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AN EVALUATION OF TAIWAN'S TRADE POLICIES
IN THE RACE
FOR FREE TRADE AGREEMENTS

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TABLE OF CONTENTS

- I. INTRODUCTION
- II. A GLIMPSE OF THE RACE FOR FTAs INTERNATIONALLY
- III. THE ECFA BETWEEN TAIWAN AND CHINA AND ITS IMPLICATION
- IV. THE TPP: A POSSIBLE HISTORIC DAY FOR TAIWAN
 - A. *The TPP in a Nutshell*
 - B. *Has Taiwan ever Endeavored to Join the TPP?*
- V. WHAT LESSONS CAN BE LEARNED FROM THE PROLIFERATION OF FTAs
 - A. *From the Perspective of the WTO*
 - B. *From the Perspective of Taiwan*
- VI. CONCLUSION

I. INTRODUCTION

The World Trade Organization (WTO) came into existence on the 1st of January 1995, as a result of the Uruguay Round of Trade Negotiations. The WTO, like its predecessor, the General Agreement on Tariffs and Trade (GATT), is responsible for administering the multilateral trading system that has gradually evolved over the past sixty years. It also serves as a forum for continuing negotiations to further liberalize trade in goods and services and for developing rules for new trade-related areas.

The initiation of the Doha Development Agenda (DDA), the first round of trade negotiations after the inception of the WTO, coincided with Taiwan's accession to the WTO in November 2001. In retrospect, the timing was simply perfect for Taiwan to take part in the first round of multilateral trade negotiations of the WTO, even though it had taken Taiwan nearly twelve years to obtain its membership.

As Taiwan's first Ambassador to the WTO, the author had the great privilege of personally witnessing, from Day One, Taiwan's involvement in this multilateral trade organization. During my time in Geneva, I strongly advocated that Taiwan should take a more positive attitude towards the Doha Round, and thus it had become Taiwan's overall negotiating guidelines in the process.

The underlying reasons for my suggestion are twofold. The first relates to the "Law of Comparative Advantage", a most important architecture for supporting the GATT/WTO system, and a unique strength for Taiwan's economic development in the past decades. The second reason why I am more inclined towards multilateral trade negotiations is that the bilateral or regional approaches through the signing of Free Trade Agreements (FTAs) or Regional Trade Agreements (RTAs) simply cannot solve the problems arising from international trade.

Without getting bogged down by the details, the journey of DDA negotiations has not been smooth since its inception thus far. In short, it is still rather uncertain whether the negotiations of the DDA will continue

to languish in a period of inactivity or change course and enter into an intensive phase. However, the prolonged stalemate of the DDA negotiations has triggered the “mushrooming” of FTAs among WTO Members. Indeed, a great many key WTO Members, such as the US, EU, Japan, Canada and China, have been actively taking part in the race to sign FTAs.

Although none of those key WTO Members have considered the stalemate of the Doha Round being an end to this multilateral trading system, some sectors in Taiwan including the government itself have strongly held the view that Taiwan could be marginalized should Taiwan be left out from the race. Therefore, a mounting wave of opinion surfaced in Taiwan’s society, namely that Taiwan needed to engage in more FTA negotiations in order for it not to be marginalized by such an FTA race internationally. In this regard, the most eye-catching example was President Ma Ying-jeou’s effort to complete the signing of the “Cross-Straits Economic Cooperation Framework Agreement” (ECFA) with China, which by nature is an FTA, in June 2010. President Ma also prioritized his trade policy to engage in more discussions on the signing of FTAs with some other countries concerned.

Some six or seven years have passed since President Ma’s trade policy in this regard was put to test. Therefore, it would be an optimal time for us to embark upon an evaluation of Taiwan’s past efforts in joining the race of FTAs. By so doing, the author wishes to provide some insight as to the proper policy-making for Taiwan in the time ahead.

II. A GLIMPSE OF THE RACE FOR FTAs INTERNATIONALLY

The concept of Free Trade Agreements (FTA), or as they were originally referred to as “Free-trade Areas,” was included in the original version of the GATT at Article XXIV. Professor John H. Jackson best elaborated it on the drafting history of this troublesome trade rule as follows:

“It is apparent that the criteria for permissible regional arrangements

under GATT are ambiguous and difficult to apply. It also appears that even economists, starting with the similar economic goal-premises, are not entirely certain whether regional arrangements are beneficial and, if so, what characteristics differentiate the beneficial ones from detrimental ones. In the face of these uncertainties, it is not surprising that the practice in GATT has resulted in a high degree of tolerance for a wide diversity of regional arrangements. . . . How is this problem to be reconciled in GATT? So far, it has been “reconciled” largely by ignoring it.”¹

In a nutshell, the drafting history of GATT suggests that, in order to encourage the process of regional integration among developing countries, the contracting parties have preferred to adopt a relaxed attitude. Countries involved in these agreements have thus been given the green light to go ahead. A tolerant attitude has been shown also toward preferential arrangements between developed and developing countries. The EEC has made considerable use of this type of arrangement.²

¹ See John H. Jackson, *WORLD TRADE AND THE LAW OF GATT* 35 (1969), at 577.

² The European Economic Community (EEC) maintains four “preferential trade regimes” which allow specified products to enter the European common market at reduced or zero tariff rates. EC Rules of Origin Information, at 2. These regimes include the European Free Trade Association (“EFTA”) agreements, which give tariff preferences to products entering the EEC from Iceland, Norway, Sweden, Finland, Austria and Switzerland; the Mediterranean agreements, which apply preferential tariff treatments for all Mediterranean countries’ exports except those from Libya and Turkey; the so-called “Lomé” or “ACP” (African-Caribbean-Pacific) convention, applicable to most African countries south of the Sahara and former European dependencies in the Caribbean and Pacific; and the Generalized System of Preferences (“GSP”) for other developing countries.; see also Richard A. Falk, *Foreword* to E. Frey-Wouters, *The European Community and the Third World* at vii (1980) (referring to “Lomé” and “ACP” matters interchangeably); E. Frey-Wouters, *The European Community and the Third World* 1 (1980) (describing creation of the Lomé agreement; explaining “Lomé” and “ACP” terms); Forrester, *Part I, EEC Customs Law: Rules of Origin and Preferential Duty Treatment-Part I*, 5 *Eur. L. Rev.* 167, 168-70 (1980) (listing EEC’s preferential trade agreements).

The EEC’s preferential trade agreements with the EFTA member-states contain roughly similar provisions. Forrester, *Part I, id.*, at 168 n.6; see *Agreements with EFTA Countries*, *Common. Mkt Rep. (CCH)* ¶ 3863(01-21) (1987) (discussing general characteristics of EEC-EFTA preferential trade agreements); compare *Agreement Between the European Economic Community and the Republic of Austria*, July 22, 1972, 15 *O.J. Eur. Comm. (No. L 300)* 3 (1972), reprinted in *European Communities*, 1 *Collection of the Agreements Concluded by the European Communities* 7 (1977) [hereinafter referred to as *EEC-Austria Trade Agreement*] (providing certain rules of origin and tariff treatment) with *Agreement Between the European Economic Community and the Republic of Finland*, Nov. 22, 1973, 16 *O.J. Eur. Comm. (No. L 328)* 1 (1973), reprinted in *European Communities*, 2 *Collection of the Agreements Concluded by the European Communities* 5 (1977) [hereinafter referred to as *EEC-Finland Trade Agreement*] (setting forth nearly identical provisions). The EEC and the ACP members renewed the Lomé agreement for the

While some progress to strengthen the rules on FTAs was made during the Uruguay Round, there has been almost no substantial change to the regime governing FTAs since the inception of the WTO.

Having said this, with the exception of the unilateral preferential trade agreements provided by EEC countries to previous colonies, FTA's have posed little threat to the cornerstone principle of the multilateral trading system—Most-Favored-Nation treatment.³ In this regard, the United States, the greatest advocate of GATT/WTO, has played a vital role in encouraging multilateral instead of bilateral/regional approach to reduce barriers to international trade. And this is the underlying reason which could largely explain why the GATT has remarkably succeeded in completing eight rounds of multilateral trade negotiations.

As fully manifested at the landmark Bretton Woods Conference in 1944, United States policy has strongly supported the liberalization of international trade by seeking agreements among the ever increasing numbers of countries in successive rounds of multilateral trade negotiations under the GATT and subsequently the WTO. Therefore, the author holds the view that some elaboration on the United States' stance on FTAs is

second time in 1984. Third ACP-EEC Convention, Dec. 8, 1984, 29 O.J. Eur. Comm. (No. L 86) 3 (1986) [hereinafter referred to as Lomé III]. Lomé III expired on February 28, 1990 but the EEC is working towards concluding a fourth Lomé convention. See Lomé III, *supra*, art. 291 (giving expiration date); *Negotiations for Fourth Lomé Convention Under Consideration, Common Mkt. Rep. (CCH)*, EC News Desk, Sept. 7, 1989, at 3-4 (discussing negotiations toward fourth Lomé convention). Lomé III provides for transitional measures to keep the agreement in force between renewals. Lomé III, *supra*, art. 291. In 1986 over 8 billion ECU's (about \$8 billion) worth of Lomé country exports-over 41% of total ACP exports to the EC-entered the Community tariff-free. General Agreement on Tariffs and Trade, GATT Activities 1988 100 (1989) [hereinafter referred to as GATT Activities 1988]; see Perrott, *European Communities: Competition (Antitrust) Law*, 21 Int'l Law. 895, 897 n.8 (1988) (comparing European Currency Unit to United States dollar); Commission Information: ECU, 28 O.J. Eur. Comm. (No. C 194) 1 (1985) (giving conversion rate of \$.80 to 1 ECU); Commission Information: ECU, 30 O.J. Eur. Comm. (No. C 235) 1 (1987) (giving conversion rate of \$1.14 to 1 ECU); Commission Information: ECU, 31 O.J. Eur. Comm. (No. C 44) 1 (1988) (giving conversion rate of \$1.21 to 1 ECU).

