

The Political and Economic Implications of the Cross-Strait Economic Cooperation Committee

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Like ordinary Free Trade Agreements (FTAs) trade agreements, the Economic Cooperation Framework Agreement (ECFA) between Taiwan and China can be divided into three major parts: market opening, trade rules (remedial process and dispute settlement), and the establishment of agencies that are necessary to achieve market opening and support the functioning of trade rules. Meant in this case is the Cross-straits Economic Cooperation Committee (CSECC), which was established on Jan. 6 this year.

Apparently, the legal basis for the CSECC is the ECFA, which was signed in Chongqing, China in June 2010 and went into force on Sept. 12 in the same year. The ECFA clearly stipulates that within six months after its entry into force, namely before March 12, 2011, the two sides must conduct further negotiations on trade in goods, trade in services and a dispute settlement mechanism on which the CSECC will obviously take responsibility.

Although the government is reiterating that the CSECC is a “non-permanent” ad-hoc body, it is per se definitely not just a consultative platform. This becomes clearly evident both from the perspective of the “Institutional Arrangements” spelt out in Article 11 of the ECFA or in its manifold powers and tasks such as even playing the role of judicial agency when applying temporary safeguard measures to early harvest lists. This is another example of the Ma government calling black in white when it comes to its cross-strait policy.

The root of the CSECC problems is that the ECFA is only a framework agreement. It is lacking

with regard to the content and timetable of trade liberalization as well as relevant supplementary regulations so that it is overburdened with functions. For example, in the previous ECFA discussions in which market opening was emphasized, yet if we calculate (the value of products and services on) the “early harvest lists” that have been implemented since Jan. 1 this year, the “real deal” likely only amounts to one seventh of total cross-strait trade. How big ECFA’s potential benefits and actual onslaught still depend on the outcome of subsequent negotiations. Our observations should focus on whether the “substantial majority” of trade (“substantially all trade” in World Trade Organization’s (WTO) wording) can be liberalized further such as for zero tariffs on goods. In fact, the most extraordinary feature of the ECFA is its “hit and run” nature, instead of stipulating a timetable for liberalization, it only states that it will be “completed as soon as possible.” This approach clearly differs from ordinary FTAs which from the beginning explicitly spell out a tariff reduction plan and schedule.

In other words, the principle regarding the negotiation of the ECFA was indeed based on the principle of “easier items first, then the difficult ones.” But this also means that easy pickings will become fewer and fewer as time goes by. Not only that further market opening is not easy to negotiate in the first place, because it directly pertains to industrial restructuring and domestic income distribution, but also, due to the design of the ECFA the framework will be implemented first, the dispute settlement mechanism and trade

remedies must be established in subsequent negotiations.

As long as the dispute settlement agreement under ECFA has not been entered into force, all disputes will be handled through consultations by the two sides or by the CSECC. Trade remedies include anti-dumping and countervailing duties (which are regarding unfair trade practices) as well as multilateral and bilateral safeguards resulting from the implementation of the ECFA. Presently, we only know that the ECFA stipulates “temporary bilateral safeguards” for products on the early harvest list for trade in goods. Relevant regulations will only become clear after the agreement on trade in goods has been completed.

While this part is complex, there is only one focus of attention, which is whether ECFA dispute resolution or trade remedies will only “go through” the CSECC or another cross-strait mechanism or whether they will “end there.” Ordinary (trade) practices can certainly be first addressed under an FTA or a regional framework, but it doesn’t exclude the legal action under the WTO dispute settlement or relevant multilateral processes. As for the arbitration mechanism for disputes under a “investment protection agreement” (between an investor and the government of the host country), the most international practice providing multiple channels (domestic, bilateral or international) for the arbitration process and allowing the investor as the weaker party to decide which one to use is the best approach.

Yet this does not mean that a body jointly set up by the two sides or the CSECC cannot first address

cross-strait trade disputes at the lower level, or assume advisory and consultative functions like the “Free Trade Commission” of the North American Free Trade Agreement (NAFTA). The point is that if cross-strait investment or other trade disputes are resolved solely or exclusively by the two sides of the Taiwan Strait, while applicable international arbitration or multilateral dispute settlement processes are excluded, it will amount to lose a firewall in the longer term. In return, we might get a new source of tension and confrontation, which will, of course, not contribute to stable cross-strait development.

Because of ECFA’s “hit and run” nature mentioned earlier, the CSECC has become quite complex in its roles and functions. Therefore, no similar bodies have been found under other FTAs that Taiwan has signed with other countries. The CSECC’s design still mainly imitates the “Joint Steering Committee” under the Closer Economic Partnership Agreements (CEPA) between China and Hong Kong/Macao of which the main task is dispute resolution. Yet the latter’s scope of authority comprises only what’s listed or clearly stated in CEPA, whereas the CSECC is responsible for handling matters relating to ECFA “including but not limited to” (the ones listed), which means its powers are virtually unrestricted which will not only provide ammunition for critics, but also easily raise people’s doubts. **BT**