and partnership with New Zealand and Singapore* in, "Political Science" 2014, Vol. 66(1) 3–22 at p. 14.

⁶⁴ Young 2014, p. 15.

is presented on official government websites. For example, on the MOFAT website, it is not included on the list of "Agreements in Force" but can only be found by means of a link to the New Zealand Commerce and Industry Office, meaning it is not hosted on MOFAT's website at all. Likewise, the New Zealand Customs Service lists ANZTEC on a separate page to New Zealand's other FTAs.⁶⁵

C. Singapore

Whereas Taiwan's success in inking a trade agreement with New Zealand was primarily a geopolitical achievement on the road to concluding future similar FTAs, its agreement with Singapore was both an additional geopolitical success as well as one with important underlying economic imperatives and implications. Singapore is Taiwan's fifth largest trading partner with Taiwan being Singapore's 6th most important investment destination. For its part, Singapore is Taiwan's eight largest trading partner and the 10th most important destination for Taiwanese exports. Total trade between the two countries was reported at some USD 20 billion for 2012.⁶⁶

The Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership (ASTEP) was signed on 7 November 2013 in Singapore. It has been characterized as a "high quality comprehensive agreement"⁶⁷ that contains the usual liberalization comments in terms of trade in goods and services, but also contains chapters on investment, intellectual property, government procurement, e-commerce, competition and dispute settlement.

Significantly, ASTEP provides for the immediate duty-free entry of all goods originating from Taiwan upon the agreement's entry into force in April 2014. Taiwan's tariff reduction commitments are phased in more gradually, over different implementation periods lasting from 2018 to 2028.

ASTEP also represents a breakthrough for Taiwan in terms of it being its first FTA with a member of both ASEAN and the TPP. As documented above, Taiwanese officials are now seeking trade agreements with additional ASEAN Member States (Brunei Darussalam, Indonesia), as well as other TPP participants (Australia, Chile). We discuss this strategy in brief in the next section.

D. Other Potential FTA Partners

The obvious list of potential FTA partners include ASEAN Member States as well as other countries currently engaged in the TPP negotiations. In addition to these countries, there is South Korea, which is neither engaged in the TPP talks nor is it a member of ASEAN (although it is engaged in RCEP). South Korea has proven to be the single most enthusiastic economy in the region when it comes to seeking out and signing deals with FTA partners.⁶⁸ Significantly, it also already has an FTA with Mainland China, which in the context of the New Zealand and Singapore agreements seemed to be a pivotal factor in determining whether China's stance on a PTA with Taiwan would be muted acquiescence or vocal obstructionism. Although policymakers in both Taiwan and Korea may understandably be somewhat dubious of one another, given the fact that these two economies compete head to head across a small

⁶⁵ Ibid.

⁶⁶ See Anthony Fensom, *Taiwan-Singapore FTA*, published in: "The Diplomat", 8 November 2013, available at: <http://thediplomat.com/2013/11/taiwan-singapore-fta/> (visited on 1 October 2014).

⁶⁷ International Enterprise Singapore, *The Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership (ASTEP): A business guide for companies*, 2014, available at: http://www.iesingapore.gov.sg/~media/IE%20Singapore/Files/Trade%20from%20Singapore/ASTEP/ASTEP_30_04_2014_V8_final.pdf (visited on 1 October 2014).

⁶⁸ See Taeho Bark, *The Republic of Korea's trade relations, its FTA policy and trade integration in the Asia-Pacific*, available at: <http://aienetwork.org/blog/55/the-republic-of-koreas-trade-relations-its-fta-policy-and-trade-integration-in-the-asia-pacific> (visited on 1 October 2014).

range of vital manufacturing sectors, this should not be a reason to further delay economic partnership talks any longer. Concluding an EPA with South Korea should be at the very top of Taiwan's foreign economic policy agenda (next to ratifying its existing services agreement with China).

In addition to South Korea, some less obvious candidates also come to mind, that are part of APEC but may not be currently engaged in either RCEP or the TPP. One often-overlooked potential partner is Papua New Guinea, which is both a member of APEC and the ACP.⁶⁹ There are also a range of smaller island nations in the Pacific that have largely been orphaned by the scramble to conclude PTAs and who are constantly on the lookout for new "friends" (Fiji is perhaps the best example). In addition to these, another country which has so-far been reluctant to abandon MFN and engage in the process of competitive liberalization has been Mongolia, and it is possible that overtures from Taiwan might be well received, although these would have to be carefully calibrated with Beijing given Mongolia's geographic proximity to Mainland China and its importance to China as an energy exporter.

As stated above, Taiwan's ultimate objective is to avoid marginalization and exclusion from the quickly emerging web of preferential trading arrangements currently flourishing into existence across the Asian Pacific region. This objective is driven not so much by the desire to be included for the sake of inclusion itself, but by the cold, hard economic realities of relative competitive parity (or superiority) that preferential market access arrangements can quickly and definitively erode. If Taiwanese firms in a whole range of export-competitive sectors including chemicals, plastics, semi-conductors, machine parts, auto-components, and many others are to be able to continue competing on price with like products from its competitors who can avail themselves of preferential market access regimes, then Taiwan must have equal or better access to its export markets. This can be achieved through membership of trading blocks like RCEP and the TPP, but it can likewise be achieved through a network of equally beneficial bilateral trade and investment agreements. How it goes about achieving this objective involves confronting some difficult realities and making some hard choices, which we discuss in the next chapter.

