出國報告書(出國類別:進修)

中華民國(臺灣)參加 「跨太平洋夥伴協定」(TPP) 之政治與經濟因素障礙及解決之道

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派赴國家:美國

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一、目的

本次出國進修之研究主題為:中華民國(臺灣)參加「跨太平洋夥伴協定」(TPP)之政治與經濟因素障礙及解決之道」,選定此一研究課題之動機,主要係基於一方面我國在經濟上極度倚賴國際貿易,且在全球生產供應鏈上扮演重要角色,但另一方面則在國際活動上處處受限;而在現今全球化的發展浪潮下,國際貿易的全球治理問題,已經擴大到其他眾多領域:諸如環境保護、勞工權利、智慧財產權保護、金融秩序等議題,皆與國際貿易規範脣齒相依,因此,為擴大我國之國際發展空間,其中重要策略之一,有賴於我國尋找出如何成功融入快速變遷之國際經貿秩序中之方法,如此亦將擴大我國在上述國際議題之參與,故國際發展空間與融人國際經貿秩序對我國而言,二者間息息相關;更進一步而言,推動參與TPP,可協助我國進一步融入最新發展之國際經濟秩序中,一方面將增強我國與TPP成員國間之外交與經貿關係,另一方面,由於TPP協定中援引國際勞工組織、多邊環境保護公約、國際貨幣基金組織、以及世界智慧財產權組織制定之規範體系,我國加入TPP後,也將與該等國際組織與公約體系發生聯繫,如前所述,將可有效擴大我國在各種不同領域之國際參與。基於上述考量,且我國政府亦將加入TPP列為現階段之優先外交經貿政策之一,爰擇定此一研究主題。

惟為推動加入 TPP 時,我國必須面臨政治與經濟因素之影響與挑戰,謹簡述如下:

(一) 政治方面:初步分析有三項亞太地區之三角地緣政治因素,將影響我國加入 TPP 的機會:(1) 美-「中」-臺三角關係;(2)日-「中」-臺三角關係;(3)東南亞南海周邊國家-「中」-臺三角關係。對於此三項國際地緣政治角力因素,雖然事實上我國無法居主導地位,但如我方運用本身利基得宜,皆可對我國加入 TPP 產生正面之協助能量。此外,近年來之國際情勢發展,美國為因應中國大陸國際政經勢力日增之趨勢,

已重新定位其在亞太之戰略目標與方向,而提出「向亞洲再平衡」政策,除加強與環太平洋國家之軍事合作關係外,亦以 TPP 作為其重返亞洲(pivot to Asia)之經濟策略,企圖建構與盟邦間更緊密之經濟貿易合作關係。從二戰後之冷戰時期開端以來,臺灣在美國對於環太平洋安全戰略思維上,一向具有特殊地位,目前由後冷戰美國獨霸局面,逐漸推升至美「中」爭霸賽局,其間我國如何利用此一國際情勢之發展,成為我國加入 TPP 之推手,值得投入更多資源加以研究分析。

另一方面,我國自 2008 年馬英九總統主政以來,兩岸關係之制度 化與和平發展獲得長足之進展,我方如能利用此一良性互動之基礎, 並參酌兩岸同時於 2002 年加入世界貿易組織(WTO)後,帶動中國大陸 整合至多邊貿易體系,為其帶來巨大之經貿發展動能,使其成為過去 十年間國際貿易之最大受益者之一,在這段令人屏息的快速發展中, 台灣對中國大陸的直接投資與助其引進相關技術與商業模式,是中國 大陸經濟發展不可或缺的環節與因素之一,從此觀點而言,臺灣加入 TPP 或亦將可為中國大陸提供寶貴之發展經驗,從而有效移植至中國大 陸,促進其經濟轉型與相關涉及 TPP 體制(環境保護、勞工權保障、金 融服務開放、允許資訊跨境自由流通、智財權保障)改革,將可能使兩 岸互蒙其利。

進一步而言,在兩岸因素中,亦必須考量美「中」爭霸賽局中兩方之經濟戰略。中國大陸「一帶一路」與創立亞洲基礎建設投資銀行 (Asia Infrastructure Investment Bank, AIIB)之倡議,中國大陸似已明顯轉向採取積極攻勢之國際經濟金融戰略,有別於過往「廣積糧、高築牆、緩稱王」韜光養晦之低調漸進式發展策略,在此一發展情勢下,對於區域國際外交關係之影響與演進,是否可能加深美、日、越南、澳洲與紐西蘭等 TPP 參與國對中國大陸是否和平崛起之疑慮,在防堵策略

的思維模式下,轉而爭取我國之支持,以及此種情勢對於兩岸關係和 平發展與建制化之利弊,對於我國是否能順利參與 TPP, 皆可能成為關 鍵因素。

(二) 經濟方面: TPP 標榜為高標準與廣泛性之自由貿易協定,其所造成之貿易創值與貿易轉向之效果,將不同於過往之自由貿易協定,頗值我方提早分析與因應。而我國參與過程中,將面臨如何提高我國經濟法制自由化程度,以及強化貿易競爭力之問題。另我國與 TPP 之談判參與國間,具有不同層面之投資、外勞、產業供應鏈及價值鏈之關聯,如何在推案策略上,區分與不同 TPP 成員國間之利害關係,轉化為助我之動能,亦為本次進修研究方向之一。

而除了 TPP 以外,另一個亞太地區的區域自由貿易協定 RCEP (Regional Comprehensive Economic Partnership,區域全面經濟夥伴關係),在初步分析設定本研究範圍時,將其排除於本次進修之主要目的外,其決定性原因為對我國而言,加入 RCEP 面臨之政治上與經濟上難度,將遠高於 TPP,因此現階段設定推案順序時,似宜先專注於加入 TPP 之議題:

- (一) 首先在政治層面上,因加入 RCEP 之前提要件為先與東協國家簽訂自由 貿易協定,惟東協十國間對於我國之友善程度差距甚大,要能統合其間 之歧見,達成與我國簽署自由貿易協定之政治共識,其難度甚高;其次 在 RCEP 談判成員內,中國大陸居主導性之影響地位,其是否同意我國 加入,具有關鍵地位,我方是否有足夠籌碼換取中國大陸之表態支持, 尚難預料。
- (二) 在經濟層面上,由於我國與 RCEP 參與談判之 16 國間,除牽涉出口產 品同質性與替代性高之問題,同時出口目標市場亦高度重疊,如我國加 入 RCEP 後,是否能獲得有效之創造貿易效果,以及 RCEP 整合造成我

國經濟依存度進一步依賴中國大陸與東南亞各國,是否能帶來增加對我國國內投資經濟效益、或是可能反而加速對外投資之資本淨流出之損害,仍有待更詳細之評估;另一方面,在我國未加入 RCEP 之情況下,其簽署後我國即將面臨之經濟衝擊各種面向,在此一階段,我國亦應速擬相關對策。

綜合上述我國於現階段加入 RCEP 在政治與經濟上所面臨之高困難度,本進修研究對象仍專注於我國加入 TPP 之相關議題上。爰此,本研究之目的為擬分析上述我國加入 TPP 之政治與經濟因素,提出初步建議,以期或可提供外交決策之參考。