³ For a discussion of whether FTAs are on equal footing with MFN under the GATT or are instead an exception to the MFN rule, see Thomas Cottier & Marina Foltea, *Constitutional Functions of the WTO and Regional Trade Agreements*, in *Regional Trade Agreements and the WTO Legal System* 43, 51-58 (Lorand Bartels & Federico Ortino eds., 2006); See also Peter Sutherland, *The Doha Development Agenda: Political Challenges to the World Trading System: A Cosmopolitan Perspective*, 8 J. Int'l Econ. L. 363, 366 (2005) (“[T]he reality is that one of the central pillars of the WTO--most-favoured nation (“MFN”) treatment--has been undermined to the point that it may become meaningless.”); Report by the Consultative Board to the Director-General Supachai Panitchpakdi, *The Future of the WTO: Addressing Institutional Challenges in the New Millennium* 19 (WTO 2004) (“Consultative Board Report”)

desirable so as to catch a glimpse of the race of FTAs internationally.

The first US FTA, which was with Israel, went into effect on September 1, 1985;⁴ the second one, with Canada, took effect on January 1, 1989.⁵ Exactly five years later, the North America Free Trade Agreement (NAFTA) went into effect, which created an FTA encompassing the United States, Canada and Mexico.⁶ Despite the most successfully transformation of the GATT into the WTO in 1995, the United States' pursuit of FTAs has intensified. The FTA with Jordan became effective on December 17, 2001. It was during the development of these FTAs that the United States, arrived at a policy position that, while continuing to be the world's strongest supporter of the multilateral trade regime, the United States would view bilateral and regional FTAs as another means to the end of achieving a more liberalized trade environment.

⁴ Free Trade Area Agreement, Apr. 22, 1985, U.S.-Isr., 24 I.L.M. 645; *see also* Bernard Riech, *The United States and Israel Influence in the Special Relationship* 177 (1984); Ira Nikelsberg, *The Ability to Use Israel's Preferential Trade Status with Both the United States and the European Community to Overcome Potential Trade Barriers*, 24 *Geo. Wash. J. Int'l L. & Econ.* 371, 372 (1990); Avraham Azrieli, *Improving Arbitration Under the U.S.-Israel Free Trade Agreement: A Framework for a Middle-East Free Trade Zone*, 67 *St. John's L. Rev.* 187, 195 (1993); Sandra Ward, *The U.S.-Israel Free Trade Area: Is it GATT Legal*, 19 *Geo. Wash. J. Int'l L. & Econ.* 199, 217 (1985); Blair, *A U.S.—Israel FTA, How Both Sides Gain*, AIPAC Papers on U.S.—Israel Relations 3 (1984) (available through offices of the American Israel Public Affairs Comm'n, 500 N. Capitol St., Washington, D.C. 20001)

⁵ Free Trade Agreement, Dec. 22, 1987-Jan. 2, 1988, Can.-U.S., 27 I.L.M. 281; *see also* R.M. Stern et al., *Perspectives on a U.S.-Canadian Free Trade Agreement* 97 (1987).

⁶ North American Free Trade Agreement Between the Government of the United States of America, the Government of Canada and the Government of the United Mexican States, --U.S.T.--, abridged version *reprinted in* 32 I.L.M. 296 (1993); Alexander F. Watson, Assistant Secretary for Inter-American Affairs, *NAFTA and the U.S. National Interest*, 4 U.S. Dept. St. Dispatch 610 (Sept. 6, 1993); M. Delal Baer, *North American Free Trade*, *Foreign Aff.* 132 (Fall 1991); Sidney Weintraub, *US Mexico Free Trade: Implications for the United States*, 34 *J. Interam. Stud. & World Aff.* 29 (1992); Stephen Zamora, *The Americanization of Mexican Law: Non-Trade Issues in the North American Free Trade Agreement*, 24 *Law & Pol'y Int'l Bus.* 391 (1993); Sidney Weintraub, *The Promise of United States-Mexican Free Trade*, 27 *Tex. Int'l L.J.* 551 (1992); *see also* Ruth K. Agather & Timothy N. Tuggey, *The Meat and Potatoes of the North American Free Trade Agreement*, 24 *St. Mary's L.J.* 829 (1993); Terence J. Centner, *Changes Impacting Production Agriculture: NAFTA and New Environmental Regulations*, 24 *U. Tol. L. Rev.* 371 (1993); Albert Szekely, *Establishing a Region for Ecological Cooperation in North America*, 32 *Nat. Resources J.* 563 (1992). Ironically, despite NAFTA's great importance for environmental law, a Court of Appeals has concluded that no environmental impact statement need be prepared under the National Environmental Policy Act. *Public Citizen v. United States Trade Representative*, 5 F.3d 549 (D.C. Cir. 1993). For a further discussion of this case *see* Kristin Loecke, *Recent Development, The National Environmental Policy Act of 1969 and Its Implications for NAFTA: Public Citizen v. United States Trade Representative*, 822 *F. Supp.* 21 (D.D.C.), *rev'd* 5 F.3d 549 (D.C. Cir. 1993), 23 *Ga. J. Int'l & Comp. L.* (1993).

Needless to say, the creation of some of the FTAs formed by and with the United States was motivated more by political considerations than economic reality. The US FTAs with Israel, Jordan, and the Southern African Customs Union vividly articulated clear foreign policy objectives from the perspective of the United States. In other words, the FTAs have provided a way for the United States to engage with various countries for foreign policy reasons while having little economic significance to the United States.

In the meantime, the United States arrived at a clear conclusion that FTAs also offered a way to continue making headway toward the goal of freer trade, even, in the face of the difficulties blocking progress at the Doha Round that engaged in such agreements expand trade with the United States.⁷ Therefore, the United States has become one of the leaders in the race to form more FTAs.⁸

It is equally important to point out that, while sharing the same view as the United States that multilateral approach is the best way to effectively

⁷ “Competitive liberalization” is the term adopted by former U.S. Trade Representative Zoellick to describe the U.S. strategy: “By pursuing multiple free trade initiatives, the United States has created a ‘competition for liberalization,’ launching new global trade negotiations.” Pol. & Soc’y 1, 3-4,8 (2005) (noting that the United States pursues FTAs with countries willing to undertake economic reforms with regard to domestic regulatory practices); see also Jagdish Bhagwati, *Regionalism and Multilateralism: An Overview*, in *New Dimensions in Regionalism Integration* 29 (Jaime deMelo & Arvind Panagriya eds., 1993). Bhagwati states that “the main driving force for regionalism today is the conversion of the United States, hereto an abstaining party, to [GATT] Article XXIV. . . . [T]he conversion of the United States is of major significance. As the key defender of multilateralism through the postwar years, its decisions now to travel the regional route (in the geographical and preferential senses simultaneously) tilts the balance of forces at the margin away from multilateralism to regionalism.” *Id.* See also, GAO, *An Analysis of Free Trade Agreements and Congressional and Private Sector Consultation under Trade Promotion Authority*, GAO-08-59, at 1-2 (2007), available at <http://www.gao.gov/new.items/d0859.pdf> [hereinafter referred to as GAO 2007 Report]. According to the GAO, the recent U.S. FTAs “have a number of absolute requirements, based on the model USTR seeks to use.” *Id.* at 18. In its Trade Policy Review Report to the WTO, the United States also noted that its regional trade agreements could “become models for future multilateral liberalization in new areas such as agriculture, services, investment and environmental and labor standards.” WTO, Trade Policy Review, *Report by United States*, WT/TPR/G200, at 14 (2008) [hereinafter referred to as US/TPR], available at www.wto.org/english/tratop_e/tpr_e/g200_e.doc.

⁸ The most recent U.S. free trade agreements (FTAs) are those negotiated or enacted under the Bush Administration. The following represents a chronological list of the agreements and their enactment in the United States as of 2008: U.S.-Jordan (2001); U.S.-Singapore (2003); U.S.-Chile (2003); U.S.-Australia (2004); U.S.-Morocco (2004); U.S.-CAFTA-DR (2005); U.S.-Bahrain (2006); U.S.-Oman (2006); U.S.-Peru (2007). See United States Trade Representative (USTR), *The President’s 2008 Trade Policy Agenda* 107-15 (2008), available at http://www.ustr.gov/assets/Document_Library/Reports_Publications/2008/2008_Trade_Policy_Agenda/asset_upload_file649_14563.pdf.

reduce barriers to international trade, the EU,⁹ Canada, Japan, and so many active WTO Members joined the race for FTAs according to their individual agendas. This broad race to create FTAs started before the DDA negotiations starting to break down, but the pace of the race has picked up considerably since the stalling of the DDA negotiations. This explosion in FTAs has given rise to a major concern; the proliferation of free trade areas is threatening to erode the foundational principle of the multilateral trading system, namely MFN.¹⁰

In short, FTAs have become increasingly prevalent since the early

⁹ See Commission of the European Communities, Towards an EU-Brazil Strategic Partnership, COM (2007) 281 Final (May 2007) [hereinafter referred to as Towards EU-Brazil Partnership], available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0281:FIN:EN:PDF> (Brazil); Agreement on Partnership and Cooperation Establishing a Partnership Between the European Communities and their Member States, of the One Part, and the Russian Federation, of the Other Part, June 24, 1994, O.J. L 327/3 (1997) (Russia); Commission of the European Communities, An EU-India Strategic Partnership, COM (2004) 430 Final (June 2004), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2004:0430:FIN:EN:PDF> (India); Agreement on Trade and Economic Cooperation between the European Economic Community and the People's Republic of China, May 21, 1985, O.J. L 250/2 (1985) (China); See also Anne-Sophie Claeys & Alice Sindzingre, *Regional Integration as a Transfer of Rules: The Case of the Relationship Between the European Union and the West African Economic and Monetary Union (WAEMU)*, Paper Presented to Development Studies Association Annual Conference, Glasgow, University of Strathclyde (Sept. 10-12, 2003), available at <http://www.edpsg.org/Documents/dp26.doc> (observing that "the EU has constituted a model of regional integration for a certain number of developing countries").