⁶⁹ ACP stands for African Caribbean and Pacific, and is a block of former European colonies that carry quite some weight as a block within the WTO.

V. Hard Choices about Taiwan's Place in the Regional Economic Integration Architecture

A. Playing to its Strengths

Many observers including some policymakers in Taiwan seem to think that Taiwan's position is one in which it is inherently disadvantaged, and must content itself to exercise its autonomy within the limited confines afforded it by the very real and complex dynamics of its relationship with its infinitely larger Mainland counterpart. But this perspective mistakes the reality that Taiwan has some very real strengths that it can play to, as well as having some very considerable advantages that it can exploit in its dealings with its trade and investment partners.

The first obvious fact is that Taiwan is a rich industrialized country and as such one of arguably only three such countries in the region that have managed to make the transition from third world to first in the post WWII era.⁷⁰ Thus although Taiwan has a relatively small domestic market, which makes it of only limited interest to potential trading partners as an export destination, it nevertheless has fairly substantial monetary reserves with which to finance both development cooperation and outward foreign direct investment. This sort of advantage can be exploited when approaching and negotiating with developing countries in and beyond the region, and as such can be brought into play to create the sort of forward momentum that will be required to turn the process of concluding more and more PTAs into a dynamic that has its own self-propelling imperative.

What is more, even though its domestic market is small, it nevertheless represents some very real and significant opportunities for exporters of highly commoditized products that are domestically important from a political-economy perspective and for which price volatility on global markets tends to be high, while conditions of market access also tend to be precarious. This is the case for a range of agricultural products like beef, chicken, and dairy products, where exporters from the United States, the European Union, Australia, New Zealand and Canada are constantly trying to out perform one another in securing favorable market access terms for these commodities.

The same calculus and considerations exists for certain segments of the Taiwanese labor market, particularly for a number of low and semi-skilled professionals, where there is both a genuine need to meet demand on the domestic market and a very real ability and desire to supply such human resource needs from developing countries in the region. This dynamic represents some very powerful negotiating coin that Taiwan has not even begun exploring in any real way. The most obvious example would be in nursing, where countries such as the Philippines, Indonesia or Thailand represent potentially interested PTA partners if the deal on offer might involve both technical assistance to train their nurses to work in Taiwan, complemented by real opportunities for such workers to access the Taiwanese labor market to provide such services for a limited period of time. There are various other sectors of the domestic labor market where such an approach could increase both Taiwan's leverage in the PTA process and the goodwill of its trade and investment partners.

Yet another strength that Taiwan enjoys and has so far underplayed is the fact that it is a relatively mature democracy by regional standards, as well as being a fully functional capitalist market economy that protects private property, upholds the sanctity of contract, and maintains the rule of law. In addition

⁷⁰ The other two are of course South Korea and Singapore. For a recent and refreshing discussion of how this process occurred in these economies, see: Joe Studwell, *How Asia, Works*, Grove Press, 2014.

to this, the model of economic development favored by Taiwan was a lot less state-led or SOE-centric than almost any other economy in the region, which puts it into broad alignment with the growing tendency to promote a policy of competitive neutrality that is so central to countries like the United States, Australia, New Zealand, and which is ultimately behind initiatives in the TPP to constrain the advantages that governments can afford their own domestic corporate favorites.⁷¹

Finally another strength that Taiwan enjoys but needs to learn to play to more assertively is the very real level of sophisticated skills and technical expertise it has across many sectors, especially in manufacturing. Taiwan needs to find ways to export these skills by means of mutual recognition agreements (MRAs) coupled with development and technical assistance to help partners establish laboratory and testing capacity to meet the requirements imposed by these future MRAs. This is something Japan already does very well, providing support both explicitly and often less openly to industry associations and standards bodies across the region in sectors where it has very real export interests, the most obvious one being automotive.⁷² This is a very real and under-the-radar way in which Taiwan can advance its own interests by generating greater goodwill and understanding of its processes and approaches.

B. The False Choice between China and other Regional Partners

The domestic political landscape in Taiwan currently seems to be one of increasing polarization and discord between opposing views on the need and intensity with which Taiwan should engage with Mainland China. Since the 2000s, the governing KMT have consistently taken a pragmatic approach towards normalizing Cross-Straights relations, focusing first and foremost on the economic ties between the two economies. The opposition, however, deeply suspicious of China's motives and its designs on Taiwan's sovereignty, seems to favor less rather than more economic integration with China and has sought (so far successfully) to block passage of the Cross-Straights services agreement and to all but bring the process of closer economic integration between the two economies to a standstill.

