


2008

# China-Taiwan Trade Relations: Implications of the WTO and Asian Regionalism

Pasha L. HSIEH

Singapore Management University, pashahsieh@smu.edu.sg

Follow this and additional works at: [https://ink.library.smu.edu.sg/sol\\_research](https://ink.library.smu.edu.sg/sol_research)

 Part of the [Asian Studies Commons](#), [Law and Economics Commons](#), [Law and Politics Commons](#), and the [Transnational Law Commons](#)

---

## Citation

HSIEH, Pasha L.. China-Taiwan Trade Relations: Implications of the WTO and Asian Regionalism. (2008). *Trading Arrangements in the Pacific Rim: ASEAN and APEC*. 1-18. Research Collection School Of Law.

**Available at:** [https://ink.library.smu.edu.sg/sol\\_research/4](https://ink.library.smu.edu.sg/sol_research/4)

This Book Chapter is brought to you for free and open access by the School of Law at Institutional Knowledge at Singapore Management University. It has been accepted for inclusion in Research Collection School Of Law by an authorized administrator of Institutional Knowledge at Singapore Management University. For more information, please email [libIR@smu.edu.sg](mailto:libIR@smu.edu.sg).

---

---

**Trading Arrangements  
in the  
Pacific Rim**

**ASEAN  
and  
APEC**

---

---

Compiled and Edited  
by

Paul Davidson

**III. Regional Trading Arrangements  
C. Commentary**

**III.C.14 China-Taiwan Trade Relations: Implications of the  
WTO and Asian Regionalism  
by Pasha L. Hsieh**

*Release 2008-1  
Issued March 2008*

---

**Oceana®**  
NEW YORK

**OXFORD**  
UNIVERSITY PRESS

*Oxford University Press, Inc., publishes works that further Oxford University's  
objective of excellence in research, scholarship, and education.*

Copyright © 2008 by Oxford University Press, Inc.  
Published by Oxford University Press, Inc.  
198 Madison Avenue, New York, New York 10016

Oxford is a registered trademark of Oxford University Press  
Oceana is a registered trademark of Oxford University Press, Inc.

All rights reserved. No part of this publication may be reproduced, stored in a  
retrieval system, or transmitted, in any form or by any means, electronic,  
mechanical, photocopying, recording, or otherwise, without the prior  
permission of Oxford University Press, Inc.

ISBN: 978-0-379-00855-5

Printed in the United States of America on acid-free paper.

**Note to Readers:**

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is based upon sources believed to be accurate and reliable and is intended to be current as of the time it was written. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional person should be sought. Also, to confirm that the information has not been affected or changed by recent developments, traditional legal research techniques should be used, including checking primary sources where appropriate.

*(Based on the Declaration of Principles jointly adopted by a Committee of the  
American Bar Association and a Committee of Publishers and Associations.)*

**You may order this or any other Oxford University Press publication  
by visiting the Oxford University Press website at [www.oup.com](http://www.oup.com)**

**TABLE OF CONTENTS**

I. Introduction .....	1
II. China-Taiwan Trade Relations Under the WTO .....	2
A. Historical Background .....	2
B. Implications of WTO Memberships .....	3
C. Cross-Strait Trade Disputes .....	6
III. Impact of Asian Regionalism .....	9
A. APEC and Open Regionalism .....	9
B. ASEAN and ASEAN-China FTA .....	12
IV. Prospects for the Cross-Strait Free Trade Agreement .....	15
V. Conclusion .....	18

**CHINA-TAIWAN TRADE RELATIONS: IMPLICATIONS  
OF THE WTO AND ASIAN REGIONALISM**

**Pasha L. Hsieh\***

**I. Introduction**

China-Taiwan relations, frequently referred to as cross-strait relations, are essential to Asia Pacific stability, both politically and economically. Situated on opposite sides of the Taiwan Strait, the People's Republic of China (PRC) and the Republic of China (ROC) are located on Mainland China and Taiwan, respectively. The Chinese Communist Party founded the PRC in 1949 after defeating the ROC government, led by the Chinese Nationalist Party (Kuomintang). The same year, the ROC government retreated to Taiwan, which it recovered from Japan following World War II.

Since the division of the PRC and ROC governments, the trading volume across the Taiwan Strait was negligible for more than two decades due to restrictions enacted for political reasons. However, beginning in the 1980s, trading relations between the two sides changed dramatically because indirect trade through third places, such as Hong Kong and Japan, rapidly increased. For instance, the value of total trade soared from US\$1.1 billion in 1985 to US\$88.1 billion in 2006.<sup>1</sup> In 2006 alone, Taiwan's exports to China accounted for 28.3% of Taiwan's total exports, with China absorbing 63.9% of Taiwan's total foreign investments.<sup>2</sup> It is evident that China and Taiwan, two political rivals, have become indispensable trade partners.

Cross-strait relations underwent a fundamental change when both China and Taiwan joined the World Trade Organization (WTO) in 2001.<sup>3</sup> The WTO is the first world-wide multilateral organization in which China and Taiwan share equal statuses. Thus, the WTO provides a neutral forum for China and Taiwan to resolve trade conflicts. More importantly, the WTO requires the two states to behave toward one another in a manner consistent with WTO norms. Consequently,

---

\* Associate, Shearman & Sterling LLP, Washington DC; former Legal Affairs Officer, Appellate Body Secretariat, World Trade Organization; J.D., LL.M, University of Pennsylvania Law School. The author wishes to thank Christine Y. Chang for her research assistance.

1 Table 6 Estimation of Trade between Taiwan and Mainland China, Mainland Affairs Council, available at [www.mac.gov.tw/big5/statistic/em/145/6.pdf](http://www.mac.gov.tw/big5/statistic/em/145/6.pdf) and <http://www.mac.gov.tw/big5/statistic/em/176/6.pdf> (last visited Dec. 5, 2007).

2 Brief Summary, Mainland Affairs Council, available at <http://www.mac.gov.tw/english/english/csexchan/rpt/169.pdf> (last visited Dec. 5, 2007).

3 The Fourth WTO Ministerial Conference held in November 2001 ratified China's and Taiwan's accessions to the WTO. China signed its protocol and officially became a WTO member on November 11, 2001. Taiwan became a WTO member on January 1 2002 after its legislature approved the accession protocol.

the trade policies of China and Taiwan would change in response to their WTO obligations. In addition to the WTO, "Asian regionalism," which refers to the recent accelerated integration of Asian countries also shapes relations between China and Taiwan, along with their foreign policies in the Asia Pacific.