二、過程

本次進修期間為 104 年 4 月 29 日至 8 月 2 日,至美國史丹福大學「民主、發展暨法治中心」(Center on Democracy, Development and the Rule of Law) 短期研究,抵達後首先被分配至與該中心「臺灣計畫」協調人 Mr. Kharis Templeman 同一研究室,渠除協助提供研究主題之相關書籍與資料外,並由渠詳細介紹「臺灣計畫」之各項研究細節,進修期間並與渠就 TPP 談判進展、臺灣民主法治、選舉制度、國防預算等相關議題廣泛交換意見。職並即開始就研究主題進行研究,期間並參與該中心各項研討會(請詳附件一列表)。

經過研習期間及相關討論,該中心認研究成果可供發表,爰安排^職於7月1日下午4時15分至5時30分以「台灣國家安全與泛太平洋夥伴協定(TPP)之國際法觀點」為題進行專題研討會,該研討會由該中心主任Larry Diamond 教授主持,由 先發表40分鐘之專題演說,之後開放進行30分鐘之問答討論。該研討會共約十餘名該中心研究人員及當地僑民參加,進行氣氛熱烈,Diamond 教授並表示肯定 進修研究成果。謹附該研討會會議通知及演說簡報檔各乙份(請詳附件二)」。

職 除繼續進行進修主題之研究外,並於7月18日起至7月31日參加 該中心舉辦之"Draper Hills Summer Fellows Program",該研習營為期3週, 迄今已舉辦10年,邀請美國關於研究民主、發展與法治相關議題之知名 學者開設進階課程,參加對象則為各民主發展中國家對於推展民主與法治 相關發展卓有貢獻之政府、法界與非政府組織中青年領袖,舉辦成效卓著,

¹ 參與者並將當日研討會內容全程錄影剪輯後上傳網路供大眾使用與參考: https://www.youtube.com/watch?v=313QCNk8vek.

並深獲各界肯定。此次研習課程中包含邀請前美國國務卿 Ms. Condoleezza Rice 介紹美國外交政策;美國前駐阿富汗大使 Mr. Karl Eikenberry、前駐菲律賓大使 Mr. Michael Armacost、及前駐俄國大使 Mr. Michael McFaul 就其駐外生涯與經驗及美國扮演之外交角色進行專題討論會;史丹福大學政治學教授 Mr. Francis Fukuyama 講授國家發展與民主政治之形成策略等課程;該中心主任 Mr. Larry Diamond 講授目前之全球民主進展現況等(詳細課程列表請詳附件三)。

【附件一】

- 1. Making A Rural Modern In Early Twentieth Century China, May 5, 2015 - 4:15pm to 5:30pm, Speaker(s): Kate Merkel-Hess, Assistant Professor of History and Asian Studies, Pennsylvania State University -China became a majority urban country only in 2011, and the trend toward urbanization will deepen in the next decade as the government fulfills its plans to move rural populations into cities, razing villages and relocating villagers to suburban high rises. This shift is the end of a story that originated in the 1920s and 1930s, when intellectuals began what turned out to be an almost century-long challenge to the urban nature of modernization, positing, in its place, a rural modern. This alternate vision of modernity got its start among the thousands of Chinese reformers who ventured into the countryside to try to effect rural reconstruction and, in so doing, make a new people. This talk explores not only how reformers imagined remade people and their communities, but also the shifts in rural reconstruction models as government and international interest in the reforms grew, and what had been largely independent or local efforts at reform were increasingly entangled with the developmental state.
- 2. China Under Mao: A Revolution Derailed, May 7, 2015 4:15 PM 5:30 PM, Speaker(s): Andrew G. Walder, Senior Fellow at the Freeman Spogli Institute for International Studies, Denise O'Leary and Kent Thiry Professor of Sociology, Stanford University China's Communist Party seized power in 1949 after a long period of guerrilla insurgency followed by full-scale war, but the Chinese revolution was just beginning. China Under Mao narrates the rise and fall of the Maoist revolutionary state from 1949 to 1976—an epoch of startling accomplishments and disastrous failures, steered by many forces but dominated above all by Mao Zedong. Mao's China, Andrew Walder argues, was defined by two distinctive institutions established during the first decade of Communist Party rule: a Party apparatus that exercised firm (sometimes harsh) discipline over its members and cadres; and a socialist economy modeled after the Soviet Union. Although a large national bureaucracy had oversight of this

authoritarian system, Mao intervened strongly at every turn. The doctrines and political organization that produced Mao's greatest achievements—victory in the civil war, the creation of China's first unified modern state, a historic transformation of urban and rural life—also generated his worst failures: the industrial depression and rural famine of the Great Leap Forward and the violent destruction and stagnation of the Cultural Revolution. Misdiagnosing China's problems as capitalist restoration and prescribing continuing class struggle against imaginary enemies as the solution, Mao ruined much of what he had built and created no viable alternative. At the time of his death, he left China backward and deeply divided.

- 3. Debunking the Myths of the Chinese Economy, May 8, 2015 12:00 PM - 1:30 PM, Speaker(s): Keyu Jin, London School of Economics, There is a fundamental misunderstanding and misconception about the Chinese economy - about how it works and what are the true challenges it faces. In the talk, Dr. Keyu Jin will highlight three major myths: on what really drives growth in China, what explains its high savings rate, and the economic consequences of the one child policy. Everyone has something to complain about the Chinese economy: large misallocation of resources, low employment growth, a declining share of the economic pie going to Chinese households, environmental costs, financial repression, and wage suppression. Dr. Jin will argue that all of these phenomena are not disparate problems, but are all part of the same fundamental problem, one of macroeconomic structure. The Chinese economy is not 'imbalanced,' rather it is subject to a vicious cycle. And yet, there is still reason to view the Chinese economy with 'guarded optimism.'
- 4. Fateful Ties: A History of America's Preoccupation with China, May 12, 2015 12:15 pm, Speaker(s): Gordon Chang, "Americans look to China with fascination and fear, unsure whether the rising Asian power is friend or foe but certain it will play a crucial role in America's future. This is nothing new, Professor Gordon Chang says. For centuries, Americans have been convinced of China's importance to their own national destiny. Fateful Ties draws on literature, art, biography,

- popular culture, and politics to trace America's long and varied preoccupation with China."
- 5. Why Taiwan's Defense Spending Has Fallen as China's Has Risen, May 19, 2015 12:00 PM - 1:30 PM, Speaker(s): Kharis Templeman, Over the past 20 years, the military balance between the People's Republic of China and Taiwan has rapidly shifted. As China's defense budget has grown annually at double-digit rates, Taiwan's has shrunk. These trends are puzzling, because China's rise as a military power poses a serious threat to Taiwan's security. Existing theories suggest that states will choose one of three strategies when faced with an external threat: bargaining, arming, or allying. Yet for most of this period, Taiwan's leaders have done none of these things. In this talk, I explain this apparent paradox as a consequence of Taiwan's transition to democracy. Democracy has worked in three distinct ways to constrain rises in defense spending: by intensifying popular demands for non-defense spending, introducing additional veto players into the political system, and increasing the incentives of political elites to shift Taiwan's security burden onto its primary ally, the United States. Together, these domestic political factors have driven a net decline in defense spending despite the rising threat posed by China's rapid military modernization program. Put simply, in Taiwan the democratization effect has swamped the external threat effect.