¹⁰ See generally Jagdish Bhagwati, Termites in the Trading System: How Preferential Agreements Undermine Free Trade (2008); Nuno Limão, *Preferential Trade Agreements as Stumbling Blocks for Multilateral Trade Liberalization: Evidence for the United States*, 96 Amer. Econ. Rev. 896 (2006) (finding that FTAs have impeded multilateral trade liberalization); Colin B. Picker, *Regional Trade Agreements v. the WTO: A Proposal for Reform of Article XXIV to Counter this Institutional Threat*, 26 U. Penn. J. Int'l Econ. L. 267 (2005); Meredith Kolsky Lewis, *The Prisoners' Dilemma and Free Trade Agreements: An Application of Game Theory to Trade Liberalization Strategy*, in *Challenges to Multilateral Trade: The Impact of Bilateral, Preferential and Regional Agreements* (Laurence Boule et al. eds., 2008) ("Game Theory"); Meredith Kolsky Lewis, *The Free Trade Agreement Paradox*, 21 New Zealand Universities L. Rev. 554 (2005); Thomas Cottier, *The Erosion of Non-Discrimination: Stern Warning without True Remedies*, 8 J. Int'l Econ. L. 595 (2005) (noting the problem of noncompliant FTAs as stumbling blocks); Frederick M. Abbott, *A New Dominant Trade Species Emerges: Is Bilateralism a Threat?*, 10 J. Int'l Econ. L. 571, 583 (2007) ("weaker actors have a better chance to have their voices heard, and their policy choices taken into account" in the multilateral consensus-based system); Guy Harpaz, *When East Meets West: Approximation of Laws in the EU-Mediterranean Context*, 43 Common Market L. Rev. 993, 999 (2006) (discussing the expectation by the EU that in connection with its European Neighbourhood Policy, its Mediterranean neighbours will unilaterally "approximate" or align their legislation to some degree to that of the EU rather than the parties engaging in a cooperative process of give and take); Kyle Bagwell & Robert W. Staiger, *An Economic Theory of GATT* (NBER Working Paper No. 6049, June 1998) (concluding that free trade agreements prevent the implementation of an efficient multilateral agreement based on the GATT pillars of non-discrimination and reciprocity). See also C. O'Neal Taylor, *The Changing Tide of Trade: The Social, Political and Environmental Implications of Regional Trade Agreements*, 28 SLU Pub. L. Rev. 155 (2008); Moshe Hirsch, *The Sociology of International Economic Law: Sociological Analysis of the Regulation of Regional Trade Agreements in the World Trading System*, 19 Eur. J. Int'l L. 277 (2008).

1990s. As of January 31, 2014, some 583 notifications of FTAs had been received by the GATT/WTO. Of these, 406 FTAs were in force.¹¹

III. THE ECFA BETWEEN TAIWAN AND CHINA AND ITS IMPLICATIONS

As a matter of fact, Taiwan had completed FTAs with Panama, Guatemala, Nicaragua, El Salvador and Honduras from 2004 to 2008. Given the very fact that Taiwan maintains diplomatic ties with those countries and the two-way trade between Taiwan and those countries has been very insignificant, it is plain to say that strengthening diplomatic relationship with those countries by signing FTAs is more important than economic considerations from Taiwan's perspective. To demonstrate its willingness to engage in discussions on the FTAs, Taiwan has pushed to knock on the doors of a few meaningful trade partners that have no diplomatic ties with Taiwan. However, these efforts by Taiwan have been mostly in vain, as potential FTA partners have been reluctant to openly negotiate with Taiwan out of fear that such discussions may draw the ire of the PRC government.

In relation to the quick surge of FTAs among WTO Members especially the FTA between ASEAN and China after the stalemate of the Doha Round negotiations,¹² the view of the United States was that, along with the obvious and direct localized effect that FTAs have on the liberalization of trade, the growing use of FTAs would encourage countries sitting on

¹¹ WTO, *Regional trade agreements*, at http://www.wto.org/english/tratop_e/region_e/region_e.htm.

¹² Qingjiang Kong, *China's WTO Accession and the ASEAN-China Free Trade Area: the Perspective of a Chinese Lawyer*, 7 J. Int'l Econ. L. 839, 843, 846 (2004) (arguing that by forming the ASEAN-China Free Trade Agreement (ACFTA), China will increase its available resources and market volume, allowing it to develop into an economic super-power, and that the formation of the ACFTA will allow China and ASEAN to work together to form international economic rules); Herman S. Kraft, *Japan and the United States in ASEAN-China Relations*, in *ASEAN-China Relations: Realities and Prospects* 90, 92 (Saw Swee-Hock & Chin Kin Wah eds., 2005) (discussing Chinese Premier Zhu Rongji's 2001 China-ASEAN FTA proposal); Shulan Ye, *China's Regional Policy in East Asia and Its Characteristics* 6 (Univ. of Nottingham China Policy Inst., Discussion Paper No. 66, 2010), at <http://www.nottingham.ac.uk/cpi/documents/discussion-papers/discussion-paper-66-china-regional-policy-shulan-ye.pdf> (observing that the Early Harvest Program provided ASEAN states favorably treatments to demonstrate China's "benignancy"); Sen & Srivastava, *ASEAN's Bilateral Preferential Trade and Economic Cooperation Agreements: Implications for Asian Economic Integration*, 26 ASEAN Econ. Bull. 194, 196 (2009) (indicating that the ASEAN-China FTA acted as a catalyst for the proliferation of FTAs in the region, and triggered a new focus on bilateralism among ASEAN countries).

the side-line of trade liberalization to get involved in the movement. The prevailing thinking was that as FTAs spread, those not actively engaged in negotiating and entering into such agreements would find themselves on the outside of these growing bilateral and regional multilateral trade arrangements and would thus be significantly disadvantaged economically.

This fear of being left out was becoming increasingly popular in Taiwan both at the policy making level as well as amongst the local business community both of whom recognized the importance of entering into FTAs with more significant trade partners. Given the historical reluctance of Taiwan's trade partners to negotiate such arrangements with Taiwan due to fears of negative reactions from the Chinese government, the thinking in Taiwan was that an FTA with China would clear the path to future negotiations with Taiwan's other major trade partners. Some ranking Taiwanese officials even strongly suggested that, by signing FTA with China, Taiwan could be part of the Eastern Asian Economic Bloc.

Despite the opposing stance taken by the Democratic Progressive Party and other pro Taiwan's independence groups that the engagement with China in a preferential trade agreement would damage Taiwan's local economy and undermine Taiwan's sovereignty, President Ma Ying-jeou continued the path to the completion of the Economic Cooperation Framework Agreement (ECFA) with China on June 29, 2010.¹³

The complete translated title of the agreement is "Cross-Straits Economic Cooperation Framework Agreement." While the English

¹³ Economic Cooperation Framework Agreement, China-Taiwan, June 29, 2010, available at <http://www.ecfa.org.tw/EcfaAttachment/ECFADoc/ECFA.pdf>; see also Jonathan Adams, *China, Taiwan to Sign Breakthrough Trade Deal*, Christian Sci. Monitor (June 24, 2010), <http://www.csmonitor.com/World/Asia-Pacific/2010/0624/China-Taiwan-to-sign-breakthrough-trade-deal>; Elizabeth Chien-Hale, *Introductory Note to the Economic Cooperation Framework Agreement Between the Straits Exchange Foundation and the Association for Relations Across the Taiwan Strait*, 50 Int'l Legal Materials 440, 440 (2011); Pasha L. Hsieh, *The China-Taiwan ECFA, Geopolitical Dimensions and WTO Law*, 14 J. Int'l Econ. L. 121, 121-22 (2011); Chi-An Chou, *A Two-Edged Sword: The Economic Cooperation Framework Agreement between the Republic of China and the People's Republic of China*, 6 BYU Int'l L. & Mgmt. Rev. 1, 3-4 (2012); *The Liberty Times Editorial: ECFA Debate: Ma Dodges the Issues*, Taipei Times, May 2, 2010, at 8 (comparing the ECFA to the 2003 agreement between Hong Kong and China, and stating the ECFA is not a free-trade agreement between two countries, but an agreement between a locality and a central authority); Stuart Harris, *Taiwan and its New Economic Agreement with China*, E. Asia Forum (July 9, 2010), at <http://www.eastasiaforum.org/2010/07/09/taiwan-and-its-new-economic-agreement-with-china/>.

translation is not considered the controlling document (the Mandarin Chinese version is), the English translation sufficed for both parties to satisfy the WTO commitment for notification to the WTO of the FTA.

As indicated above, the ECFA is one of approximately 407 FTAs in force currently between members of the WTO, but the ECFA is unique amongst all of these FTAs in that it involves an agreement between parties where one party, China, not only denies the other party's sovereign status, but actually goes so far as to lay claim to the territory of the other party. In addition, China has over 1,100 missiles stockpiled across the Taiwan Strait as a hostile reminder that Taiwan should not be naughty and declare independence.

In accordance with the drafting history of GATT and its subsequent developments at the WTO, the underlying reasons for signing an FTA between/among WTO Members was to bind like-minded parties in the goal of developing a "WTO Plus" trade relation. Therefore, it would be hard for anyone to imagine that one WTO Member, exposed to continued hostilities from the other Member, could happily sign the ECFA in a city named Chongqing, China. In this regard, it is of interest to note that, in Mandarin Chinese, the literal meaning of Chongqing is "the repeated celebrations." What a spectacular place for both sides of Taiwan Strait to create a "WTO Plus" trade relation after the KMT government was mercilessly defeated by the Communist China in 1949. Based on the chronology of the events officially established by the PRC government, the Republic of China (KMT government) has stopped existing since 1949!