But this is a false choice. The reality is that China cannot be ignored or taunted, and that in order to continue the process of seeking out new PTA partners, Taiwan will first have to get closer to China by completing the process of economic integration embarked upon several years ago. Only once China is satisfied that its own objectives in achieving closer economic cooperation with Taiwan are being fulfilled in good faith by Taiwan, will it be ready to quietly acquiesce as Taiwan goes about concluding more and more PTAs with other partners. The reality is that despite the fact that most commentators agree that China's export-led growth model has finally reached its limits, and that demographically China will only get smaller in the future, it remains one of the most important and promising markets for many

⁷¹ This is perceived as being a particular problem in economies like Singapore, Vietnam, Malaysia and of course China, although the latter is not participating in the TPP negotiations. For more on the issue of competitive neutrality see OECD, *Competitive Neutrality: Maintaining a level playing field between public and private business*, 2012, available at: <http://www.oecd.org/competition/competitiveneutralitymaintainingalevelplayingfieldbetweenpublicandprivatebusiness.htm> (visited on 1 October 2014); for a discussion on how the doctrine of competitive neutrality has translated into negotiating proposals within the TPP process, see Peter Draper, Simon Lacey and Yash Ramkolowan, *Mega-Regional Trade Agreements: Implications for the African, Caribbean and Pacific Countries*, 2014, available at: http://www.ecipe.org/media/publication_pdfs/OCC22014_.pdf (visited on 1 October 2014), particularly pp. 19-22.

⁷² For a discussion of the dominance exerted by Japanese interests in Thai trade policy in the context of trade and investment liberalization, see Antonio Postigo, *Negotiating Protection under overlapping Free Trade Agreements: Dynamic Interplay between Free Trade Agreements and Investment*, Development Studies Institute, London School of Economics and Political Science, 2013, available at: <http://www.lse.ac.uk/internationalDevelopment/pdf/WP/WP150.pdf> (visited on 1 October 2014).

countries.⁷³ This means that almost no country is going to risk embarking on a course of action with Taiwan unless they are confident it will not undermine their relationship with Mainland China. This dynamic was very much on display during the process of negotiating Taiwan's recent PTA's with New Zealand and Singapore and will continue to play a decisive role as Taiwan seeks out new PTA partners in and beyond the region. The process of closer economic integration with Mainland China is thus a necessary precondition to closer economic integration with Taiwan's ASEAN and regional trading partners. The two policies are not mutually exclusive but rather mutually reinforcing.

C. Time to care more about Outcomes than Process

As alluded to above, what Taiwan ultimately cares about in the process of regional economic integration is maintaining access for its exporters to regional and global markets on terms that are economically viable for them. This means that it has to enjoy equal or better market access terms than its competitors. The quest to gain entry into RCEP or the TPP, although sensible, reasonable and underpinned by its own inherent geopolitical and political-economy logic, may be beyond the pail of what is immediately achievable for Taiwan in light of the existing constraints to joining RCEP and the very real reservations China is likely to have towards Taiwanese membership of the TPP before China can negotiate accession terms for itself.

In light of this reality, policymakers in Taiwan would be well advised to stop spending so much time thinking about ways to get into the TPP and start thinking very hard about achieving outcomes that are ultimately the same in purely economic (market access) terms. In many ways, the situation faced by Taiwan today is not too different to the dilemma faced by Switzerland in the 1990s. With the completion of the European Common Market in 1992, and with Switzerland's rejection by popular referendum of joining the European Economic Area (which would have encompassed EFTA and the European Communities), Switzerland faced a very familiar dichotomy to what Taiwan faces today between economic and commercial realities on the one hand and sovereign political constraints on the other. The solution Switzerland ultimately adopted was to henceforth make all of its domestic laws compatible with European law (a process it referred to as *Eurolex*), and to subsequently achieve an almost equal level of economic integration with the EU that it would have had as an EU Member State, but minus ceding any political sovereignty. It achieved the latter through a series of so-called bilateral accords. Although this process was not without controversy or difficulty, Switzerland largely managed to maintain access to its most important economic partner without having to engage in the process of political integration that EU Membership inevitably requires.⁷⁴

Taiwan needs to start thinking about similar pragmatic solutions to its foreign economic and commercial policy needs. Indeed, the fact that in 2013 it succeeded in achieving meaningful bilateral PTAs with New Zealand and Singapore is more likely than not a good indication that it has already resigned itself to this reality and has started actively embracing a targeted and bilateral approach to achieving outcomes that will be almost identical to membership of either RCEP or the TPP.

⁷³ See: Tomas Ramanauskas, *China – Approaching The End of Export-Led Growth Story?* 16 March 2014, available at: <http://blog.euromonitor.com/2014/03/china-approaching-the-end-of-export-led-growth-story.html> (visited on 1 October 2014). (Ramanauskas 2014)

⁷⁴ For a very succinct piece of background and analysis on this relationship, see: Daniel Möckli, *Switzerland and the EU: The Prospects of Bilateralism*, CSS Analyses in Security Policy, Vol. 3, No. 37, July 2008, available at: <http://www.css.ethz.ch/publications/pdfs/CSS-Analyses-37.pdf> (visited on 1 October 2014).

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