【附件二】



Taiwan's National Security and the Trans-Pacific Partnership: The International Law Dimension



Joseph Yen-ching Chao

Visiting Fellow, CDDRL:

Executive Officer Department of International Cooperation and Economic Affairs, Ministry of Foreign Affairs, Republic of China (Taiwan)

July 1, 2015 4:15-5:30 PM GOLDMAN CONFERENCE ROOM 4TH FLOOR, ENCINA HALL

ABSTRACT

The Trans-Pacific Partnership (TPP) is widely regarded as the economic component of the US strategy of erebalancer-to Asia. As a major-trading partner of many of the founding members, Taiwan has obvious economicand security interests at stake and is therefore seeking to join the TPP in the next round. But an overlooked aspect of the TPP for Taiwan is its potential impact on sovereignty. Trade agreements provide a revealing window into the evolving conceptions of modern sovereignty. The way Talwan's unique form of statehood and international status is defined in trade agreements could strengthen its position under international law and contribute to its national security. This talk will consider how Taiwan was defined as a sui generis legal entity in its application to join the World Trade Organization (WTO) and as a party to the Cross-Straits Economic Cooperation Framework Agreement (ECFA), with lessons for future negotiations to join the TPP.

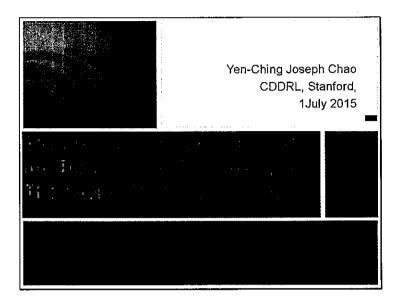
Joseph Yen-ching Chao is an Executive Officer in the Department of International Cooperation and Economic Affairs, A member of Taiwan's Ministry of Foreign Affairs (MOFA) diplomatic corps since 2005, he has previously served as a German-language interpreter for the Presidential Office, an officer in the Department of Treaty and Legal Affairs, and as a deputy secretary of Taiwan's permanent mission to the World Trade Organization in Geneva, Switzerland. He holds an LL.M. from Ruprecht-Karls University in Heidelberg and a Doctor juns from Albert-Ludwige University, Frieberg, Germany, Dr. Chao is in residence at Stanford from May-July 2015, where his research examines Taiwan's prospects for entry into the Trans-Pacific Partnership (TPP).

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This presentation is trying to provide some legal analysis of TPP and other two relevant trade agreements, WTO and ECFA, in order to find out the useful arguments for Taiwan to strengthen it's national security under international law. But how can TPP, trade agreements and the international law be relevant to Taiwan's national security? It's the principal question that this presentation will try to answer.

Is International Law Taiwan's Friend?

In response to Prof. Julian Ku's article:

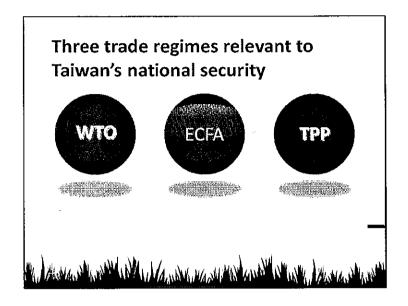
International Law Is Taiwan's Enemy

- Although protecting Taiwan is worthwhile, international law is not on Taipei's side.

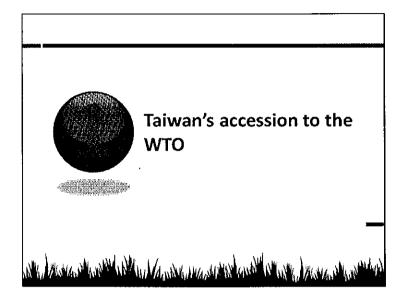
The Diplomat, July 16, 2014



Actually this question has been discussed in a very different flavor just a year ago. Prof. Julius Ku, an assistant professor at the University Hofstra and a recipient of the Taiwan Scholarship, argues that if China used forces to attack Taiwan, it was legal under international law. His article's title is as provocative as: "International Law is Taiwan's enemy". His view is strongly criticized, but it brought this question into broad attention. It demonstrates that the international law is relevant to Taiwan's national security. Taiwan government and international community need to take more consideration over this issue.

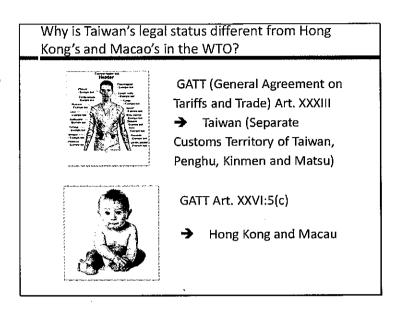


Let's focus on three trade agreements and regimes, which are relevant to Taiwan's national security. The World Trade Organization (WTO) is the most important international organization for Taiwan because of Taiwan's full membership. Cross Straits Economic Cooperation Framework Agreement (ECFA) is a Free Trade Agreement between mainland China and Taiwan. And finally, the Trans-Pacific Partnership (TPP), which has just received the backing from US Congress.



Let's start with the history on Taiwan's accession to the WTO. Taiwan submitted the application to access to the GATT (General Agreement on Tariffs and Trade), the predecessor of the WTO in 1990, just few months after the 1989 Tiananmen Square massacre. It was good timing as China was widely condemned with its cruel crackdown against the democratic movement and Taiwan could receive a little bit more international sympathy than usual. At that time, Taiwan's GDP's world ranking is 15th China is 11th. China's GDP was barely 1.5 times of Taiwan's with its fifty times more population. It was also the economic phenomena to justify Taiwan's participation in this global economic and trade forum.

投影片 5



It is worhtwhile to clearify the legal status between Taiwan and Hong Knong and Macau. China tends to spread a myth that Taiwan's status in the WTO is as the same as Hong Kong and Macau. Many diplomats, including many members in the WTO Secrateriat, believe this and abide by such illusion. It is just not the truth. Taiwan applied for its membership under GATT ART. 33 and it is different from that Hong Kong and Macau which became members of the GATT and WTO by applying GATT Art. 26: Paragraph 5(C). Even in both cases the memberships are described as Separate Customs Territory and they are different from State members by name. But these are two different types of Separate Customs Territories. For Taiwan, the membership is applied by a non GATT's member as a sovereign government. The accession procedure is absolutely identical with the State member's. It needs to undergo all the checking list and negotiations on the concession to get the final approval by General Council, then to become a member. But for Hong Kong and Macau, their membership is upon sponsorship by GATT members, i.e. their colonial mother lands. For Hong Kong, it was the United Kingdom, and for Macau, it was Portugal. It's exactly like the example when I got my Stanford ID, even I am only a visiting scholar, I need to complete the whole application procedure and fill up all the requirements. I need to complete the harassment online course in two weeks and so on. But if my child, if I have one, wants to have a Stanford ID to enjoy the recreation facilities. The only requirement is that I declare he's my son and he gets the ID. So, it's the same regulatory rationale in the GATT.

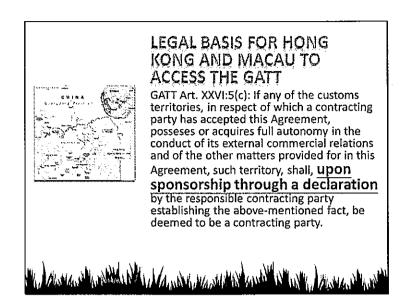
GATT Art. XXVI: metropolitan territory other territories separate customs territories customs territories (Art. XXVI 5. (c)) GATT Art. XXXIII: Government Government on behalf of the separate customs territory

To clearify with these legal points, we can look into the historical background. In the period of GATT 1947, the political world map was very different from today. There were vast territories that still belonged to colonial administration. In order to determine the application sphere of the GATT Agreement, Art. 26 defines what kind of territories of a GATT member (contracting party) is included to the jurisdition of the trade regime. It distinguishes the metropolitan territory and other territory in which the GATT is applicable. Such as Alaska was a territory of the US in 1947 and just becomes the 49th State of the US in 1959. And the Separate Customs Territory of the member is normally not subject to the GATT. A Member of the GATT can declare one or more of its different Customs Territories to become a member of the GATT. Art. 33 of the GATT regulates the application for a new membership by a government or a government on behalf of a separate customs territory.