Due to the fact that the WTO requires the ECFA, an FTA by its very nature, to abide by the rules governing FTAs, namely Article XXIV of the GATT 1994 and Article 5 of the General Agreement on Trade in Services (GATS),¹⁴ the contents of the ECFA are basically the same as most other

¹⁴ For historical background regarding Article XXIV and the motivations that led to its drafting, see generally James H. Mathis, *Regional Trade Agreements in the GATT/WTO: Article XXIV and the Internal Trade Requirement* (2002); Kerry Chase, *Multilateralism Compromised: The Mysterious Origins of GATT Article XXIV*, 5 *World Trade Rev.* 1 (2006); Sydney M. Cone, III, *The Promotion of Free-Trade Areas Viewed in Terms of Most-Favored-Nation Treatment and "Imperial Preference"*, 26 *Mich. J. Int'l L.* 563

FTAs. However, there has been extremely differing views thus far in Taiwan's society about whether the ECFA is an economic vitamin or a political poison pill from Taiwan's perspective?

One may strongly argue that the re-election of President Ma Ying-jeou in 2012 demonstrated that the signing of ECFA in 2010 had earned the support of the Taiwanese people. However, it is also very true that there has been a growing concern about the hidden costs or negative impacts in Taiwan's society; as clearly seen by the "Sunflower Student Movement" in the spring of 2014 whereby students and activists seized control of the Taiwan's legislature for three weeks in protest of certain aspects of the ECFA.¹⁵ The author is rather reluctant to predict the possible outcome without the aid of a crystal ball. Nevertheless, his instincts as a lawyer has reminded the author of the idiom "the devil is in the detail." Holding true to this adage, the author would like to thoroughly touch upon the details surrounding the trade related policies pronounced by Ma's Administration before and after the signing of the ECFA.

During the roughly two-year period of negotiating the ECFA with China, President Ma repeatedly stressed that it was a job to be done today otherwise it would be regretted tomorrow. Ma's Administration

(2005); Zakir Hafez, *Weak Discipline: GATT Article XXIV and the Emerging WTO Jurisprudence on RTAs*, 79 ND L. Rev. 879, 892 (2003).

¹⁵ The "Sunflower Student Movement" is associated with a protest movement driven by a coalition of students and civic groups that came to a head-on from March 18th to April 10th, 2014, in Taiwan. On March 17th, Taiwan's ruling party (KMT) attempted a unilateral move in the Legislative Yuan to force the "Cross-Strait Service Trade Agreement" to the legislative floor without conducting a clause-by-clause review. Due to a position strongly taken by the KMT on March 17th that the Agreement should be submitted to a plenary session for a final vote, about 300 protesters began to occupy the legislative floor on the following day and succeed in preventing the attempts by police to expel them. Shortly after the movement began, thousands of riot police were mobilized to surround the protesters. Legislative Speaker Wang Jin-Pying promised not to use force on the protesters. He also refused to meet with President Ma to discuss a response. Speaker Wang stated that President Ma should listen to the people and that a compromise was needed between the lawmakers first. On April 6th, Speaker Wang visited the occupied parliament chamber and promised to postpone review of the Agreement until legislation monitoring all cross-strait agreements has been passed. In response to Speaker Wang's promise, the protesters held a press conference on April 7th, stating that they would vacate the Legislative Yuan on April 10th. The movement marked the first citizens' occupation of the parliament chamber in the history of Taiwan, which earned the widespread support from Taiwan's society because it was largely felt that the signing of service trade agreement with China and the review processes thereof must be transparent and executed with due process. In short, the author would like to pay tribute to speaker Wang, in his infinite wisdom, has done an excellent job to prevent a violent crackdown by police from happening.

also strongly proclaimed that, by virtue of the ECFA, Taiwan would be a gateway to the huge Chinese market, thus attracting much more foreign investments to Taiwan. In addition, as previously mentioned, some ranking officials suggested without hesitation, that it would be much easier for Taiwan to engage in negotiating and entering into FTAs with other countries after the ECFA. As for China, the Beijing government also repeatedly emphasized its willingness to provide “Taiwan’s compatriots” with extra economic interest through the signing of the ECFA.

In the author’s opinion, it was this rosy picture, painted by the Ma Administration regarding the prospects of the ECFA and its promising implications for the overall economy that led to President Ma’s re-election success in 2011; However, the timing of the election so close to the signing of the ECFA presented President Ma with a notable advantage, as the rhetoric and promises for the future promised by the Ma Administration with regards to the ECFA remained untested at the time of the election.

As time has gone by and certain provisions of the ECFA have actually gone into effect, how does the rhetoric and promises of the Ma Administration from 2011 look today? Trying as much as possible to be objective, the author would like to refer to the 2013 Taiwan White Paper, which was issued by the American Chamber of Commerce (AmCham) in Taiwan in June 2013. AmCham was established in Taiwan since 1951 and is a highly regarded group in Taiwan. It was therefore a great shock to the author to see the title of the 2013 White Paper with the title “Taiwan at a Crossroads”.¹⁶

Being a loyal “advocacy group,” AmCham sounded the alarm to wake Taiwan by saying the following: “Taiwan is strikingly underperforming as a location for foreign investment. . . . Taiwan . . . remains extremely low compared with such other economies in the region as Thailand, Vietnam, Indonesia, Hong Kong, and Singapore.”¹⁷ AmCham’s observation of

¹⁶ The American Chamber of Commerce in Taipei, *2013 Taiwan White Paper*, June 2013, at 2, available at http://www.amcham.com.tw/publications/white-papers/cat_view/158-white-paper/310-2013.

¹⁷ *Id.* at 2, 5.

the facts on the ground in 2013 clearly contradicted the promises and predictions made just a few years earlier with regards to the ECFA and its effects on foreign investment in Taiwan.

AmCham also straightforwardly pointed out that “[for] political reasons, Taiwan has so far been excluded from most of the wave of bilateral free trade agreements (FTAs) and multilateral regional trade agreements (RTAs) that other countries have been pursuing following the lack of success of the Doha Round of the World Trade Organization.”¹⁸ What are the “political reasons” AmCham was referring to? The answer is crystal clear that the signing of the ECFA has not relieved Taiwan from the pressure exerted by China’s government on the international arena. Therefore, the beautiful story used originally to promote the ECFA has proved to be untrue.

Proponents of the prospects of ECFA would counter by pointing to those FTAs signed thereafter between Taiwan and Singapore on the other hand and with New Zealand on the other, as signs that the ECFA has reduced pressure from China and allowed Taiwan to enter into negotiations with its trade partners without fear of negative Chinese reaction. Do these two cases represent the fading out of the Chinese pressure on Taiwan? Although, the author would like to suggest time ahead would provide us with ample opportunity to find out the truth, the facts so far reveal that there is no reduced pressure from China’s perspective in this regard.

In order to stress the economic benefits to be generated by the ECFA to Taiwan, President Ma and his ranking officials spared no effort to educate Taiwan’s people. Nevertheless, it would seem that AmCham does not necessarily agree with this contention, noting that: “[it] is not the economic or political interest of . . . Taipei to see the Taiwan economy drawn ever closer to that of China. . . . for its own sake and to provide Taiwan with a counterbalance to pull toward over-dependence on the Mainland.”¹⁹

Furthermore, more and more Taiwanese people have begun to feel that the ECFA has brought no extra economic interest to Taiwan. In fact, it

¹⁸ *Id.* at 7.

¹⁹ *Id.*

seems that there is much more outbound investment from Taiwan to China, which has damaged capital formation and job creation in Taiwan. AmCham also gave Taiwan a clear sense of urgency by saying: “[not] so long ago, Taiwan was flourishing as one of four “Asian Tigers.” But in recent years, wage levels have been relatively stagnant, consumer confidence has been weak, and more and more young people are obliged to go to China to find good, high-paying jobs.”²⁰

As a matter of fact, the ECFA, being a Framework Agreement in its nature, requires four subsidiary agreements to be completed and ratified by both sides; namely agreements on trade in goods, trade in services, investment, and dispute settlement mechanism. The investment agreement has been completed without eliciting much attention from the general public in Taiwan. However, the subsidiary agreement on trade in services has prompted a heated debate not only in the general public but also among many KMT’s lawmakers.

The author sensed that this upwelling of oppositions against the ECFA in general, and specifically some of the ancillary agreements, came as a total surprise to the Ma Administration, particularly the resistance from within his own party, the KMT. Based on his then capacity as KMT’s Chairman, President Ma usually expected or even formally required the rank and file KMT legislators to follow his lead, and so in this case, supported the ECFA and its subsidiary agreements. Owing in part to President Ma’s “lame duck” status, ECFA related legislation had stalled out in the legislature despite the fact that the KMT controlled three-fourths of the seats. In addition, the subsidiary agreement on trade in goods would be a much harder nut for President Ma to crack given that many of the more politically sensitive items had been left off of earlier agreements (to ease negotiation and passage) and would have to be dealt with in that agreement.

In light of the aforementioned idiom “the devil is in the detail”, the author holds the view that whatever one does should be done thoroughly;

²⁰ *Id.* at 8.

i.e. details are extremely important. Thus, the truth of the rosy story about the signing of ECFA should lie in the details. After hearing the following comment that “Beijing has begun using the honey of economic enticements to catch the fly,”²¹ the author simply cannot help but recall what William Shakespeare once said: “[the] devil has the power to assume a pleasing shape.”²²

As elaborated in the former section “A Glimpse of the Race of FTAs Internationally,” some FTAs have been utilized by the United States more as tools for general foreign policy as opposed to economically motivated arrangements. It comes as no surprise that general foreign policy considerations play an important part in negotiating FTAs for all countries in the world not only the United States. Therefore, it is understandable that both Taiwan and China had certain hidden political agenda in completing the ECFA. In this regard, while wondering why Taiwan was willing to develop a closer economic relationship with a WTO Member who totally denies its existence, the author would also like to question the Ma Administration as to what the political price Taiwan would have to pay in getting the ECFA signed.