The purpose of this Article is to analyze cross-strait trade relations as it relates to recent developments of the WTO and Asian regionalism. After the introductory section, Section II will examine cross-trade relations under the WTO framework, including implications of WTO obligations for trade policies of China and Taiwan. Furthermore, this section will analyze cross-strait trade disputes occurring in the post-WTO era. Section III will discuss the development of the Asia-Pacific Economic Cooperation (APEC) and the Association of Southeast Asian Nations (ASEAN), as well as China's and Taiwan's involvement in and interactions with these organizations. In addition, this section will assess the impact of Asian regionalism on cross-strait relations. Section IV will explore the China-Hong Kong Closer Economic Partnership Agreement (CEPA) and the prospect for the cross-strait free trade agreement. Finally, Section V will present the conclusion of this Article.

## II. China-Taiwan Trade Relations under the WTO

### A. Historical Background

Since the ROC government moved to Taiwan in 1949, direct trade between China and Taiwan was illegal. The increasing indirect trade across the Taiwan Strait beginning in the 1980s was primarily motivated by business needs. The major reason for Taiwanese companies' investments in China was the low cost of labor and raw materials, both of which were essential for businesses to succeed in the competitive market. Another reason for attracting Taiwanese businesses is China's policy granting preferential investment and tax treatment to Taiwanese investors. Since the 1980s, China's policy on Taiwan changed from "armed liberation" to "peaceful reunification." To achieve this goal, Chinese leaders consistently promoted the "three links" (*i.e.* direct trade, shipping transportation, and postal services) across the Taiwan Strait. From the perspective of Chinese leaders, the "three links" would attract more Taiwanese investments. Furthermore, they believed that the influx of technology and capital would benefit China's economic reform. In the long-term, the prospects of cross-strait economic integrations, as well as the increase of Taiwan's economic dependence on China, would lead to future political unification.

To encourage Taiwanese investments, China's State Council enacted the Regulations for Encouraging Investment by Taiwan Compatriots in 1988. These regulations granted Taiwanese enterprises preferential treatment, including tax deductions and exemptions. Additionally, the National People's Congress promulgated the Taiwan Compatriot Investment Protection Law in 1994. Because the Chinese government offered more favorable treatment to "Taiwanese compatriots" than it granted to Chinese citizens and foreigners, commentators often refer to the benefits accorded to Taiwanese as "super-national treatment."

However, Taiwan has been less open to China than to other economies. In 1949, Taiwan adopted the "three No's policy," which stipulated that there would be no contact, negotiation, or compromise with China. This policy constituted the foundation of Taiwan's policy on China. In 1987, the government lifted the ban on Taiwanese residents visiting China and removed the Central Bank's approval for outbound capital below US \$5 million.<sup>4</sup> Consequently, indirect trade with China was allowed for the first time. Beginning in the 1990s, Taiwan also gradually liberalized its restrictions on investments in China to cope with the inevitably increasing bilateral trade. As of 2007, Taiwan still imposes caps on China-bound investments by Taiwanese companies.<sup>5</sup> These restrictions are related to the government's concern that overinvesting in China would hollow out Taiwan's capital and result in the country's losing its technological advantage to China.

### B. Implications of WTO Memberships

Both China and Taiwan are now WTO members. Taiwan's official name in the WTO is "Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu," abbreviated as "Chinese Taipei." Taiwan's choice of this name, instead of using its official title, the Republic of China, reflects its reluctant compromise. The ROC government on Taiwan had occupied the "China seat" in the United Nations (UN) until 1971 when the UN passed Resolution 2758. This resolution officially recognized the PRC as the "only legitimate government of China" and expelled Taiwan's representative from the UN.<sup>6</sup> As the ROC was compelled to withdraw its memberships from most UN-related international organizations, the government viewed the WTO accession as an opportunity to regain the position on the world stage.

The co-existence of China and Taiwan in the WTO profoundly impacted cross-strait relations. In light of its WTO obligations, China gradually eased the "super-national treatment" granted to Taiwanese businesses in order to comply with the "most-favored-nation (MFN) treatment" and "national treatment"<sup>7</sup> required by the WTO. However, a more significant issue became whether China could treat Taiwan as an equal member, rather than as its "local government" in the WTO arena. The WTO had a greater impact on Taiwan's existing policy, which discriminates against Chinese goods and services, because WTO obligations

4 BARRY NAUGHTON, *THE CHINA CIRCLE: ECONOMICS AND ELECTRONIC IN THE PRC, TAIWAN, AND HONG KONG* 102 (1997).

5 Taiwanese companies with a net worth of less than NT\$5 billion are permitted to invest either up to 40 % of their value or a maximum of NT\$80 million on China. For companies with a net worth between NT\$5 billion and 10 billion, a 40 % cap applies for the first 5 billion with a cap of 30 % set for the remainder up to a maximum of NT\$10 billion. For companies with net worth exceeding NT\$ 10 billion, a 20 % cap is allowed on any portion beyond NT\$10 billion, besides the restrictions outlined above. *Taiwan's Chen Says No Plans to Ease China Investment Rules in His Remaining Term*, AFX New Limited, November 6, 2007, at <http://www.forbes.com/markets/feeds/afx/2007/11/06/afx4304766.html>.

6 U.N. GAOR, 26th Sess., U.N. Doc. A/8429 (1971).

7 The General Agreement on Tariffs and Trade [hereinafter GATT], arts. I. 1. & III. 4.

compelled Taiwan to reduce its trade barriers in cross-strait economic relations and to regard China as a normal trading partner. This policy contravenes Article I of the General Agreement on Tariffs and Trade (GATT), which requires that "all rules and formalities in connection with importation and exportation" comply with the MFN principle.<sup>8</sup> According to Taiwan's Act Governing Relations between Peoples of the Taiwan Area and the Mainland Area (Cross-Strait Act), government approval is required to conduct trade with China.<sup>9</sup> In addition, Taiwan demands indirect cross-strait trade, requiring that all goods between China and Taiwan "be transhipped via third territories or the off-shore shipping center."<sup>10</sup>

The government limits the Chinese products that are permitted for import through the use of the "ROC Classification List for Import and Export Goods" and the "List of Mainland Permitted Items."<sup>11</sup> Based on the principles of "national security" and the "serious negative impact on related domestic industries,"<sup>12</sup> Taiwan's Bureau of Foreign Trade periodically reviews these lists. As of December 2007, Taiwan imported 8,710 items from China, including 1,412 agricultural products and 7,298 industrial items.<sup>13</sup> Because these restrictions apply only to products from China, not to those from other WTO members, Taiwan's regulations violate the MFN principle.

In addition, Taiwan's regulations on trade in services involved in cross-strait transportation are inconsistent with the General Agreements on Trade in Services (GATS). Similar to the GATT, Article II of the GATS sets forth the MFN principle for market access, requiring that all WTO members grant equal treatment to all "services and services suppliers."<sup>14</sup> However, the GATS differs from the GATT in that the MFN principle of the GATS permits exemptions. For instance, should Taiwan decide not to grant similar privileges to certain members, this must be listed on its MFN Exemptions List. Furthermore, each WTO member must submit a Schedule of Specific Commitments that lists services sectors "for which the Member guarantees market access and national

8 GATT art. I.

9 See Cross-Strait Act, art. 35 ("Any individual, juristic person, organization, or other institution of the Taiwan Area may be permitted by the competent authorities to engage in the trade between the Taiwan Area and the Mainland Area...").