Taiwan then apply its membership according to Art. 33 of the GATT, which stipulates that a government on behalf of a separate customs territory can apply the membership. The premises are that this separate customs territory shall possess full autonomy in the conduct of its external commercial relations and of the other matters provided for in the GATT agreement.

It's exactly the case for Taiwan's application.

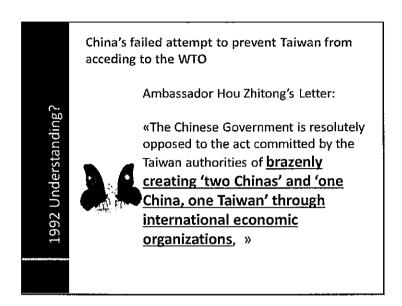


Hong Kong and Macau were deemed as GATT contracting parties according to Art. 26 Paragraph 5c upon sponsorship through declarations by respectively British and Portugal government.

It's obvious that the legal basis for Taiwan's and Hong Kong's or Macau's membership in the WTO are completely different, as well as the accession procedure.

China's failed attempt to prevent Taiwan from acceding to the WTO Letter of China's Ambassador to the UN, Hou Zhitong to Secretary General of the GATT: « Now the Taiwan authority, posing as the government of a sovereign state, have gone so far as to apply, on behalf of the so-called 'separate customs territory of Taiwan, Penghu, Jinmen and Mazu', for accession to the GATT. This is utterly illegal. »

Why is such distinction significant for Taiwan's international status? Exceptionally, here we can rely on China's authoritative and official position for the legal interpretation on international law. Right after Taiwan's submission of the application, China's Ambassador to the UN in Geneva, Mr. Hou Zhitong wrote a letter to GATT's Director-General Mr. Arthur Dunkel. In his own word, Taiwan's application is posing as a government of a sovereign state. It's an absolutely correct understanding according to the international law. But, unfortunately, China insists that Taiwan's action was utterly illegal.



Ambassador Hou continued to make China's position clearly beyond any ambiguity more than any of Taiwan's diplomats, that if Taiwan joins international economic organizations, i.e. the GATT and subsequently the WTO, it will create "two Chinas" and "one China, one Taiwan".



Based on the abovementioned reasons, China requests GATT SHOULD not accept Taiwan's application and GATT COUNCIL SHOULD not take up the application for discussion. China's request is not accepted by the GATT. GATT has accepted Taiwan's application and GATT COUNCIL has discussed the accession of Taiwan and built the working group to examine and to finalize Taiwan's Accession Protocol to join the WTO.

Faiwan's status in the international law

1992 GATT Council Meeting (C/M/259)

- 1. After GATT has accepted Taiwan's application, China tried to request that China should join GATT before Taiwan.
- GATT adopts its decisions unanimously. If China joins GATT before Taiwan, it will have the de facto veto right to oppose Taiwan's accession.
- 3. These discussions are reflected in the meeting minutes of the GATT Counicl.

For China's great disappointment, GATT has accepted Taiwan's application under the circumstances that Taiwan has been a major trading country and China did not enjoy too much international sympathy at that time. The next strategy for China was to try to convince the GATT Council that China should join the GATT before Taiwan. China's intention is quite obvious. Because GATT adopts its decisions unanimously, any member has quasi veto right to reject new member's accession or has the influence on modifying it's accession status. This China's second attempt was not successful either.

1992 GATT Council

Faiwan's status in the nternational law

- 1. Non-Legal Binding Effect: « The Chairman then proposed that the Council take note of his statement»
- 2. <u>Legal Binding Effect</u>: « ... <u>agree</u> to establish a working party on the basis of the understanding and the terms of reference and composition he had mentioned. »
- → Create a precedent in the international legal system

Due to the complicated nature and sensitivity of Taiwan's application, the GATT Council needed to deal with this issue in a very delicate and creative way, but also needed to address the requirements of the legal security. First of all, the contents of the meeting minutes can be distinguished between with or without legal binding effect. When the Council only took note of the contents, it meant no legal binding effect. Only when a decision is agreed by the council, it presents a legally binding effect. The only decision in that Council Meeting is to create a working group to examine Taiwan's accession to the GATT. It creates a precedent in the international legal regime after Taiwan's exclusion from the UN in 1971.

1992 GATT Council

Taiwan's status in the international law

Chairman's statement:

«the council should give full consideration to all views expressed, in particular that the Council should examine the report of the Working Party on China and adopt the Protocol for the PRC's accession before examining the report and adopting the Protocol for Chinese Taipei, while noting that the working parties reports should be examined independently. »

To address China's requirement that China should access to the GATT before Taiwan, the Chairman of the Council made a statement: "the council should give full consideration to all views expressed, in particular that the Council should examine the report of the Working Party on China and adopt the Protocol for the PRC's accession before examining the report and adopting the Protocol for Chinese Taipei, while noting that the working parties reports should be <u>examined independently</u>.» This statement has rejected China's demand bluntly. It also makes clear that Taiwan's and China's accession should be handled independantly and it means that there is no legal linkage between them.

Actually Taiwan's working party report was finished three years ahead of China's. US negotiators has used China's stubbornness on cross strait's political issue as a leverage to press China to more concession by threatening it will allow Taiwan to join the WTO before China.

1992 GATT Council

Faiwan's status in the

<u>Chairman's Statement</u>: «The <u>Chairman</u> then stated that as a part of the understanding, the representative of Chinese Taipei in GATT would be along the same lines as that of Hong Kong and Macau during the course of its status as an observer and subsequently as a contracting-party delegation, and that the titles carried by it's representative would not have any implication on the issue of sovereignty.

The Council <u>took note</u> of the statement. »

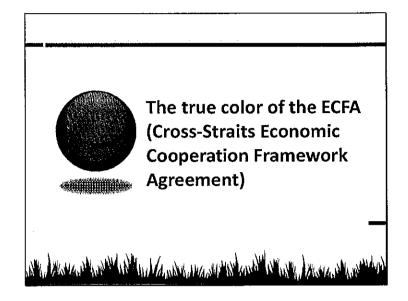
→took note, no legal binding effect

And the chairman stated: « ... that as a part of the understanding, the representative of Chinese Taipei in GATT would be along the same lines as that of Hong Kong and Macau during the course of its status as an observer and subsequently as a contracting-party delegation, and that the titles carried by it's representative would not have any implication on the issue of sovereignty. » It's an incorrect analogy to put Taiwan and Hong Kong/Macau in any linkage, as we have just discussed that Taiwan's legal staus is different from Hong Kong and Macau.

This very controversial statement actually brings Taiwan a lot of troubles after its accession to the WTO in 2002. It's part of the political realities which Taiwan faces everyday at different international arenas.

Taiwan's Accession to the WTO 1: Taiwan's right to participate actively in international organizations and Multilateral Trading System 2: Non-application of the « One China Principle » 3: Taiwan and China are two separate and equal Members in the international organisations

The implication of Taiwan's accession to the WTO in the international law demonstrates that Taiwan shall enjoy the rights to participate in the international regimes as a full and equal members. It also breaks the illusion of the so called One China Principle which is interpreted and insisted by People's Republic of China. Finally, Taiwan and China are two separate and independent members in the international organizations.