The major concerns prevailing in Taiwan’s society has been that the ECFA would usher in closer economic integration between Taiwan and China, making Taiwan increasingly dependent on China’s economy and thereby giving China greater leverage to achieve its goal of political unification. Despite the fact that President Ma himself and his ranking officials had repeatedly denied such a possibility, Chinese leaders had consistently stressed such a view, without a shadow of a doubt. For instance, Chairman Hu Jintao claimed that the ECFA was a step forward in the “irresistible historical process” leading to “complete reunification of China”.²³ In addition, Chinese Foreign Minister Wang Yi, former Director

²¹ Jonathan Adams, *China-Taiwan trade deal: Buyer’s remorse?*, Global Post, July 8, 2010, at <http://www.globalpost.com/dispatch/china/100702/taiwan-trade-economy-ECFA>.

²² A famous quote by William Shakespeare, in *Mamlet*, Act 2, Scene 2.

²³ See Hu Jintao’s 18th Party Congress Report, *quoted in* European Parliament Policy Department, *Taiwan, the Risk of Marginalization*, footnote 6.

of China's "Taiwan Affairs Office" already commented on this issue in a speech at the Brookings Institution on September 20, 2013 that "gradual integration of the two sides [of the Taiwan Strait] through two-way interactions and cooperation will lead to ultimate reunification."²⁴

Taking into consideration the afore-revealed hidden political agenda from China's perspective, it is no wonder that the first substantive agreement in the ECFA, the "Early Harvest for Trade in Goods," heavily favored Taiwan by offering tariff reductions on 539 Taiwanese exports to China versus just 267 Chinese exports to Taiwan.²⁵ In other words, by virtue of such a big and fat dollop of honey with the power to assume a pleasing shape, such an economic enticement would catch the fly. While recognizing President Ma's brave adventure in completing the ECFA and his ignorance of China's political agenda, the author, for some time, remains worried about whether this fragile young democracy could long endure in the sweaty economic embrace of the hulking suitor next door.

No one would argue that the truth of a story really lies in the details. Having taken a close look at the ECFA and objectively examined it in detail via other sources, the author would like to add a bit of his personal observations on its profound effect on Taiwan by giving consideration to both existing and prospective impacts. As a matter of fact, by virtue of the so-called "diplomatic truce" policy,²⁶ President Ma proudly regarded the

²⁴ Ministry of Foreign Affairs of the People's Republic of China, *Wang Yi: China Hopes that the United States Will Turn the Taiwan Issue into Positive Assets for China-U.S. Relations*, Sep. 21, 2013, at <http://www.fmprc.gov.cn/eng/zxxx/t1079910.shtml>.

²⁵ See http://www.ecfa.org.tw/Elist_Header2012.aspx?pid=4&cid=10&pageid=0.

²⁶ President Ma made the following statement in his 2008 President Inaugural Address: Taiwan's Renaissance:

"If a diplomatic truce can be achieved, then we can conduct a meaningful review of our foreign aid programs. Let me elaborate on three points. First, we can begin to set rational objectives, strategies and standards for our foreign aid programs. There is no longer the need to practice the so-called "Dollar Diplomacy" which many of our diplomats and citizens find so distasteful. Second, Taiwan was once a recipient of foreign assistance itself. Given Taiwan's current level of development and per capita income, it naturally behooves us to provide foreign assistance to less developed countries. However, some methods of our foreign aid have led some in the international community to perceive us as corrupting the governments and politicians of recipient nations, thus greatly damaging our international image. In reviewing our foreign aid programs, we will take into consideration the standards set by certain international organizations with regard to foreign aid such as Transparency International and the UN Convention against Corruption. At this moment the National Security Council is coordinating with the Ministry of Foreign Affairs and other relevant ministries to design a new foreign aid framework. Third, as long as we no longer engage in inappropriate

policy as a means of defusing tensions between the two sides of Taiwan Strait. However, as time goes by, more and more Taiwanese people have come to the conclusion that the diplomatic truce seems to be a unilateral rather than a bilateral one. In other words, China has continued to block Taiwan from access to international stages, either through membership in international organizations like the WHO, or by continuing to discourage other countries from entering into talks with Taiwan regarding economic, trade or other treaties.

In essence, even though Taiwan has eagerly tried to hold China in a tender embrace, China maintains a firm stance and continues to totally deny Taiwan's sovereign status. In the course of conducting the negotiations of ECFA and its subsidiary agreements, it is rather sad to point out that Taiwan's negotiators did not follow the sage advice from Richard C. Bush III that "Taiwan's negotiators will know what aspects of sovereignty are relatively minor and can be conceded and which are so important that they must be defended at all costs."²⁷ In addition, on various occasions when Chinese officials visited Taiwan, Taiwan's government even played down its sovereignty to the point of complete absurdity.

So what would be the personal comment of the author on the sensitive issue of ECFA from the point of view of Taiwanese people? One has to look back to the notion shared by most of the US political leaders during World War II that "nations which are economic enemies are not likely to remain political friends for long."²⁸ Had the United States not cultivated such lofty beliefs of ensuring international economic cooperation on equal

foreign aid activities, we will be less likely to corrupt ourselves. Scandals a 'la foreign aid to Papua New Guinea, for instance, will not happen again."; *See also*, Office of the President, *President Ma's Remarks at Ministry of Foreign Affairs: The Concept and Strategy of the "Flexible Diplomacy"*, Aug. 5, 2008, available at <http://english.president.gov.tw/Default.aspx?tabid=491&itemid=18917>.

²⁷ Richard C. Bush III, *Facing Mainland China: Taiwan's Future Challenges*, April 10, 2013, available at <http://www.brookings.edu/research/speeches/2013/04/10-taiwan-future-bush>.

²⁸ Harry Hawkins' 1944 speech as Director of the Office of Economic Affairs of the Department of State, cited in John Jackson, *World Trade and the Law of GATT* 38 n. 8 (1969). It is also noteworthy that, in 1945, President Roosevelt elaborated that: "The purpose of the whole effort is to eliminate economic warfare, to make practical international co-operation effective on as many fronts as possible, and so as to lay the economic basis for the secure and peaceful world we all desire." Cited in John Jackson, *supra* note 1, at 38.

footing, the Bretton Woods System, which has been described to have effectively prevented World War III from happening, would never been put in place. Borrowing the wisdom of those US political leaders, the author however is greatly puzzled “whether nations which are politically enemies are likely to remain economic friends for long.”

Joe Studwell, in his 2013 bestseller, *How Asia Works*, forcefully spelt out that “[in] China’s case, its government’s unwillingness to actively discuss political and social progress scares rich, free countries so much that a sensible discussion of the requirements of economic development becomes all but impossible.”²⁹ He also claimed that “China is putting off the creation of an independent legal system and more open, representative government until well after they are warranted. This is not what the Chinese people want. It does not matter that you can afford a small car or a motorbike if your friend or relative disappear into one of the country’s extra-legal “black jails.” Nor does a new kitchen seem so pleasant if the food you eat in it is poisoned for lack of environmental controls or by the addition of some low-cost but toxic ingredient, the use of which has been covered up with official connivance.”³⁰

To sum up, Joe Studwell’s most concern is that “[economic] development is only one part of a society’s development. The other parts, to do with freedom and the rights of the individual, are no less important.”³¹ Therefore, based on his research, the unwillingness of the Chinese government to address political and social issues has scared rich and free countries, and Taiwan should be one of them. Though the big and fat dollop of honey of ECFA may have generated favorable terms to Taiwan, would Taiwanese people accept to live like a Chinese being afforded just a small car or a motorbike at the expense of their friends or relatives to be disappeared into the extra-legal “black jail” as suggested by Joe Studwell? As to the point regarding the possibilities of eating poisoned food while at

²⁹ Joe Studwell, *HOW ASIA WORKS: SUCCESS AND FAILURE IN THE WORLD’S MOST DYNAMIC REGION* (2013), at 188.

³⁰ *Id.*

³¹ *Id.*

a pleasant new kitchen due to the lack of Chinese environmental controls, the author is of the opinion that there are simply much more serious environmental problems than poisoned food for China to take care of.

In short, should China expect the signing of ECFA with Taiwan be a magic recipe for the reunification between the two sides of Taiwan Strait, the author would like to remind the Beijing Government to seriously take into account the candid suggestions made by Joe Studwell. Before the emergence of a respectable model of “new China” both internationally and domestically, the author certainly prefers to believe what President Ma claimed in his 2009 National Day Address that “we have never overlooked the military threat posed by Mainland China.”³² President Ma also reiterated that “our foremost guiding principle in addressing cross-strait issues is to safeguard our national sovereignty.”³³ If the author’s understanding of President Ma’s message is correct, President Ma clearly rejected China’s offering of honey, despite the perceived size of the offering, as the price to be paid for such a large dollop of honey was Taiwan’s very own sovereignty.

IV. THE TPP: A POSSIBLE HISTORIC DAY FOR TAIWAN

A. The TPP in a Nutshell

Without going into too much detail, the Trans Pacific Partnership (TPP) was originally an FTA signed among New Zealand, Chile, Singapore and Brunei that came into effect in 2006. In 2008, the Bush Administration notified the U.S. Congress of its intention to join what became the TPP negotiations. Australia, Peru, and Vietnam joined shortly thereafter, followed by Malaysia in October 2010. Canada and Mexico joined the TPP in June 2012 and Japan joined the TPP in 2013. On October 5, 2015, Ministers of the 12 TPP countries announced conclusion of their negotiations.³⁴ Right on February 4, 2016, the signing ceremony of the TPP

³² Office of the President, *President Ma Ying-jeou’s National Day Address*, Oct. 10, 2009, available at <http://english.president.gov.tw/Default.aspx?tabid=491&itemid=16345&rmid=2355>.