10 Regulations Governing Permissions of Trade between Taiwan Area and Mainland Area, art. 5.

11 *Id.*

12 *Id.*, art. 8.

13 Imports Liberalized for 48 Items of Mainland Chinese Goods, Council for Economic Planning and Development, available at [http://www.cedi.cepd.gov.tw/eng/tnen\\_info.php?iPath=87&digests\\_id=954&CediID=f240ca05dd1187c06d02eb8c30d4771d](http://www.cedi.cepd.gov.tw/eng/tnen_info.php?iPath=87&digests_id=954&CediID=f240ca05dd1187c06d02eb8c30d4771d) (last visited Dec. 22, 2007).

14 See General Agreement on Trade in Services [hereinafter GATS], art. II, sec. 1 ("[E]ach member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favorable than that it accords to like services and service suppliers of any other country.").

treatment and any limitations that may be attached."<sup>15</sup> Because Taiwan does not exclude China from its MFN Exemptions List, Taiwan is required to provide equal service treatment to China in accordance with Taiwan's Schedule of Specific Commitments.

A significant issue related to the GATS is the "three links" between China and Taiwan. According to Article 29 of the Cross-Strait Act, any means of transportation, including vessels and aircraft, across the Taiwan Strait are prohibited without the government's permission.<sup>16</sup> With respect to air flights between China and Taiwan, only *ad hoc* chartered flights via Hong Kong or Macau operated during the lunar New Year and certain traditional Chinese holidays. Most individuals traveled between China and Taiwan through third places, resulting in increased travel time. Because the GATS does not apply to measures as to "traffic rights" or "services directly related to the exercise of traffic rights,"<sup>17</sup> it is unlikely that Taiwan's restrictions on cross-strait air transport services will be challenged. Yet, Taiwan's restrictions on sea transport services may be found inconsistent with the GATS. Since 1997, Taiwan permitted cross-strait sea transport services between Chinese ports and Taiwan's offshore transshipment centers. Currently, Taiwan only allows foreign ships and ships under flags of convenience operated by companies from Taiwan and China. Hence, by excluding Chinese vessels, Taiwan's current restrictions violate the MFN principle of Article II of the GATS.

Because Taiwan's trade measures limiting the importation of Chinese goods and the operation of Chinese vessels across the Taiwan Strait contravene WTO rules, Taiwan might face international and domestic pressures should it maintain these measures. From an international perspective, Taiwan might send a message that the nation lacks concern and respect for its WTO commitments. For instance, when Taiwan participated in the first-ever Trade Policy Review meeting at the WTO in June 2006, representatives from China argued against Taiwan's policy discriminating against Chinese goods and services.<sup>18</sup> Domestically, not only Taiwanese businesses, but also American and European Chambers of Commerce urged the government to relax current restrictions in order to maintain the competitiveness of their companies. Consequently, although Taiwan's policy on cross-strait trade is not fully in compliance with WTO obligations, Taiwan will likely

15 Each Member is required to list four modes of supply in the Schedule: 1) Cross-border supply, 2) Consumption abroad, 3) Commercial presence, 4) Presence of natural persons.

16 See, e.g. Cross-Strait Act, art. 29 ("Unless permitted by the competent authorities, no Mainland vessels, civil aircraft or other means of transportation may enter into the restricted or prohibited waters of the Taiwan Area or the controlled airspace of the Taipei Flight Information Region."). These provisions apply to both foreign companies and companies from China or Taiwan.

17 GATS Annex on Air Transport Services. Yet, the GATS applies to (a) aircraft repair and maintenance services; (b) the selling and marketing of air transport services; and (c) computer reservation system (CRS) services.

18 See Minutes of Meeting, Trade Policy Review, WT/TPR/M/165/Rev.1, October 10, 2006.

further reduce its trade barriers against China, thereby providing an impetus for promoting regionalism across the Taiwan Strait.

### C. Cross-Strait Trade Disputes

Despite their interrelated trade relations, China and Taiwan have no direct official channels of communication. Currently, civil organizations and the governments conjointly manage cross-strait trade issues.<sup>19</sup> Because they are WTO members, both China and Taiwan are provided with a neutral forum to resolve trade disputes.

One paramount improvement to the WTO is that the WTO established a dispute resolution mechanism, which is widely recognized as "a central element in providing security and predictability to the multilateral trading system."<sup>20</sup> Dispute resolution procedures are set forth in the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). Any WTO member, such as China or Taiwan, is entitled to ask the infringing party to "accord sympathetic consideration" and "afford adequate opportunity for consultation."<sup>21</sup> Furthermore, the member bringing up the complaint may request the establishment of a panel<sup>22</sup> to deal with trade disputes and may further appeal the panel's decision to the Appellate Body.<sup>23</sup> The winning party is granted "authorization to suspend concessions or other obligations" against the losing party.<sup>24</sup> Because of the WTO's compulsory jurisdiction and effective implementation, commentators frequently refer to the WTO dispute resolution mechanism as the "world trade court."<sup>25</sup> It is likely that this WTO "court" will be the first official forum to adjudicate China-Taiwan trade conflicts and will largely facilitate cross-strait economic interactions.

At the outset of its entrance into the WTO, Chinese government officials expressed on numerous occasions that cross-strait trade issues were "internal affairs."<sup>26</sup> Thus, China was reluctant to resolve trade issues with Taiwan under the WTO

framework. The major reason for China's reluctance was its belief that resorting to the WTO dispute settlement mechanism would internationalize China-Taiwan affairs, thus creating an impression of "two equal states." However, China's position seems unfounded, given that the "one China principle" does not supersede the WTO's compulsory jurisdiction.<sup>27</sup> Because the Chinese government realized that interactions with Taiwan in the WTO arena were unavoidable, China gradually changed its attitude toward Taiwan.