At the second part of this presentation let's turn to the Cross-Straits Economic Cooperation Framework Agreement, a free trade agreement between Mainland China and Taiwan. The discussion here will be limited to its international aspects and try to extract its true color under the legal spectrum.

ECFA's Preamble

Have agreed, in line with the basic principles of the World Trade Organization (WTO) and in consideration of the economic conditions of the two Parties, to gradually reduce or eliminate barriers to trade and investment for each other, create a fair trade and investment environment, further advance cross-Straits trade and investment relations by signing the Cross-Straits Economic Cooperation Framework Agreement (hereinafter referred to as this Agreement), and establish a cooperation mechanism beneficial to economic prosperity and development across the Straits.

The ECFA is signed in 2010. Its preamble stipulates that the Agreement is in line with the basic principles of the WTO. Now let's turn to these WTO principles to analyze the international nature of this agreement. So, we need to go back to the WTO again for a while.

It's also the same in the Free Trade Agreements between Taiwan and Singapore and between Taiwan and New Zealand, both Agreements are also built on the rights and obligations under the WTO Agreement.

WTO Agreement Art. XII: Any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement and the Multilateral Trade Agreement may accede to this Agreement, on terms to be agreed between it and the WTO.

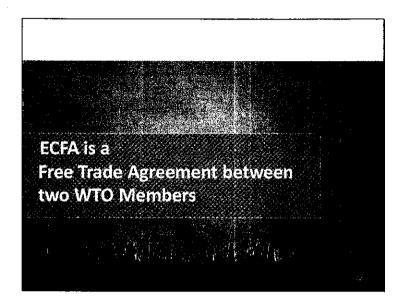
In the WTO agreement in 1994, State and Separate Customs Territory are both eligible members of the WTO, which share the same rights and bear the same obligations under the WTO Agreements. Legally speaking, State and Separate Customs Territory are deemed exactly the same under the WTO legal norm according to the purposes and realities. Actually this article is only designed for Taiwan's accession. Hong Kong and Macau are both the original members of the WTO. All of the colonial territories have become independent or a stable oversea territory status. Taiwan is the only Separate Customs Territory on this globe that was considered to apply this article to accede the WTO at that time.

WTO Agreement Explanatory Notes: The terms "country" or "countries" as used in this Agreement and the Multilateral Trade Agreements are to be understood to include any separate customs territory Member of the WTO.

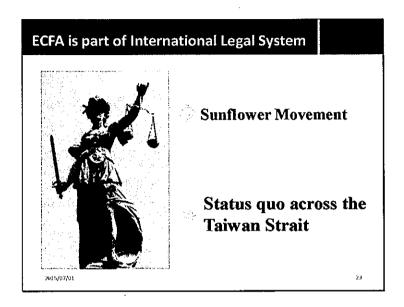
Furthermore, according to WTO Agreement Explanatory Notes: "The terms 'country' or 'countries' as used in this Agreement and the Multilateral Trade Agreements are to be understood to include any separate customs territory Member of the WTO." It shall be understood that in the Multilateral Trading System shall include Taiwan by resolving the sovereign issues. Country or Separate Customs Territory are equivalent subjects under the multilateral trade legal system, which forms an integral part of the international law. It also recognizes that the participation of Taiwan in the international system is indispensable.

GATT Agreement Art. XXIV:5: ".... the provisions of this Agreement shall not prevent, as between the territories of contracting parties, the formation of a customs union or of a free-trade area or the adoption of an interim agreement necessary for the formation of a customs union or of a free-trade area..."

GATT Article 24 Paragraph 5 stipulates that: "the provisions of this Agreement shall not prevent, as between the territories of contracting parties, the formation of a customs union or of a free-trade area or the adoption of an interim agreement necessary for the formation of a customs union or of a free-trade area". As this paragraph governs the ECFA free trade agreement, it is clear that ECFA is an agreement between two Contracting Parties in GATT's terminology and it means also between two separate WTO members, i.e., between two international legal entities.



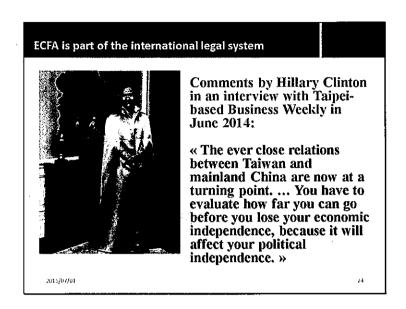
It is a plain and easy recognized fact that the ECFA is free trade agreement between two WTO Members. It is regulated by the WTO law. Hence WTO Law is an integral part of the international law, the trade relationship between China and Taiwan is also governed by international law.



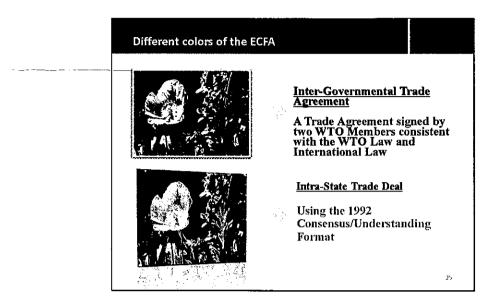
The wish of the majority of the Taiwanese is that Taiwan can be treated fairly as an equal member in the international community. This wish is only prevented by China, and the major threat to Taiwan's national security is from China. The follow up agreement of the ECFA, Cross-Strait Trade in Services Agreement, which is signed in 2013, created a huge distrust in the Taiwan society, especially among the young generation. The Sunflower Movement in which the students occupied the parliament for weeks just last in March last year, should be understood to express the request toward social justice. This social justice shall be guaranteed by Taiwan's national security as well as the international system. The interpretation on the Status Quo across the strait shall also be taken into consideration.

Here I would like to quote Shang-su Wu, a research fellow at Nanyang Technological University in Singapore. Her article published a week ago is titled: "Taiwan, the Final Piece of the Rebalance?" She said: "Given that Beijing has credibly used economic tools to pressure Japan and the Philippines, it would be no surprise for it to take similar actions against Taipei. Undeniably, the China-friendly policies of the present ROC administration have become unpopular, especially after the Sunflower Movement last year, and some anti-China emotion is brewing in Taiwan, as evidenced in the rising percentage of the population claiming Taiwanese rather than Chinese identity in recent polls. The opposition Democratic Progressive Party (DPP) is

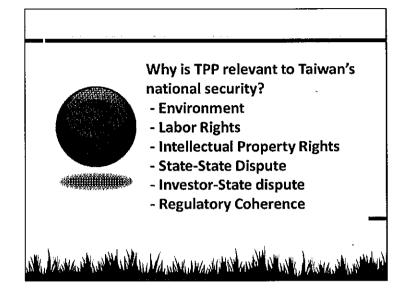
the frontrunner ahead of the presidential elections in Taiwan next year and would form a government less well disposed towards China. Nevertheless, given the potential economic and political blowback, the agreements between Beijing and Taipei for cross-Strait integration will not be easily abrogated. The DPP's candidate, Tsai Ing-wen, has emphasized her respect for the 'status quo.'"



In order to make this point more clearly, let's turn to quote Ms. Hillary Clinton's comment on Taiwan's economic and political independence. She said: "The ever close relations between Taiwan and mainland China are now at a turning point. ... You have to evaluate how far you can go before you lose your economic independence, because it will affect your political independence. » It's clear that in searching the effective way to guarantee a country's economic and political independence, it needs to find part of the answers in the international law.