³³ *Id.*

³⁴ Congressional Research Service, *The Trans-Pacific Partnership (TPP): In Brief*, February 9, 2016, at

was held in Auckland, New Zealand, ticking away a two year time frame for those 12 countries to rectify the TPP in accordance with their respective domestic legal system.³⁵

Without doubt, the TPP is one of the Obama Administration's signature trade policy initiatives, an effort to reduce and eliminate trade and investment barriers among the 12 countries. More importantly, the TPP represents that the United States, in addition to its direct economic impact, would be enhancing its overall influence in the economically dynamic Asia-Pacific region and advancing leadership in setting the new rules of commerce in the region and potentially in the multilateral trading system under the WTO.³⁶

In other words, the TPP would allow the United States to spur existing alliances to adopt a more U.S.-friendly foreign policy outlook and enhance broader diplomatic and security relations. It comes as no surprise that many policymakers as well as political commentators could interpret a failure of TPP in the United States as a symbol of the United States' declining interest in the region and inability to assert leadership. Meanwhile, through the completion of the TPP, the United States can play a leading role in "writing the rules" for commerce with key trading partners, addressing gaps in current multilateral trade rules, and thereby setting a precedent especially for multilateral trade talks at the WTO.³⁷

As mentioned previously, the creation of some of the FTAs formed by and with the United States was motivated more by political considerations than economic realities. There is no exception for the United States to actively take lead in the negotiations on the TPP. As for the US' political rationale in taking the initiative in the negotiations of the TPP, it could be best illustrated by President Obama' State of the Union Address on January

<https://www.fas.org/sgp/crs/row/R44278.pdf>

³⁵ Article 30.5 of the TPP provides that this Agreement shall enter into force 60 days after the date on which all original signatories have notified in writing of the completion of their applicable legal procedures within a period of two years from the date of signature of this Agreement.

³⁶ Congressional Research Service, *Japan Joins the Trans-Pacific Partnership: What Are the Implications?*, August 13, 2013, at <https://fas.org/sgp/crs/row/R42676.pdf>

³⁷ *Id.*

12, 2016 that “With TPP, China does not set the rules in that region, we do. We want to show our strength in this new century. Approve this agreement, give us the tools to enforce it.”³⁸ The National Association of Manufacturers announced its support for TPP by saying that “without such an agreement, the United States would be ceding economic leadership to other global powers, letting them set the rules of economic engagement in the region.”³⁹

The economic significance of the TPP lies in its share of the global economic pie, about forty percent of global GDP and one third of world trade. No wonder the European Centre for International Political Economy (ECIPE) has said in 2014 that TPP “will be the first ‘competing’ economic integration that is large enough to have a considerable negative impact on Europe in the long-term, the negative effects will come from dynamic impact, e.g. on investment, productivity, and competitiveness”.⁴⁰ Pascal Lamy, the former Director General of the WTO, called the TPP “the last of big old-style trade agreements”.⁴¹

In accordance with the IMF’s statistics in 2014, the United States and Japan respectively enjoyed sixty two percent and sixteen percent of the total GDP among the entire members of the TPP, the largest two in this club of economic integration. On April 29, 2015, Japanese Prime Minister Shinzo Abe therefore delivered a speech entitled “Toward an Alliance of Hope” at a joint meeting of the U.S. Congress. He eloquently stressed that “the U.S. and Japan must take the lead...to build a market that is fair, dynamic, sustainable, and is also free the arbitrary intentions of any nation. In the Pacific market, we cannot overlook sweat shops or burdens on the environment. Nor can we simply allow free-riders on intellectual property. No. Instead, we can spread our shared values around the world and have them take root: the rule of law, democracy, and freedom. This is exactly

³⁸ <https://www.whitehouse.gov/sotu>

³⁹ Needham, Vicki. "Big Endorsement for Obama trade deal". *The Hill*. Retrieved 4, January 2016.

⁴⁰ Matthias Bauer, Fredrik Erixon, Martina Ferracane and Hosuk Lee-Makiyama TRANS-PACIFIC PARTNERSHIP: A challenge to Europe ECIPE Policy Briefs, No.9/2014, page 1-13, European Centre for International Political Economy, ISSN 1653-8994

⁴¹ *Id.*

what the TPP is all about”.⁴²

In this connection, another initiative for “mega-regional” negotiations, namely the Regional Comprehensive Economic Partnership (RCEP) covering ten members of ASEAN plus China, Japan, Korea, Australia, India and New Zealand has started discussions since the latter half of 2012. However, RCEP faces many challenges and therefore its future as a consolidated economic bloc remains uncertain. The main challenge facing the prospective RCEP parties is that, despite the fact that there are many existing bilateral FTAs between the negotiating countries, there are enormous differences in the fundamental terms of these competing FTAs, leading to significant conflicts over whose approach should prevail.⁴³

As Jayant Menon, the lead economist at the Office of Regional Economic Integration of the Asian Development Bank (ADB) stated very articulately:

“In truth, consolidation may be just as difficult, if not more difficult, simply starting from scratch. Getting a pair of countries to agree on a specific set of terms will not necessarily facilitate similar breakthrough with third parties. To ignore this is to ignore ground realities and the political-economy of FTA negotiations. And anyone who has looked closely at an FTA will know how difficult the task of enmeshing even two similar agreements can be, let alone many different ones.”⁴⁴

Jayant Menon concluded that unless there is enough political will to close potential loopholes disguised as “flexibility” and pursue reforms deeper than those ever before attempted, RCEP may be seen as serving the

⁴² http://japan.kantei.go.jp/97_abe/statement/201504/uscongress.html

⁴³ For example, the rules of origin (ROOs) have been one of the most troublesome hurdles. There are at least 22 different ROOs among ASEAN+1 FTAs, and only about 30 percent of tariff lines across the ASEAN+1 FTAs share common ROOs. With bilateral FTAs, taking the Japan-India one as an example, there are 12 types of ROOs, seven of which are unique from the ASEAN+1 FTAs. Jayant Menon, *The Challenge Facing Asia's Regional Comprehensive Economic Partnership*, June 23, 2013, at <http://www.eastasiaforum.org>

⁴⁴ Jayant Menon, *Will Asia's largest FTA make a difference?* July 1, 2013, available at <http://www.adb.org/news/op-ed/will-asias-largest-fta-make-difference>.

geopolitical interests of a few players, to little economic effect. Then it will not be “the economy, stupid”, but just politics as usual.⁴⁵ Even though it may be possible to consolidate those FTAs to create the RCEP, one thing which could be reasonably foretold is that the degree of trade liberalization created by the RCEP will be much less than that created by the proposed TPP.

Having said the above, based on the fact that China is not taking part in TPP, and that the United States has taken the lead in TPP but kept its distance from RCEP, this has reflected the views that the TPP is a U.S.-led containment strategy aimed at China. In this regard, Jon Huntsman, a former U.S. ambassador to China, was quoted in June 2015 saying: “Domestically we tend to view trade through a political prism by way of winners and losers . . . In Asia, it’s seen as directly tied to our leadership and commitment to the region. A failed TPP would create an influence vacuum that others, primarily China, would fill.”⁴⁶

Linkages between the TPP and the promotion of broader diplomatic and security interests can also be best illustrated in a speech given by Secretary of Defense Ashton Carter on April 6, 2015 that “passing TPP is as important to me as another aircraft carrier.”⁴⁷ What an unexpected conjunction of events that the completion of the negotiating process of TPP coincided with the escalating tensions between China and its neighboring countries on the contested artificial islands and tiny rocks. China has forcefully declared most of South China Sea as its territorial waters by virtue of the so-called “Nine Dash Line”, which sees about thirty percent of the world’s trade transit the waters each year. U.S. Defense Secretary Ashton Carter has repeatedly underscored the U.S. Military’s determination to safeguard maritime security particularly in the South China Sea region. For that purpose, Ashton Carter was perfectly correct to identify an urgent

⁴⁵ *Id.*

⁴⁶ Jon Huntsman, quoted in Peter Baker, “The Trans-Pacific Partnership and a President’s Legacy,” *New York Times*. June 14, 2015.

⁴⁷ U.S. Department of Defense, “Asia-Pacific Remarks,” Secretary of Defense Ashton Carter, McCain Institute, Arizona State University, April 6, 2015.

need for another aircraft carrier, which hopefully could be achieved by passing the TPP.⁴⁸

B. Has Taiwan ever Endeavored to Join the TPP?

It is of interest to cite President Ma's Double Tenth National Address in 2013, when the President stated:

“In order to become a free economic island, Taiwan must comprehensively take part in regional economic integration. Only if we have the courage to compete can we create economic prosperity. This is the only way forward for the structural transformation of Taiwan's economy.”

It is more important to refer to President Ma's strong message which contained in his New Year's Day Address in 2014 as follows:

“I have instructed the Executive Yuan . . . to act as quickly as possible to propose specific plans . . . for joining the TPP and RCEP. I will personally preside over the first meeting of the task force on January 3, and in the future will regularly receive briefings from it. . . Taiwan's membership in the TPP and RCEP are our unswerving goals. This administration will adopt a dual-track approach and seek public unity to move forward at full speed.”⁴⁹

In order to know which direction President Ma would take while contemplating Taiwan's plan for taking part in the TPP's negotiations, a US academic from the Washington-based Center for Strategic and International Studies (CSIS) could provide some clues. In December 2013, CSIS adviser Scott Miller said in response to a question about what objections there

⁴⁸ On March 7, 2016, a spokesman for U.S. Pacific Fleet told that the John C. Stennis Carrier Strike Group completed routine operations in the South China Sea for five days and then transited to the Philippine Sea. It is interesting to note that U.S. Navy already deployed carrier to the disputed seawaters, so as to support continued freedom of navigation operations and discredit China's territorial overreach in the region. <http://www.military.com/daily-news/2016/03/08/stennis-carrier-strike-group-exits-south-china-sea-days-arriving.html>

⁴⁹ Office of the President, *President Ma Ying-jeou's National Day Address*, Jan. 1, 2014, available at <http://english.president.gov.tw/Default.aspx?tabid=491&itemid=31547&rmid=2355>.

were to include Taiwan in the TPP: “[It’s] just chronologically Taiwan has not requested [TPP] membership.” Scott Miller also referred to the words of New Zealand Trade Minister Tim Groser, “TPP has a dress code and you got to be ready and willing to [comply with the] dress code [policy] to be part of the agreement... So the high standard is a factor, but to this point, it’s just chronologically Taiwan has not requested membership.”⁵⁰

So despite President Ma’s claimed determination to join the TPP as he has repeatedly stressed in his domestic appearances and declarations, why has the outside world described Taiwan as shying away from knocking on the door of the TPP’s club? As said, the truth of a story lies in the details. The rationale behind Taiwan’s hesitation in requesting TPP’s membership had much to do with a friendly pro-China policy taken by Ma’s Administration. Given the fact that TPP has been described as a U.S.-led containment strategy aimed at China, it should come as no surprise that Taiwan refrained itself from knocking on the door of the TPP’s club.