The Steel Case illustrates this transition. This case involved the Taiwanese steel industry in China's anti-dumping and safeguard proceedings. This became the first-ever case involving China-Taiwan confrontation in the DSU proceedings under the WTO. In March 2002, China launched an anti-dumping investigation on the cold-rolled steel sheet imported from Taiwan, along with Russia, Korea, and Kazakhstan.<sup>28</sup> Within a week, China initiated another anti-dumping investigation on polyvinyl chloride (PVC) imported from Taiwan, as well as the US, Korea and Russia.<sup>29</sup> For both cases, China's Ministry of Foreign Trade and Economic Cooperation (MOFTEC) notified all of the involved governments with the exception of Taiwan. Instead, China's steel and plastics industries informed their Taiwanese counterparts of these anti-dumping investigations. China's failure to notify the government of Taiwan was inconsistent with Article 6 of the Agreement on Implementation of Article VI of the GATT 1994 (Anti-dumping Agreement). This agreement stipulates that interested parties, including "the government of the exporting Member," should be "given notice of the information" during an anti-dumping investigation.<sup>30</sup>

Several months later, in May 2002, China adopted provisional safeguard measures against imports of forty-eight steel products from Taiwan and implemented formal safeguard measures against five of the products. Once again, rather than notifying the Taiwanese government of these measures, the Chinese government informed only the Taiwan Iron and Steel Industries Association. The failure to inform the Taiwanese government of the aforementioned measures violated the notification requirement set forth in the Safeguard Agreement. Although it is legal for a WTO member to "take a provisional safeguard measure,"<sup>31</sup> the member is required to notify "those Members having a substantial interest as exporters of

19 Although the two governments established semi-official organizations, Taiwan's Strait Exchange Foundation (SEF) and China's Association for Relations across the Taiwan Strait (ARTS), to negotiate bilateral matters, these two organizations have been unable to function efficiently due to cross-strait political tensions.

20 Understanding on Rules and Procedures Governing the Settlement of Disputes [hereinafter DSU], art. 3.2.

21 DSU art. 4.2.

22 See DSU art. 6.1 ("If the complaining party so requests, a panel shall be established at the last at the DSB meeting... unless at that meeting the DSB decides by consensus not to establish a panel").

23 DSU art. 17.

24 DSU art. 22.1

25 E.g., John A. Ragosta, *Unmasking the WTO—Access to the DSB System: Can the WTO DSB Live up to the Moniker "World Trade Court"?*, 31 L. & Pol'y Int'l Bus. 739, 766 (2000).

26 See e.g., Qingjiang Kong, *Can the WTO Dispute Settlement Mechanism Resolve Trade Disputes Between China and Taiwan?*, 5 J. Int'l Econ. L. 747, 755 (discussing that the PRC opposes any attempt to discuss cross-strait economic and trade affairs under the WTO and does not intend to resort to the dispute resolution mechanism to resolve such matters).

27 See John Shijian Mo, *Settlement of Trade Dispute between Mainland China and the Separate Customs Territory of Taiwan within the WTO*, 1 CHINESE J. INT'L L. 145, 167 ("In fact, the "One China" principle cannot deny the DSB's jurisdiction").

28 *China Sets off Anti-dumping Investigation on Steel Products from Russia & ROK*, People's Daily, Mar. 27, 2002, available at [http://english.people.com.cn/200203/27/eng20020327\\_92931.shtml](http://english.people.com.cn/200203/27/eng20020327_92931.shtml).

29 *Ministry of Commerce Notice No. 11*, XINHUA NEWS AGENCY, May 13, 2003, available at [http://news.xinhuanet.com/english/2003-05/13/content\\_1058245.htm](http://news.xinhuanet.com/english/2003-05/13/content_1058245.htm).

30 Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, art. 6.

31 Agreement on Safeguards, art. 5.

the product concerned," according to Article 12 of the Safeguard Agreement.<sup>32</sup> In the *Steel Case*, Taiwan requested to hold consultations on this matter pursuant to the DSU. Although China's WTO representatives replied to its Taiwanese counterpart, they referred to Taiwan's permanent mission to the WTO as an economic and trade office, the title that Hong Kong uses in the WTO. Taiwan promptly notified China's WTO mission that Taiwan had neither the obligation nor intention to discuss the matter until the request was sent in an appropriate manner. Finally, as China overcame its reluctance, the first China-Taiwan meeting was held in Taiwan's mission on December 12, 2002.<sup>33</sup> Although this meeting did not result in any substantive solutions, it did demonstrate the WTO's ability to further communications between China and Taiwan and to set a precedent for resolving future cross-strait trade conflicts.

The *Towel Case* is another case which demonstrates China-Taiwan interactions pursuant to WTO norms. This case involved proceedings brought by Taiwan's Yunlin County Towel Industry Technology Association (Yunlin) and other towel makers against Chinese towel imports in 2005. Local towel makers demanded that the government impose both import-relief taxes and anti-dumping duties on Chinese towels because Chinese towels surged to 70% of the local market in 2004 after Taiwan lifted the ban on Chinese towel imports in 2002. Additionally, Chinese products cost approximately 42% of the price of local products in the same year.<sup>34</sup> This case is significant because it is the first safeguard proceedings by a WTO member against China pursuant to the "transitional product-specific safeguard mechanism" under China's WTO Accession Protocol (Protocol). Moreover, this case was Taiwan's first anti-dumping action against China.

In March 2006, a delegation of PRC officials and industry representatives attended a hearing held by the International Trade Commission of the Ministry of Economic Affairs (MOEA) in Taipei to defend their positions. The Commissioner recommended the adoption of safeguard measures on the grounds that the importing of Chinese towels caused "material injury" to local towel producers and, furthermore, the injury led to "market disruption," pursuant to Section 16 of the Protocol.<sup>35</sup> The MOEA notified China's WTO mission of its intention to implement safeguard measures. Although delegates from Taiwan and China held informal consultations, they were unable to reach an agreement. In April 2006, the MOEA decided to increase duties on Chinese towels as a safeguard measure.<sup>36</sup>

32 Agreements on Safeguard art. 12.

33 Annual Review on Taiwan's Accession to the WTO and Prospects, Ministry of Foreign Affairs, available at <http://www.mofa.gov.tw/webapp/ct.asp?xItem=10680&ctNode=1220&mp=1> (last visited Dec. 22, 2007).

34 Jessie Ho, *Towel Makers Rally in Taipei to Protest Chinese Imports*, Mar. 3, 2006, Taipei Times, at A1.

35 Thomas Weishing Huang, Taiwan's Protocol 16 Special Safeguard and Anti-Dumping Enforcement on Imports from China, J. WORLD TRADE 41(2), 371, 374 (2007).

36 Jessie Ho, *Taiwan to Levy Anti-Dumping Duties on Chinese Towels*, July 26, 2006, TAIPEI TIMES, at A1.

Moreover, in July 2006, Taiwan's Ministry of Finance decided to impose anti-dumping duties ranging from 86.6 percent to 204.1 percent on Chinese towels for five years beginning in 2006.<sup>37</sup> In October 2006, the MOEA suspended the safeguard proceedings. Therefore, no safeguard measures were actually imposed because the MOEA viewed anti-dumping duties as sufficient to rectify the injury caused by importing Chinese towels.<sup>38</sup>

These cross-strait trade cases have several implications. First, to some degree, China has overcome its reluctance to face Taiwan at the WTO and has demonstrated its willingness to deal with cross-strait trade under WTO norms. Second, the anti-dumping and safeguard measures under WTO rules protect Taiwan's local manufacturers from being injured by the rapid influx of relatively low-cost Chinese products and provide them sufficient time to increase their market competitiveness.<sup>39</sup> Finally, the increase in communication between China and Taiwan under the WTO may promote further economic partnerships.