There are different interpretations for the legal nature of the ECFA in Taiwan. It reflects the polarized front regarding Taiwan's political future. One understanding is that ECFA is an Inter-Governmental Trade agreement. It is a bilateral Free Trade agreement signed by two equal footing WTO Members and is consistent with the WTO Law and International Law. The other view is that the ECFA is only an Intra-State Trade Deal and trying to use the so called 1992 Consensus or Understanding format to justify this claim. Here we will not provide any judgment, only for my own view they will be two different pictures under the legal spectrum.



The world economy is undergoing revolutionary changes, as John F. Kennedy told the US Congress in 1962. It's still true nowadays. The TPP is described as a comprehensive, high standard and a 21st Century Trade Agreement to cope with the trade related, evolving global challenges. These are the issues such as environment, labor, intellectual property right, state-state trade dispute settlement mechanism, investor-state dispute and the regulatory coherence etc. The best strategy for Taiwan to guarantee its national security in economic dimension is to integrate itself into the international legal regime, to strengthen its ties to the global supply chain and to fulfill its international obligations under global trading system. To Join TPP will provide an appropriate forum for Taiwan to achieve these goals.

Trans-Pacific Partnership

Environment and Climate Change

Terms of the 2007 US Congress Bipartisan Trade Deal:

- 1. Adopt, maintains and implement laws and regulations to fulfill their obligations under Multilateral Evironmental Agreements (MEAs)
- 2. Create a Dispute Settlement Mechanism to decide whether a Party has failed to implement an MEA

The TPP presents an opportunity to address a range of the environment and climate issues. Because of the US's economic size and strategic importance for other TPP parties, its approach to the environment issues will significantly influence the outcome. The so called 2007 Bipartisan Trade Deal of the US Congress provides an instructive direction for the possible outcome. It envisions US FTAs including a list of multilateral environmental treaties or agreements (MEAs) that the FTA parties must enforce. Furthermore, the enforcement of the MEAs is subject to the FTA's dispute settlement mechanism. Since Taiwan is denied participation in any of the Multilateral Environmental Agreements, Taiwan's membership to the TPP will link it with these international legal regimes.

Labor Rights

Possible outcomes:

- 1. Implement and enforce the 1998
 Declaration on Fundamental Principles and
 Rights at Work of the International Labor
 Organization (ILO):
- freedom of association,
- right to collective bargaining,
- a ban on forced or compulsory labor,
- the effective abolition of child labor, and
- a ban on discrimination in employment or occupation
- 2. Dispute Settlement Mechanism

In the TPP negotiations, the US wants TPP members to implement and enforce the 1998 Declaration on Fundamental Principles and Rights at Work of the International Labor Organization (ILO). The ILO declaration covers five basic principles: freedom of association, right to collective bargaining, a ban on forced or compulsory labor, the effective abolition of child labor, and a ban on discrimination in employment or occupation. The US also demands that the labor obligations be subject to the dispute settlement mechanism. It applies the same analysis as mentioned in the environmental issues. Taiwan is not a member of the ILO. Joining TPP will expand Taiwan's legal status under the international law.

s-Pacific Partnership

Intellectual Property Rights

- 1. The failure of the US «Stop Online Piracy Act (SOPA) » and the plurilateral agreement «Anti-Counterfeiting Trade Agreement (ACTA) »
- 2. TPP complicates the multilateral IP negotiations in World Intellectual Property Organization (WIPO)
- 3. The necessity of coordination in the international lawmaking and its implication for Taiwan's sovereignty

The intellectual property (IP) negotiations are very controversial at the bilateral and multilateral level such as in the World Intellectual Property Organization (WIPO) or World Trade Organization (WTO). The US «Stop Online Piracy Act (SOPA) » which is not passed by the US Congress and the plurilateral agreement «Anti-Counterfeiting Trade Agreement (ACTA) » which is not ratified by most of the negotiating parties have both failed. It testified a new hostility in the public policy environment for domestic and international IP law making. The other factor is that the TPP IP negotiations will increase complexity and fragmentation of the international IP legal environment. Signing up to new set of IP standards in the TPP could complicate the multilateral IP negotiations in the WIPO. It is necessary to coordinate between these international law making procedures. TPP would help Taiwan to open the window for participating in these international legislation activities and strengthen its legal status in the international arena.

cific Partnership

State-State Dispute Settlement

- 1. Overlapping Treaties and Dispute Settlement Mechanism
 - Conflict of Norms
 - Conflict of Jurisdiction
 - Rules of Interpretation
- 2.Integration into the international legal system
- 3. Implication for Taiwan's sovereignty

Most modern Preferential Trade Agreements (PTAs) contain state-state dispute settlement mechanisms, and the TPP will be no exception. The consequence is that there are multiple overlapping trade treaties between various subset of TPP parties and each contains their own dispute settlement systems. For example, between Singapore and New Zealand, the TPP will represent their fifth trade treaty.

It raises questions in relation to conflicts of norms and conflicts of jurisdiction between the different systems. It also needs to address the rules of interpretation which will be used by TPP tribunal.

These competing international trade judicial systems inevitably enhance and enforce the substantial international law. And it also relativize the concept of sovereignty by making the state accountable and reliable. The TPP will contribute to these constitutionalization of the international trade law by designing a mechanism to solve the questions. The TPP will bring the members further to be integrated into the international legal system. It will bring positive implication for Taiwan's sovereignty as well.

s-Pacific Partnership

Investor-State Dispute Settlement

- 1. Evolving Multilateral Investment Process
- Expanding on the scope of regulatory expropriation
- Eroding the link between the fair and equitable treatment of foreign investors
- Minimum standard of justice
- Modifying the national treatment standard
- Expanded subjective national security provisions
- 2.Principle of absolute immunity of sovereign states? Ex.: China
- 3. Draft Article 12.18(3) of the TPP:
- Under the ICSID Convention
- Under the ICSID Additional Facility Rules
- Under the UNCITRAL Arbitration Rules

The investor-state dispute settlement mechanisms demonstrate the evolution of the concept of the sovereignty. These pose unique problems for countries that uphold the principle of absolute immunity of sovereign states. The most important example is China. Chinese court will hold that China, as a sovereign state, is immune from law suit by inbound investor. Nor will Chinese courts enforce arbitral awards made by commercial arbitration institutions against China.

Due to Taiwanese huge outbound investment in the region, it will recommendable for Taiwan to support an effective investor-state dispute settlement. To hold the sovereignty in check under the international law is also in Taiwan's national interest.

Regulatory Coherence

1. Goals:

- Eliminate unnecessary regulatory barriers
- Make regulatory systems more compatible/transparent

2. Mechanisms:

- Achieve greater domestic coordinations of regulations
- Increase transparency and stakeholder engagement
- Improve SME's competitiveness in international trade

3. Draft Article X.1 of the TPP

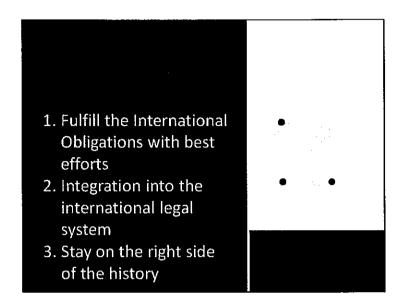
- The Party affirms the importance of: "each party's sovereign right to identify its regulatory priorities"
- "regional regulatory cooperation taking into account the Parties' <u>international obligations</u>."