As a consequence, it was not until November 20, 2013, at a conference held by the Brookings Institution entitled “Taiwan and the Trans-Pacific Partnership: Issues and Opportunities,” that President Ma asked the retired Vice President Vincent Siew to solicit the U.S. support for Taiwan’s taking part in the TPP.⁵¹ Needless to say, no tangible action with respect to Taiwan’s joining the TPP negotiations had ever been taken during Ma’s Administration.

As previously mentioned, AmCham strongly suggested in its *2013 Taiwan White Paper* that “Taiwan’s best option is to seek to enter TPP. The result would be equivalent of an FTA not just with the United States, but with a total of a dozen countries, including such other large markets as Japan, Mexico, and Canada.”⁵² Though many opportunities don’t often wait

⁵⁰ Hsiu-chuan Shih, *Taiwan has not asked to join TPP: US forum told*, Taipei Times, Dec. 7, 2013, at <http://www.taipeitimes.com/News/taiwan/archives/2013/12/07/2003578490>.

⁵¹ <http://www.brookings.edu/~media/events/2013/11/20-taiwan-transpacific-partnership/20-taiwan-transpacific-partnership-vincent-siew-prepared-remarks.pdf>

⁵² The American Chamber of Commerce in Taipei, *2013 Taiwan White Paper*, June 2013, at 7, available at http://www.amcham.com.tw/publications/white-papers/cat_view/158-white-paper/310-2013.

for us to make up our mind before they disappear, the TPP does provide the APEC members with a unique opportunity to join.⁵³

When the news about the TPP's negotiations has been successfully wrapped up on October 5, 2015, both KMT, the ruling party, and DPP, the largest opposition party, expressed their strong willingness to seek the "second round" ticket to join. No long after, on January 16, 2016, the DPP won by a landslide victory both in the elections of the President and the lawmakers. Noting that Dr. Tsai Ing-wen, the President-Elect will be sworn in on May 20, 2016, the DPP will certainly have to shoulder an once-in-a-lifetime opportunity as well as responsibility to finish the job of joining the TPP.

To illustrate the importance of the TPP for Taiwan, one can share the proclamation entitled "A Historic Day for Canada" made by Stephen Harper, Prime Minister of Canada, on October 5, 2015, the very day of completing the TPP's negotiations. Prime Minister Harper pronounced that "This is an once-in-a-lifetime agreement, an once-in-a-lifetime moment of decision. You are either in or out, and we choose to be in because there is simply too much to gain for Canada....We have chosen a future of participation over isolation."⁵⁴

Bearing in mind the wake-up call of the afore-mentioned "2013 Taiwan White Paper" issued by AmCham that "It is not the economic or political interest of either Washington or Taipei to see the Taiwan economy drawn ever closer to that of China. Both governments should welcome the opportunity to strengthen the U.S.-Taiwan economic relationship, both for its own sake and to provide Taiwan with a counterbalance to pull toward over-dependence on the mainland."⁵⁵ AmCham then arrived at the conclusion that "Taiwan's best option is to seek to enter TPP."⁵⁶

⁵³ Article 30.4 of the TPP provides that this Agreement is open to accession by any State or separate customs territory that is a member of APEC.

⁵⁴ <http://www.canada.com/business/27historic+says+stephen+harper+canada+signs+trans+pacific+trade+deal/11413137/story.html>

⁵⁵ The American Chamber of Commerce in Taipei, *supra* note 50, at 7.

⁵⁶ *Id.*

At this juncture, the author is delighted to learn that both the U.S. and Japan have publicly declared their welcoming policy on Taiwan's bidding for the TPP's membership. In addition, though it is expected that Taiwan will be confronted with huge challenges along the path to the TPP, the author also has the pleasure to note that the Taiwan's society as a whole has demonstrated supportive attitude toward the TPP. So, based on the much-needed support from all TPP members and unreserved efforts at home, the author remains confident that Taiwan could follow suit of Canada in achieving a historic day for becoming the next round member of the TPP.

V. WHAT LESSONS CAN BE LEARNED FROM THE PROLIFERATION OF FTAs

A. From the Perspective of the WTO

Without over-emphasizing the importance of the trauma of 9/11 being a major impetus behind the launch of the Doha Round, there is little doubt that this attack on the economic and political centers of the largest economy globally provided an impetus for cooperation in a nervous world.⁵⁷ In the meantime, the Doha Declaration fostered lofty expectations by proclaiming that the interests of developing Members would be the central concerns of the Round. Inevitably, as time goes by, the global concern about the event of 9/11 has gradually faded away, leading to a loss of focus on the proclaimed objectives of the DDA.

Even with no tangible result in sight, the author would not hasten to predict the DDA would end in a total failure. The author prefers to compare the expectations of a "broad and balanced" agenda items envisioned when the DDA was officially launched to the experience of taking part in a pole-vaulting competition. Without real experience in this sport, the author always admired the ability of athletes to make everything coming together

⁵⁷ Larry Elliott, "Does Doha trade talk's failure suggest second age of globalisation is over?", *The Guardian*, November 29, 2015; see also Ernesto Zedillo, Keynote Speech at the Release of *Delivering on Doha: Farm Trade and the Poor*, a meeting cohosted by the Peterson Institute and the Center Global Development, December 18, 2006.

at once, with extensive preparations and sudden explosion of momentum, followed by one giant leap, propelling their entire body over the bar. All these athletes undergo many failed attempts before they achieve the glory of success. By virtue of this analogy, the author would like to explain why the DDA negotiations have kept crashing into the bar.

Is the bar too high to sail over it? Or is the lack of preparations and momentum to be blamed? The author with little hesitation would conclude that both of these factors contributed to so many failed attempts thus far. Therefore, the DDA will remain stalled out should those two factors remain uncorrected. With such an ambitious negotiations agenda, the bar has been set pretty high for achieving the DDA.

Apart from the longstanding principle of consensus, the DDA also mandates a “single undertaking” to ensure a balanced outcome of the negotiations.⁵⁸ Therefore, nothing is agreed upon until everything is agreed upon. Starting from the Uruguay Round Negotiations, this rule was designed to encourage Members to make concessions in some sectors with the understanding that they will be compensated by the gains from other sectors. However, as the saying goes, “too many cooks spoil the broth,” the surge of WTO membership has provided some Members the ability to play the spoiler and thus resulting in a significant impediment to passing the bar. In addition, accusations that certain Members lack the proper preparations and momentum has become common in Geneva, and discussions have digressed in some instances to nothing more than name-calling and finger-pointing.

Now, I would like to touch upon the second point of my thought on the future of the WTO, namely the possible role of plurilateral approaches for

⁵⁸ The principle of single undertaking was first adopted in the attempt to clean up the muddled post-Tokyo Round set of Codes that GATT Contracting Parties could pick and choose to sign in. The Tokyo Round was concluded in 1979. When the WTO Ministerial Conference in 2001 adopted the “Doha Development Agenda”, it launched an integrated work programme (known as the Doha Round) with the understanding that “the conduct, conclusion and entry into force of the outcome of the negotiations shall be treated as parts of a single undertaking.” See also Robert Wolfe, “The WTO Single Understanding as Negotiating Technique and Constitutive Metaphor”, *Journal of International Economic Law*, November 26, 2009.

the Doha Round and future trade negotiations within the WTO context. While firmly supporting the WTO as the bedrock of the global trade system, the stalemate of the Doha Round, which causes regionalism as the sole driving force for promoting trade liberalization and rulemaking, deserves us to take a hard look at the serious difficulties that the WTO has been facing.

As previously mentioned, the stalemate of the Doha Round is closely related to the decision-making mechanism of the WTO, or more specifically its underlying principles of consensus and single undertaking that have caused the WTO extremely difficult and time-consuming in making decisions. To overcome such a situation, two pieces of information provide us with some food for thought on the role plurilateral approaches could play within the WTO context.

During the Eighth Ministerial Conference in December 2011, some WTO Members supported the idea to seek plurilateral agreements to be discussed in order for the WTO to maintain its centrality and universal coverage.⁵⁹ In addition, in February 2012, the National Foreign Trade Council of the United States released a paper on “A 21st Century Work Program for the Multilateral Trading System”, which, among other suggestions, included a detailed legal analysis of WTO-consistent approaches to plurilateral agreements. In this regard, a plurilateral approach could serve as starting point for new efforts to assess sectors where a “critical mass” may be available.⁶⁰

In principle, plurilateral agreements can be characterized as either “exclusive” or “inclusive”. The Agreement on Government Procurement (GPA) best represents the exclusive type, which only opens up government procurement markets to signatory Members and a Most-Favoured-Nation (MFN) treatment under GATT Article I does not apply. In this connection, like the GPA, any new plurilateral agreements of this kind require the consent of all WTO Members, a rather tall hurdle given the current stalemate of the Doha Round.