### III. Impact of Asian Regionalism

#### A. APEC and Open Regionalism

The terms "regionalism" and "regionalization" are distinct. The former refers to the acceleration of economic cooperation through formal RTA/FTA type agreements, whereas the latter references natural economic integrations without governments' interventions. In terms of the degree of regionalism, the most noteworthy example occurred in Europe with the creation of the European Economic Community in 1958 and followed by the establishment of the North-American Free Trade Agreement in 1993.

It is traditionally considered infeasible to form a trading bloc in Asia, given its diverse economic development and political backgrounds among the countries in the region. However, the evolution of the Asia-Pacific Economic Cooperation (APEC) in 1989 and the Association of South East Asian Nations (ASEAN) in 1992 served as a precursor to "Asian regionalism." The development of Asian regionalism was motivated by the United States' change in multilateral trade policy to a more regionally-based approach.<sup>40</sup> By its involvement in the Asia Pacific, the US maintained its geopolitical influence in the region. Furthermore, Asian countries became more confident in actively engaging in regional integration and did not want to be "left out" in the new era of an RTA-oriented world trading system, given the successful formation of the European Union and the North American Free Trade Agreement (NAFTA).

37 *Id.*

38 Huang, *supra* note 35, at 372-73.

39 In addition to the *Towel case*, Taiwan's Ministry of Finance imposed 5-year anti-dumping duties on Chinese footwear products in July 2007.

40 YOSHI KODAMA, ASIA PACIFIC ECONOMIC INTEGRATION AND THE GATT/WTO REGIME 13-14 (2000).



Distinct from other trading blocs, which are primarily based on Article XXIV of the GATT, Article V of the GATS, or the Enabling Clause, regionalism in Asia traditionally possesses its unique informal nature, usually characterized as "open regionalism." Asian countries' refusal to move toward a FTA-type trading bloc was due to their insistence on sovereignty and non-intervention because of their colonial pasts. Nonetheless, the nature of open regionalism has gradually evolved into more integrated trading blocs. This evolution can be illustrated by the recent development of APEC and ASEAN. The new era of Asian regionalism, which emphasizes an institutionalized mechanism and the conclusion of FTAs, has also altered the balance of cross-strait relations.

APEC, which was created in 1989 under the proposal of Robert Hawke, the former Australian Prime Minister, is the first high-level multilateral economic arrangement in the Pacific Rim. With 21 economies, APEC has held annual summits since 1993. The most recent summit was held in Sydney, Australia on September 9, 2007. Due to political tensions, China, Hong Kong, and Taiwan did not join APEC until the 1991 Seoul meeting based on the intermediary efforts of South Korea. The fact that APEC members are addressed as "member economies," rather than "member states" also reflects the sensitivity of cross-strait relations. In response to China's objections, Taiwan reluctantly accepted the title of "Chinese Taipei." Moreover, Taiwan's president and other high-ranking government officials are "forbidden" to attend annual leaders' summits. It has become customary for the Taiwan president to send representatives to attend APEC summits.

At the outset of APEC, members declined to form a trading bloc or to have an enforcement mechanism. In addition, they decided that the decisions of APEC are non-binding. Instead, APEC was founded upon what is known as the "four Cs," including cooperation, consensus, collegial atmosphere, and consultation.<sup>41</sup> Because of its informal and non-exclusive structure, individuals characterize APEC as "open regionalism," with some referring to APEC as a "talk shop." However, the evolution of APEC demonstrates that it gradually transformed its nature of "open regionalism" to a more defined structure, although APEC is not legally a trading bloc. In 1992, APEC members established a permanent secretariat in Singapore. APEC's most significant milestone was the summit that convened in Bogor, Indonesia in 1994 because this was the first time that APEC members set a defined agenda to move toward a more integrated economic arrangement. The so-called "Bogor goals" were to commit to "open trade and investment in the Asia-Pacific" by 2010 for "industrialized economies" and by 2020 for "developing economies."<sup>42</sup> This was a significant step because the Bogor goals included liberalization from not only tariffs, but also non-tariff barriers (NTBs).

41 Comment, Melissa Gerardi, *Jumpstarting APEC in the Race to "Open Regionalism": A Proposal for the Multilateral Adoption of UNCITRAL's Model Law on International Commercial Arbitration*, 15 *NW. J. Int'l L. & Bus.* 668, 673 (1995).

42 APEC Economic Leaders' Declaration of Common Resolve, Nov. 15, 1994, available at [http://www.apec.org/apec/leaders\\_declarations/1994.html](http://www.apec.org/apec/leaders_declarations/1994.html) [hereinafter the 1994 Bogor Declaration].

Despite the non-binding nature of the Bogor goals, APEC members enhanced trade liberalization as evidenced by subsequent declarations and implementations. In 1995, APEC adopted the Osaka Action Agenda to further implement the Bogor Goals.<sup>43</sup> This Osaka Action Agenda requires each member "to develop its Action Plan immediately after the Osaka Economic Leaders' Meeting [and the] Action Plan will elaborate steps toward achieving the objectives."<sup>44</sup> Again, in 1996, APEC leaders adopted the Manila Action Plan for APEC, which was viewed as the implementation phase of the Bogor goals and involved members agreeing to "outlin[e] the trade and investment liberalization and facilitation measures to reach" these goals.<sup>45</sup> APEC not only promoted intraregional economic integration, but it also supported multilateral trade liberalization. In 2001, APEC adopted the so-called "Shanghai Accord" in which member economies advocated WTO accession for China, Taiwan, Russia and Vietnam.<sup>46</sup> From 2003 to 2006, APEC also consistently expressed its support and concern for the WTO Doha Development agenda. After these developments, although APEC retained its nature of open regionalism, it gradually transitioned from a mere talk shop to a formalized institution. Furthermore, while APEC's declarations are non-binding, members abide by the principles and mandates, thereby facilitating further economic integration in the Pacific Rim.

In my view, APEC impacts cross-strait relations in three ways. First, it provides a multilateral forum beyond the WTO for China and Taiwan to communicate regularly. Most interactions between China and Taiwan under the WTO occurred under the dispute settlement mechanism and the trade policy review mechanism. Their interactions were on an *ad hoc* basis; consequently, they were relatively limited. APEC, however, holds regular meetings attended by trade ministers and national leaders, thus maintaining cross-strait high level dialogues.