The inclusion of a chapter on regulatory coherence in the TPP represents a major development towards the effort to harmonize the domestic legislatures between the members. The goals of the regulatory coherence are to eliminate unnecessary regulatory barriers, and to make regulatory systems more compatible and transparent. It will include the mechanisms to achieve greater domestic coordinations of regulations, to increase transparency and stakeholder engagement and to improve Small and Medium Size Enterprises' competitiveness and their ability to engage in international trade.

The draft Article X.1 of the TPP states: "The Party affirms the importance of : each party's <u>sovereign right</u> to identify its regulatory priorities", and "regional regulatory cooperation taking into account the Parties' international obligations."

According to this draft text, the TPP Member's sovereign right and its international obligations are explicitly emphasized.

Furthermore, the regulators' domestic responsibilities could be subject to potentially increased restrictions in the TPP. It will reshape our understanding on the modern sovereignty. It will help us to evaluate the legal status of Taiwan in the evolution of the concept of the sovereignty.



Based on the discussion under the international law dimension, the best strategy for Taiwan to counter China's attempt to isolate Taiwan from international participation is to fulfill its international obligations with best efforts, to integrate itself into the international legal system and to stay on the right side of the history.

Stay on the right side of the history?

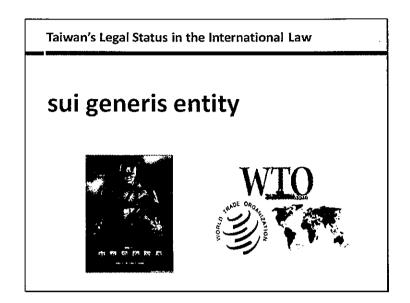
- »Democracy, Development and Rule of Law
- »Avoidance of China's attempt to undermine Taiwan's Sovereignty
- »Aware of the Global Issues
- »Build the Excellency for Taiwan's International Participation
- »Strengthen Bilateral and Multilateral Channels

The right side of the history is identical with democracy, development and the rule of law. I am not suggesting to change the name of the Center on Democracy, Development and the Rule of Law, CDDRL, into the Center on the right side of the history.

As Prof. Francis Fukuyama observes, rule of law is important in China not only for "commercial purposes" but for "survival of the leadership." He says, "Rulers try to evade the law if they can, but at a certain point, they realize that it's safer for them if they actually have rules rather than just arbitrary struggle for power."

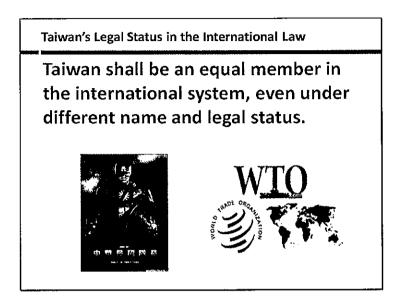
Prof. Fukuyama also notices: "Part of the process of entering the WTO was creating legal institutions that would allow Chinese firms to interact with international firms and so forth. So there has been a buildup of commercial law."

TPP will eventually bring the similar effects for China's reform. To include Taiwan in the TPP will create a strong incentive for China to consider its position towards the TPP. It could be a win-win situation.



Let's examine the argument made by Prof. Ku after the analysis of Taiwan's legal status. He mentioned that: " but both the U.S. and Japan have made clear that China is a single legal entity that includes Taiwan, and that the PRC is the sole government in charge of this entity." But it's just not the truth. It's clear that China and Taiwan are two different legal entities under international law. In a hedge fund they would probably say it's a misfortune in the investment to provide him the Taiwan Scholarship. The Congressional Research Service (CRS) document on U.S. policy towards Taiwan by experts Shirley Kan and Wayne Morrison defines U.S. policy briefly: "The United States has its own 'one China' policy (vs. the PRC's 'one China' principle) and position on Taiwan's status. Not recognizing the PRC's claim over Taiwan nor Taiwan as a sovereign state, U.S. policy has considered Taiwan's status as unsettled."

Actually Taiwan has participated in the international regimes under different status: as a Customs Territory to access to the WTO, as an economy to join the APEC, as a Fishing Entity to participate in the International Fishery Reservation Treaties etc. Some people also suggest that Taiwan can participate in the Multilateral Environmental Agreements such as the Kyoto Protocol as an emission entity, but it sounds more like a car than a legal entity.



Now let's come to the Conclusion: Taiwan shall be an equal member in the international system, even under different name and legal status.

For some strategic reflection:

Since the U.S. announced its rebalance to Asia in 2011, Taiwan has received relatively little attention compared to other countries in the region. Yet some recent symbolic events suggest that this might be changing. Strategically, Taiwan would be significant for the U.S. rebalance.

Before Taipei adopted a China-friendly position in 2008, Beijing was preoccupied with the Taiwan issue and did not impose significant strategic pressure in the East and South China Seas. In other words, a robust Taiwan could pin down some of China's attention and resources. In sum, Taiwan's location and importance to China could be reasons for the U.S. to include the former as the final element of its rebalance policy.

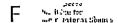
【附件三】

.. Stanford | CDDRL | Summer Follows Program on Development

Draper Hills Summer Fellows Program

2015 Agenda

Stanford | CDDRL | Summer Follows Program on Democracy and Development



2015 Draper Hills Summer Fellows Program on Democracy and Development Program Schedule July 18 – August 7, 2015

SATURDAY, July 18

6:30 pm Meet in Munger Residences Lobby

6:40 pm Depart on bus from Escondido Turnaround

7:00 pm - 9:00 pm Informal Welcome Dinner (Optional), Trellis Restaurant, Menio Park

9:20 pm Arrive back at Escondido Turnaround

SUNDAY, July 19

10:30 am Informational Brunch with Summer Fellows Team (Arrillaga Family Dining)

1:00 pm Tour of Stanford Campus with CDDRL Director Larry Diamond (Meet in front of

Hoover Tower)

(Will meet in front of Munger Residence at 12:30 pm)

6:00 pm Welcome Reception and Dinner - (Bechtel Conference Center)

. Stanford CDDRL Summer Follows Program on Democracy and Development

WEEK ONE: Defining Democracy, Development, and the Rule of Law

(Bechtel Conference Center, Encina Hall, Entry level)

Monday, July 20: Polifical Development

9:00 am - 9:30 am Welcoming Remarks (Faculty)

9:30 am - 11:15 am Dimensions of Development (Lecturer: Francis Fukuyama)

11:15 am - 11:30 am Break

11:30 am - 1:00 pm Three Approaches to Development (Lecturer: Steve Krasner)

1:00 pm - 2:00 pm Lunch

2:00 pm - 3:45 pm Rule of Law and Comparative Constitutionalism (Lecturer: Erik Jensen)

Tuesday, July 21: Global Democratic Trends

9:00 am - 10:30 am Introduction to Economic Development (Lecturer: Marcel Fafchamps, Chair: Francis Fukuyama)

10:30 am - 10:45 am Break

10:45 am - 12:15 pm Is there a Global Democratic Recession? (Larry Diamond and Marc Plattner)

12:15 pm - 1:15 pm Lunch

1:15 pm - 2:45 pm The Role of Civil Society in Democracy and Autocracy (Lecturer: Kathryn Stoner)

Wednesday, July 22: Economic Development

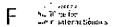
9:00 am - 10:30

Special Discussion on the Draper Richards Kaplan (DRK) Foundation with Bill Draper, Co-Chair and Christy Remey Chin, managing director at DRK Foundation, Chair: Francis Fukuyama