⁵⁹ https://www.wto.org/english/thewto_e/minist_e/min11_e/min11_e.htm

⁶⁰ <http://www.nftc.org/default/trade/WTO/NFTC21stCenturyTradeAgenda2012.pdf>

As for the inclusive type, the foremost example is the Information Technology Agreement (ITA). Once the major trading Members constituted the threshold of “critical mass”,⁶¹ the principle of MFN treatment mandates the non-discriminatory distribution of benefits derived from such agreements. Since the ensuing trade liberalization is unilateral, the principle of consensus, decision-mechanism of the WTO, does not apply. By all means, this kind of plurilateral agreements has the advantage of achieving some much-needed breakthrough where the overall negotiations of the Doha Round are stalled. In this regard, the successful completion of the Information Technology Agreement (ITA) II in July, 2015 represented an exciting crack for proceeding to the Doha Round. The initiative of the so-called “Really Good Friends of Services”, which took place in 2012, also represented a good candidate for plurilateral approach to trade in services.

Having said the above, in light of the proliferation of FTAs that may replace the WTO as the primary rule maker and promoter of trade liberalization, it becomes imperative to develop a mechanism for making full use of issue-based plurilateral agreements along with FTAs. Plurilateral agreements can and must present solutions and provide much-needed impetus to the WTO. The issue-oriented approach of plurilateral initiatives is instrumental in supporting the free trade regime.

Taking the TPP as an example, its proponents also argue that the size and economic significance of “mega-regionals,” such as the TPP and the U.S.-EU Trans-Atlantic Trade and Investment Partnership (T-TIP), may help spur long-stalled negotiations at the multilateral level and influence their direction. They argue that the rules established in the TPP that go beyond existing WTO commitments and address new trade barriers could become the basis for future negotiations at the WTO, including on a plurilateral basis.⁶²

⁶¹ For an in-depth discussion on this term, please see Patrick Law, “WTO Decision-Making for the Future,” Economic Research and Statistics Division, WTO, Staff Working Paper ERSD-2011-05, May 2, 2011.

⁶² Congressional Research Service, *The Trans-Pacific Partnership: Strategic Implications*, February 3,

B. From the Perspective of Taiwan

Needless to say, Taiwan's WTO membership enables her to settle trade disputes through the WTO mechanism. Previously, before joining as a WTO Member, Taiwan faced major difficulties when raising a complaint or finding a venue for settling trade disputes, due to a lack of diplomatic relations with most of her trading partners. As a WTO Member, Taiwan can now settle trade disputes effectively and on equal footing even with the bigger economic players. Whenever any WTO Member has a legitimate trade related complaint against another Member, they can initiate a legal process through the WTO dispute settlement mechanism. Under such conditions, Taiwan is subject to a much more equitable and welcoming legal framework for solving trade disputes than would otherwise be the case.

While serving as Taiwan's first Ambassador to the WTO, the author strongly advocated that the Taiwan government take a more positive stance towards multilateral trade negotiations. The underlying reasons behind this suggestion are twofold. The first relates to the "Law of Comparative Advantage" which is the cornerstone of GATT/WTO.⁶³ Based on this doctrine, trade liberalization, as pursued by the GATT and the WTO, is a win-win situation for all parties involved and Taiwan had already benefited greatly from the gradually liberalized trading environment even before acceding to the WTO. Moreover, the application of the "Law of Comparative Advantage" also reveals that countries like Taiwan with a high level of competitiveness in exports will benefit more from the increased opportunity for market access.

2016 <https://www.fas.org/sgp/crs/row/R44361.pdf> at 7.

⁶³ Both the Preambles to the General Agreement on Tariffs and Trade in 1947 and the Marrakesh Agreement Establishing the World Trade Organization in 1994 recognize that "their relations in the field of trade and economic endeavor should be conducted with a view to raise standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods." Those wordings could serve as a best articulation of the "Law of Comparative Advantage" developed by David Ricardo, an English political economist in 1817.

The second reason why the author is inclined to be in favor of multilateral trade negotiations is that the bilateral or regional approach through the signing of FTAs simply cannot solve the problems arising from international trade. Though a great many of WTO Members have been actively taking part in the race to sign FTAs, none of them has shown concerns that the continued stalemate of Doha Round represents the death knell of this multilateral trading system.

In other words, the best strategy for Taiwan is to continue to be a strong supporter of the WTO, regardless of the current “mushrooming” of FTAs amongst WTO members. The author believes that once the Doha Round resumes, which he believes is inevitable, there will be momentum to complete the agenda items. A completion of the Doha round, with the cardinal principal of non-discrimination remaining intact, would completely cancel out any short term negative effects felt by Taiwan as a result of it not signing up to more FTAs. In any case, what is clear to the author is that there are alternatives for Taiwan other than joining FTAs?

As previously mentioned, though it is not necessary to join the FTA race internationally, Taiwan still has to learn from those countries engaging in the high-quality FTAs so as to get a better understanding of the overall picture of liberalizing the markets. There are two reasons for the author to hold this view.

First, only through exploring the total truth with respect to the liberalization of the entire markets, could Taiwan learn how to adjust her overall industrial, agricultural and service sectors when she also takes part in those high-quality FTAs’ negotiations.⁶⁴ As clearly manifested, the TPP plays a leading role in writing the new rules for commerce, addressing

⁶⁴ In his speech at a joint meeting of the U.S. Congress on April 29, 2015, Japanese Prime Minister Shinzo Abe touched upon the urgent need for Japan to conduct a comprehensive reform in agriculture. He stressed that “Japan’s agriculture has gone into decline over these last 20 years. The average age of our farmers has gone up by 10 years and is now more than 66 years old. Japan’s agriculture is at a crossroads. In order for it to survive, it has to change now. We are bringing great reforms toward the agriculture policy that’s been in place for decades. We are also bringing sweeping reforms to our agricultural cooperatives that have not changed in 60 long years.” In comparison with Japan, the author would like to point out that Taiwan’s agriculture sector would be facing much more challenges if Taiwan became a serious bidder for TPP’s membership.

gaps in current multilateral trade rules, and setting a precedent for future regional and bilateral FTA negotiations or even multilateral trade talks at the WTO forum. By knocking on the door of the TPP's club, Taiwan could not only achieve a proper evaluation of the required "give-and-take", but also best utilize it to upgrade the overall industrial structure and the efficiency of the government functioning.

Second, given that Taiwan has largely stayed out of the FTA race, either because of self-reluctance or the obstacles stemming from China's political pressure, Taiwan must be properly prepared for the resumption of the Doha Round that will occur sooner or later. As previously elaborated, the signing of FTAs among WTO Members is a kind of piecemeal approach to globalizing trade liberalization, but it could eventually prove to be the catalyst for achieving a much more receptive attitude towards those issues already on the Doha Round agenda. Therefore, Taiwan should not be lulled into a false sense of security and just sit back complacently during the stalemate of the Doha Round.

In this regard, Taiwan has to be well aware that, the multilateral trade negotiations (MTNs), based on past GATT history, may take a substantial period of time and may even only lead to a more symbolic deal than a substantive one. The final outcome of the DDA is still unknown, but what can be certain is that the WTO and the internal games of the WTO will continue. Despite the fact that the negotiations of the DDA and other MTNs seem endless, Taiwan has to be prepared to play an active role in these matters, or otherwise, face being sidelined in these multi-issue barter exchanges and multi-party games. Being left out of these negotiations would be risky as the issues covered in these negotiations matter greatly to Taiwan's national economic interest.

VI. CONCLUSION

The author would like to share with the readers two points of his thought on the future of the WTO. First, though it appears multilateralism is struggling, the author remains optimistic about the indispensable role the

WTO can play in terms of further liberalizing trade in goods and services in the times ahead. Second, plurilateral approaches could be a useful solution to the current impasse of the Doha Round, and serves as a basis for future trade negotiations within the WTO context. The author would like to further elaborate his thoughts as follows.

Based on his longtime involvement in the study of GATT/WTO law, the author has always shared the view that the blueprint of this multilateral trade organization was and still is the elimination of all types of trade barriers. However, the real world is not ready for such an ideal situation. With this in mind, no one would argue that the launching of a multilateral trade negotiation once a few years should be a desirable ways and means to pursue the goal of building a progressively liberalized environment for international trade. In this connection, it is quite right to say that multilateral trade negotiations are never-ending games. Past history of the GATT with the completion of eight rounds of trade negotiations has vividly demonstrated its remarkable success in terms of reducing trade barriers. However, the ups and downs of the journey that lasted nearly fifty years have also told us that the progress of trade negotiations sometimes has been fitful, often involving two steps forward and one step back.

Given the experience during the GATT period, it would be of no surprise that the Doha Round cannot be completed within the expected timeframe. With the consensus method for decision-making during the negotiation process remains unchanged, the quick surge of WTO membership from 128 to 161, and each having different levels of economic development, is bound to cause difficulties for the Members to reach agreement. Besides, though the principle of “single undertaking” could possibly bring about a balanced outcome of the negotiations for all Members, this principle which requires nothing being agreed upon unless everything is being agreed upon simply makes the negotiations more complicated. In short, the reason for the continued stalemate of the Doha Round could be best illustrated by the saying that “too many cooks spoil the broth”.

In this connection, it is very true that a great many key WTO Members, including the US, EU, Japan and China, etc. have been actively taking part in the race to sign FTAs. The “mushrooming” of regionalism may undermine Members’ confidence in the WTO as a vehicle for making global trade rules and promoting liberalization, and thus poses a severe threat to multilateralism. However, the much-delayed Doha Round should not be interpreted as a death knell to the WTO as a forum for multilateral trade negotiations. In this respect, it is important to note that all of the key WTO Members have not given thoughts to the possibility that the current situation represents the end of this multilateral trading system. In fact, none of them seem to have considered that the bilateral or regional approaches could be the magic formula for replacing the multilateral approach for dealing with the issues relating to further liberalization in international trade.

Having said the above, the author would like to point out that, the signing of FTAs among the WTO Members concerned, albeit through such kind of piecemeal approach, could eventually prove to be the catalyst for achieving a much more receptive attitude towards those issues already on the Doha Round agenda. And, in the author’s view, that’s probably the reason why some key WTO Members actually welcome the proliferation of FTAs. As such, the author still maintains strong belief that the WTO will continue to play an indispensable role in reducing barriers of international trade.