Second, unlike WTO meetings, which are limited to trade-related issues, APEC forums include non-trade topics. For instance, to condemn the September 11th attacks in the United States, APEC issued the Counter-Terrorism Statement in Shanghai in 2001. Similarly, because APEC includes high-profile leaders in cross-strait relations, APEC facilitates exchanges among nations. For example, while attending the APEC summit in Santiago, Chile, US President George Bush met with Chinese President Hu Jintao and reiterated that the US opposed the unilateral

43 History: Key APEC Milestones, available at [http://www.apec.org/content/apec/about\\_apec/history.html](http://www.apec.org/content/apec/about_apec/history.html) (last visited Dec. 20, 2007) [hereinafter APEC History]; see generally Osaka Action Agenda, available at [http://www.apec.org/etc/medialib/apec\\_media\\_library/downloads/ministerial/annual/1995.Par.0003.File.tmp/95\\_amm\\_oaa.doc](http://www.apec.org/etc/medialib/apec_media_library/downloads/ministerial/annual/1995.Par.0003.File.tmp/95_amm_oaa.doc).

44 Osaka Action Agenda, *supra* note 43.

45 APEC History, *supra* note 43.

46 See APEC Economic Leaders' Declaration of Common Resolve, Oct. 21, 2001, available at [http://www.apec.org/apec/leaders\\_declarations/2001.html](http://www.apec.org/apec/leaders_declarations/2001.html) [hereinafter the 2001 Shanghai Accord] ("We urge that the decision on final approval of China's accession.... We also reiterate strong support for the final approval of the accession by Chinese Taipei....").

change of the cross-strait *status quo*. Further, President Bush stressed the US's hope that both China and Taiwan could resolve disputes peacefully.<sup>47</sup>

Finally, a formation of a pan-APEC FTA may be the most feasible way to prevent Taiwan from being marginalized in Asian FTAs. Although the FTAs have rapidly proliferated in Asia, most of Taiwan's trading partners are reluctant to sign FTAs with Taiwan because of China's objection that bilateral FTAs may signify Taiwan's sovereignty. The idea for the FTA of the Asia Pacific (FTAAP), which covers all APEC members, was first proposed at the 2004 APEC leaders' meeting in Santiago, Chile. The FTAAP was conceived as another option to further trade liberalization in case the WTO Doha Round or the Bogor goals failed. Although the US has been a major proponent of the FTAAP, some APEC members opposed the proposal, arguing that the FTAAP may hamper ongoing negotiations of FTAs. Opponents also contended that APEC should focus on the implementation of the Bogor goals, rather than a new effort. As the FTAAP is probably the only significant FTA intended to include Taiwan, the issue of whether the FTAAP can be formed is of importance to Taiwan with regard to its regional market competitiveness in light of the prevalence of other FTAs in Asia.

#### B. ASEAN and ASEAN-China FTA

In addition to APEC, the other significant economic organization in the Asia Pacific is the Association of South East Asian Nations (ASEAN). In 1967, five countries, including Thailand, Malaysia, Singapore, the Philippines, and Indonesia, established ASEAN with the signing of the Bangkok Declaration. In terms of trade liberalization, ASEAN has gone further than APEC in that ASEAN has already created a formal free trade area. In 1976, ASEAN held the first meeting attended by heads of governments in Bali, where members signed the Declaration of ASEAN Concord and the Treaty of Amity and Cooperation in Southeast Asia, and established a secretariat in Jakarta. ASEAN currently includes ten members and leaders of members finally signed the ASEAN Charter in 2007, formally accord- ing ASEAN a legal personality.

In its early days, given the sensitivity of sovereignty for Southeast Asian countries, ASEAN shared the characteristic of "open regionalism" with APEC, and members did not intend to make ASEAN a trading bloc with a defined rule-based structure. Economic cooperation was more a goal than an actuality in the early days of ASEAN. Members' attitude toward integration subsequently changed for two reasons. First, ASEAN members witnessed the integration of the EU and NAFTA. They feared that their access to these trading blocs would be limited and they intended to search for alternative markets. Second, the economic rise of China posed a threat to ASEAN. Since its economic reform beginning in the 1980s, China has become a magnet for foreign investments and a "world factory" as a result of its low cost of labor and infrastructure. Hence, ASEAN members became

47 Chang Ya-jin, *APEC: An Economic Forum in which both Taiwan and Mainland China Participate*, No. 79 EXCHANGE 40, 42 (2005).

determined to reduce intra-ASEAN trade barriers in order to make ASEAN countries more competitive in the world market.

ASEAN's first attempt to achieve trade liberalization was its Preferential Trading Arrangement (PTA) concluded in 1977, which granted preferential tariff rates to members. However, the PTA failed to achieve its goals because of the high threshold for the rule of origin requirement and permissive use of exclusion lists and non-tariffs barriers. In 1992, to end the stagnation of the PTA, ASEAN members signed the Agreement on the Common Effective Preferential Tariff (CEPT) to establish the ASEAN Free Trade Area (AFTA). The CEPT remedied the shortcomings of the PTA and mandated immediate tariff reductions. The AFTA has been successful in that both intra-regional trade and ASEAN exports significantly increased.

The evolution of ASEAN has altered geopolitics both globally and regionally. ASEAN serves an example of the most integrated FTA in "the South" of the world. Furthermore, enhancing trade relations with ASEAN has become a priority for neighboring countries. ASEAN also plays a pivotal role in the foreign trade relations of China and Taiwan. On one hand, China intends to strengthen its relations with ASEAN in order to expand its political influence and market access. On the other hand, Taiwan sees the ASEAN market as a substitute for the Chinese market and thus an opportunity to balance its economic dependence on China.

China began to enhance economic ties with ASEAN in the 1990s. It was initially involved in the ASEAN Plus Three (APT) Framework, which comprises ten ASEAN countries plus China, Japan, and Korea. The APT was established in 1997 at the height of the Asian financial crisis. Its purpose was to create a forum for dialogue and further trade ties between ASEAN and three strong economies in East Asia. In 2001, China and ASEAN began negotiations to set up an FTA to be known as the ASEAN-China FTA (ACFTA). In 2002, China and ASEAN concluded the Framework Agreement on Comprehensive Economic Co-operation, providing a framework for guiding principles and a timetable. This Framework Agreement also aimed at becoming effective in 2010 for the six original ASEAN members and in 2015 for the remaining four. In 2004, both sides signed the Agreement on Dispute Settlement Mechanism and the Agreement on Trade in Goods, which came into force in 2005 under an early harvest program. In 2007, both sides further concluded and implemented the Agreement on Trade in Services. The impact of the ACFTA is prominent, given that it would create the world's largest FTA by 2010-15, embracing 1.7 billion consumers and trade worth US\$1.2 trillion.<sup>48</sup> Yet, because of its trade diversion effect, the ACFTA would negatively impact Taiwan's economy by decreasing Taiwan's GDP by 0.025% and the country's exports by 0.21%.<sup>49</sup>

48 Sofia Wu, *Taiwan to Negotiate Free Trade Pact with ASEAN States One by One*, Nov. 6, 2002, CENTRAL NEWS AGENCY (TAIWAN).

49 Y. F. Low, *Taiwan Would Benefit From Cross-Strait Common Market: Ex-Premier*, May 24, 2005, CENTRAL NEWS AGENCY (TAIWAN).

China has a conspicuous economic motivation for the establishment of the ACFTA. The ACFTA is expected to increase bilateral exports by 50% while adding 1% growth to ASEAN's gross domestic product and 0.3% to that of China.<sup>50</sup> China's geopolitical rationale for supporting the ACFTA is even more salient. China plans to form a "China-led regionalism," thereby pursuing an indispensable, if not hegemonic, role in the Asia Pacific. The United States and Japan have been the most influential actors in the Asia Pacific as a result of their foreign policy goals as well as their outbound investments in Asian countries. Nonetheless, China sees the US and Japan as untrustworthy competitors or "enemies," to some extent, in Asia. Aware of its rising economic power, China now intends to enforce its version of the "Monroe Doctrine," enhancing its status in Asia and diminishing the influence of the US and Japan. Strengthening trade relations and promoting economic development in the region are also evidence of China's foreign policy principle, known as "peaceful rise."

China is also concerned with the Taiwan issue. Beginning in 1992, Taiwan initiated the "Go South" policy, encouraging the country's outbound investments to divert from China to ASEAN members. The primary purposes of the policy are to decrease economic dependence on China and to develop substantive relations with Southeast Asian countries. With the acceleration of ASEAN integration, Taiwan also seeks to conclude FTAs with individual ASEAN members in order to enjoy lower tariffs under the AFTA, thus gaining better access to the ASEAN market. However, although Taiwan has concluded investment guarantee agreements with Singapore, Vietnam, Indonesia, Malaysia, and Thailand, Taiwan's efforts to sign FTAs with countries in the region have been futile. Singapore is the only Southeast Asian country thus far indicating an interest in developing a FTA with Taiwan, but, as other countries, was reluctant to be the first countries in the region to begin such negotiations in order not to offend China. In fact, as of December 2007, Taiwan has concluded FTAs with only five Central American countries with which Taiwan maintains diplomatic relations<sup>51</sup>, albeit with only a limited scale of trade between them and Taiwan.

China opposes Taiwan's "Go South" policy because it does not wish to see Taiwan expand its economic relations with ASEAN countries, thereby creating unofficial "recognition" of its status. The ACFTA can certainly increase China's political and economic influence over ASEAN nations and obstruct Taiwan's diplomatic expansion. Furthermore, the formation of the ACFTA may increase the outflow of Taiwan-based manufacturers to China in order to better access the ASEAN market. The trend will likely give China more leverage in cross-strait relations.

50 Qingjiang Kong, China's *WTO Accession and the ASEAN-China Free Trade Area: The Perspective of a Chinese Lawyer*, 7 J. INT'L Eco. L. 837, 843-44 (2004).

51 These countries include El Salvador, Guatemala, Honduras, Nicaragua and Panama.

#### IV. Prospects for the Cross-Strait Free Trade Agreement

According to their WTO obligations, both China and Taiwan are required to treat each other as a normal trading partner. The WTO has also facilitated cross-strait interactions, thereby bringing both sides closer than they were before. In addition, Asian regionalism, in particular, the integration of APEC and ASEAN, China and Taiwan has accelerated its pace to conclude FTAs with other neighboring nations. Against these backgrounds, another issue worth discussing is the prospect of the creation of a cross-strait free trade agreement. Greater China, or the Greater China economic zone, is a concept of natural economic interactions among Chinese economies, including Mainland China, Hong Kong, and Taiwan. Greater China has long been regarded as a regionalization because of the absence of formal agreements among these economies. Yet, the nature of regionalization has evolved to regionalism resulting from trade liberalization based on the Closer Economic Partnership Arrangement (CEPA) concluded between China and Hong Kong in 2003. China also signed a similar CEPA with Macau in the same year. Supplements to these two CEPAs have also been signed annually to increase the coverage of liberalization. The most recent supplements between China, on the one hand, and Hong Kong and Macau, on the other, are Supplements V, often referred to as CEPAs V, signed in 2007. Hence, Taiwan is now the missing point in the pan-China FTA framework.

The unique character of CEPA is that it is the first-ever FTA concluded between two WTO members within one country. The use of an "arrangement" rather than an "agreement" also indicates that CEPA avoids signifying its "international" nature. Yet, despite the name, CEPA is a FTA in every aspect. CEPA was motivated by China's political intention to ensure the success of its "One County, Two systems" after its takeover of Hong Kong. In addition, prosperity of Hong Kong would also lure Taiwan to join the China circle.

CEPA includes liberalization of trade in good and services. As for goods, both sides would apply zero tariffs for exports of certain goods meeting the rule of origin requirements. With respect to services, service providers based in Hong Kong would be granted access, or better access than their foreign competitors, to various industries, including, for example, telecommunication, financial, legal, and real estate services. CEPA has largely reduced trade barriers in goods and services between China and Hong Kong, hence meeting the "substantially all" requirements under Article XXIV of the GATT and Article V of the GATS. In addition, China and Hong Kong complied with the procedural requirements set forth in these two articles by notifying the WTO Council for Trade in Goods and the Council for Trade in Services of the CEPA for them to examine and review.

The issue of whether CEPA can be a model for the establishment of the cross-strait FTA has been periodically discussed in academia. Although China opposed Taiwan's bid to sign FTAs with foreign countries, China was keen on concluding a CEPA with Taiwan. In contrast, the Taiwanese government has lukewarmly responded to this proposal because the nation would be "downgraded" to a subordinate status similar to that of Hong Kong to China. In my opinion, subject to

certain revisions, future cross-strait economic cooperation may be modeled after CEPA. From a broader perspective, China should understand that the long-term goal of unification with Taiwan cannot be simply "a step forward" by political forces. Using the EU experience as an example, the best way to achieve unification with lowest costs is via economic integration. Hence, to decrease Taiwan's resistance resulting from domestic pressures, China should be more flexible in the contents of the cross-strait FTA and view Taiwan's efforts to conclude FTAs with other nations as normal trade matters.

For Taiwan, the government should note that its current limitations on investments in China are simply impractical because the market will ultimately be controlled by the "invisible hand" and not by policy. The government's restrictions would only force Taiwan-based companies to go underground, since the companies may invest in China through Hong Kong or tax heavens such as the Virgin Islands, thus making the government unable to monitor them effectively. This view is illustrated by the rising amount of undeclared Taiwanese investments in China.

Forming a cross-strait FTA with China has several benefits to Taiwan. First, this FTA would link Taiwan to the AFTA through the ASEAN-China FTA, thus boosting Taiwan's exports to Southeast Asian countries. Second, because of preferential access to goods and services in the Chinese market and Taiwan's possession of a more developed legal regime and better trained personnel, Taiwan may serve as a springboard to China, thus attracting more foreign firms. Finally, according to the economic theory of "hub and spoke," Taiwan may enjoy large trade creation if the country forms an FTA with another major market, such as the United States, because Taiwan will become the "hub" linking two major "spokes," China and the US. Consequently, Taiwan's benefits due to the CFTA will prevail over its economic independence on China and the potential trade diversion effect.

Political implications for the cross-strait FTA would be even more significant because the cross-strait FTA may serve as a different form of a peace agreement between China and Taiwan, symbolically ending almost 60 years of hostility on both sides. However, although the cross-strait FTA could be based on CEPA, several changes would be necessary to accommodate special conditions involving intricate cross-strait politics.

First, to decrease Taiwan's concern that the cross-strait FTA is an indication that its status is being downgraded to Hong Kong, the classification of this FTA should be construed by both sides as neither purely international nor domestic. As for its title, the future cross-strait FTA could use the wording "agreement" rather than "arrangement," which is used in CEPA. China should constructively interpret its "one China" principle and accept this proposal. In fact, China and Taiwan have concluded the "Kinmen Agreement" regarding the repatriation of fugitives.<sup>52</sup>

52 Joy Su, *Extradition Sought of Two Fugitives Caught in Xiamen*, Aug. 6, 2004, Taipei Times, at A.2 ("The Kinmen Agreement, signed by the Red Cross Societies of Taiwan and China, contains provisions for the repatriation of individuals, criminals and suspects illegally entering either country.")

In practice, the two sides agreed to refer to the agreement as "xieyi" instead of "xieding," a usual translation of "agreement," in order to avoid sensitive sovereign implications. The CFTA may follow this mutual compromise. The cross-strait FTA should also comply with the WTO notification requirement set forth in Article XXIV of the GATT and Article V of the GATS, therefore affording the FTA "international" status. This aspect of the agreement should not be difficult for China to accept, given that CEPA also meets this requirement.

Second, the cross-strait FTA should keep trade remedies measures. Article 9 of CEPA contains a safeguard measure, which allows either side to "temporarily suspend concessions" that apply to goods imported from the other side, should the import of those goods increase and therefore "cause or threaten to cause seriously injury" to the other side's domestic competitive products. However, pursuant to Articles 7 and 8 of the CEPA, China and Hong Kong agreed to waive anti-dumping and countervailing measures on "goods imported and originated from each other." Similar "waiver" provisions would face strong resistance from domestic industries in Taiwan. As previously illustrated, the rapid increase of cross-strait trade disputes and domestic producers' utilization of trade remedies show that Taiwan producers fear the inflow of low-cost Chinese products. As a result, the provisions concerning safeguard, antidumping, and countervailing measures should be kept and the application of these measures should be at least consistent with the WTO rules.

Finally, a dispute resolution mechanism should be created under the structure of the cross-strait FTA. Because of Taiwan's large investments in China, investment disputes between private parties are common. These disputes can be solved with the aid of arbitration institutions such as the China International Economic and Trade Arbitration Commission (CIETAC). However, due to the lack of a bilateral investment treaty between China and Taiwan, there is no neutral forum in which Taiwan's private investors can challenge government measures of China. The cross-strait FTA should thus fill this judicial gap. CEPA may not be a good example in this regard, for it lacks an elaborate dispute resolution mechanism. According to CEPA, conflicts between China and Hong Kong are subject to "consultations" under the auspices of the "Steering Committee" composed of "senior representatives or officials designated by the two sides."<sup>53</sup> The Steering Committee functions as a facilitator rather than a judicial institution.

I would propose that the cross-strait FTA establish a NAFTA-like panel on which would be seated experts from either side or third nations. The panel could accept disputes arising from the FTA from either China or Taiwan. It would apply to both domestic laws of China or Taiwan and WTO rules and issue binding decisions. As the panel would not supersede the WTO's compulsory jurisdiction, a WTO panel could review the same case *de novo*, should either side decide to submit the case to the WTO. Moreover, unlike the requirement that must be met before bringing

53 See Mainland and Hong Kong Closer Economic Partnership Arrangement [hereinafter CEPA], art. 19:1 & 19:5. Article 9 of the CEPA also provides that safeguard issues will be subject to "consultations . . . so that an agreement may be reached."

a case to the WTO, a private enterprise would not need to persuade the government to bring the case on its behalf. Furthermore, as the judicial process could be conducted in Chinese and take place in either China or Taiwan, litigation costs would be lower and the time required to adjudicate the case would be shorter. In addition, as the panel's decisions would have binding effect under domestic laws, its decisions, unlike those of the WTO panel or Appellate Body, would not need to go through the lengthy implementation process.

#### V. Conclusion

Trade relations between China and Taiwan are permeated with domestic politics and intertwined with the foreign relations of both states. This Article provided a historical background of such intricate relations and found that while "regionalism" prompted by the FTAs proliferates in the world, cross-strait trade, despite the large amount of bilateral trade, still maintains the feature of informal "regionalization." Yet, fundamental changes have resulted from the WTO obligations of China and Taiwan and recent Asian regionalism.

WTO membership brings China and Taiwan new challenges and opportunities. China has realized that it would be in violation of WTO law to refuse confrontations with Taiwan in the WTO arena, particularly in the setting of the dispute settlement mechanism. On the other hand, Taiwan needs to comply with its obligations, gradually reducing discriminatory measures against Chinese goods and services. Furthermore, a review of bilateral trade disputes also shows the WTO has brought cross-strait relations into a rule-based stage, thereby facilitating interactions between the two. In addition to the WTO, the recent trend of Asian regionalism, particularly the integration and institutionalization of APEC and ASEAN, also has had a profound impact on cross-strait relations. APEC provides a high-level forum for cross-strait issues and the proposal for forming an FTA among APEC members may prevent Taiwan's dilemma of being marginalized from the FTA map. As for ASEAN, its integration and its FTA with China would pose even greater threat to Taiwan's FTA efforts. This Article also asserts that the CFTA will help China achieve its goal of peaceful rise, thus increasing its regional power.

Finally, this Article analyzes the China-Hong Kong CEPA and asserts that the cross-strait FTA may be beneficial to both China and Taiwan from both political and economic perspectives. The cross-strait FTA's trade creation will likely prevail over its trade diversion. As products of China and Taiwan are vertically integrated instead of horizontally competitive, closer cross-strait trade relations will make companies and manufacturers of the two sides more globally competitive. In addition, the cross-strait FTA would stabilize the political tensions in the Taiwan Strait, given that history of the EU, NAFTA and ASEAN has showed that no major outbreaks have occurred in FTAs. The cross-strait FTA will integrate Taiwan into the regionalism of the Asia Pacific and will likely be the basis for a more ambitious Greater China Free Trade Area. In the long term, the economic integration resulting from the cross-strait FTA may also lead to further political integration across the Taiwan Strait.