10:30 am - 10:45 am Break

3

Stanford CDDRL Summor Fellows Program on Development



10:45'am - 12:15 pm Development Economics (Lecturer: Alberto Diaz-Cayeros, Chair: Erik

Jensen)

12:15 pm - 1:15 pm Lunch

1:15 pm - 3:15 pm Case Study: Serious Business: Diminishing the Size of the Informal

Sector in Medellin, Colombia (Lecturer: Francis Fukuyama)

6:30 pm Scaling Tech4Good - TechSoup's Social Enterprise as a Driver for

Building Hacktivism with TechSoup.org's Chris Worman, Senior Director

of Marketing and Communications

Dinner Served at 6:00 pm

Thursday, July 23: State-Building

9:00 am - 10:30 am Making Democracy Deliver: How to Get Better Public Management

(Lecturer: Francis Fukuyama)

10:30 am - 10:45 am Break

10:45am - 12:15 pm Administrative Law (Lecturer: David Engstrom, Chair: Erik Jensen)

12:15 pm - 1:15 pm Lunch

1:15 pm - 2:45 pm The Relationship of Law to Economic Growth and Development

(Lecturer: Erik Jensen)

2:45 pm - 3:00 pm Break

3:00 pm Depart for Google

3:30 pm Google Visit and Tour with Megan Ryskamp, Head of Social Impact

Partnerships at Google

5:00 pm Return to Stanford University

Friday, July 24: Global Health

9:00 am - 10:15 am TED-talk Panel 1

10:15 am - 10:30 am Break

Stanford CDDRL Summer Follows Program on Democracy and Development

10:30 am - 12:00 pm Combating Pneumonia in Bangladesh: Many Sectors, Many Decisions (Lecturer: Steve Luby, Chair: Francis Fukuyama)

12:00 pm — 1:00 pm Lunch

1:00 pm - 2:30 pm Global Health (Lecturer: Paul Wise, Chair: Francis Fukuyama)

Friday Evening:

5:45 pm Shuttle will depart from Escondido Tumaround

6:00 pm - 9:00 pm Dinner at Larry Diamond's house (Optional)

9:15 pm Arrive back at Escondido Turnaround

Saturday, July 25: Tour of San Francisco (Optional)

8:00 am Breakfast at Encina Hall

8:30 am Shuttle will depart from Encina Hall

9:30 am - 12:30 pm Bus Tour of San Francisco

12:30 pm - 2:30 pm Lunch at Fisherman's Wharf, San Francisco

2:30 - 8:00 pm Free time at Union Square

8:00 pm Depart for Stanford from Union Square

9:30 pm Arrive back at Stanford at Escondido Turnaround

Sunday, July 26: Dinner at Ingrid Hills' Home (Optional)

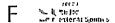
5:00 pm Marguerite shuttle will depart from Escondido Tumaround

5:30 pm Dinner at Ingrid Hills' house

8:30 pm Arrive back at Stanford at Escondido Turnaround



Stanford CDDRL Summer Follows Program on Democracy and Development



WEEK TWO: Governance and the Interaction between Democracy, Development, and the Rule of Law

(Bechtel Conference Center, Encina Hall, Entry level)

Monday, July 27: Transitions To and From Democracy

9:00 am - 10:30 am The Case of Weimar Germany (Lecturer: Jim Sheehan, Chair: Larry

Diamond)

10:30 am - 10:45 am Break

10:45 am - 12:15 Causes of Democratic Breakdowns (Lecturer: Larry Diamond)

12:15 pm - 1:15 pm Lunch

1:15 pm - 2:45 pm Causes of Democratization (Lecturer: Michael McFaul)

Tuesday, July 28:

9:00 am - 10:15 am TED-talk Panel 2

10:15 am - 10:30 am Break

10:30 am - 12:15 pm Civil Military Relations (Lecturer: Karl Eikenberry, Chair: Erik Jensen)

12:15 pm - 1:15 pm Lunch

Transitional Justice and the ICC (Lecturer: Beth Van Schaack, Chair: 1:15 pm - 2:45 pm

Erik Jerisen)

2:45 pm - 3:00 pm Break

Anne Marie Burgoyne, Managing Director of Impact Investing at 3:00 pm - 4:15 pm

Emerson Collective (Chair: Larry Diamond)



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Wednesday, July 29: US Foreign Policy

9:00 am - 10:15 am TED-talk Panel 3

10:15 am - 10:30 am Break

10:30 am - 12:00 pm Ambassador Panel (Lecturers: Karl Eikenberry, Michael Armacost, and Michael McFaul, Chair: Larry Diamond)

12:00 pm - 1:00 pm Lunch

1:00 pm - 1:15 pm

Group Photo

1:15 pm - 2:30 pm

American Foreign Policy (Lecturer: Condoleezza Rice, Chair: Larry

Diamond)

Thursday, July 30: Democracy Assistance and Food Security

9:00 am - 10:30 am International Movement Towards U.S. Democracy Assistance (Lecturer:

Carl Gershman, Chair: Francis Fukuyama)

10:30 am - 10:45 am Break

10:45 am - 12:15 pm Democracy Promotion Panel (Lecturers: Larry Diamond, Francis Fukuyama, Michael McFaul)

12:15 pm - 1:15 pm Lunch

1:15 pm - 2:45 pm

Food Security (Lecturers: Roz Naylor/Steve Stedman).

6:00 pm

Optional Film Screening of Brother Outsider: The Life of Bayard Rustin, moderated by Carl Gershman (Encina Hall, Oksenberg conference room

3rd floor)

Dinner will be served at 5:30 pm and the screening will begin at 6:00 pm

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Friday, July 31:

9:00 am - 10:15 am TED-talk Panel 4

10:15 am - 10:30 am Break

10:30 am - 12:00 pm Technological Progress, Population Health Improvement, and

Contemporary Challenges in Global Health Policy (Lecturer: Grant Miller,

Chair: Kathryn Stoner)

12:00 pm - 1:00 pm Lunch

1:00 pm - 2:30 pm Judging in the U.S.: Inside the Court and Beyond (Lecturer: Justice

Mariano-Florentino Cuéllar, Chair: Erik Jensen)

Friday Evening

6:00 pm Marguerite Shuttle will depart from Escondido Turnaround

6:30 pm - 9:30 pm Dinner at Michael McFaul and Donna Norton's Home (Optional)

10:00 pm Arrive back at Stanford at Escondido Turnaround

Weekend is Open for Free Time and Exploration

三、心得報告

中華民國(臺灣)參加 「跨太平洋夥伴協定」(TPP) 之政治與經濟因素障礙及解決之道

外交部國際合作及經濟事務司 金融合作科 趙科長彥清

中華民國一〇四年十一月一日

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第六章 結語

出國報告書:中華民國(臺灣)参加「跨太平夥伴協定」(TPP)之政治與經濟因素障礙及解決之道

導言

目前國際積極進行各項區域貿易協定之談判氛圍中,於亞太地區目前主要有「跨太平洋夥伴協定」(The Trans-Pacific Partnership, TPP)及「區域全面經濟夥伴協定」(Regional Comprehensive Economic Partnership, RCEP)等兩項談判獲得國際間廣泛之矚目,此一情況,可提供台灣擴展參與國際經貿場域之機會,但如何掌握此一機遇,實有待明確之政策指示,與迅速整合國內各部會之資源研析相關議題,以利全力以赴推動申請與加入各項對我有利之區域自由貿易定。

從初步對 TPP 與 RCEP 兩項協定之分析,由於加入 RCEP 對於台灣而言,其參與之初始條件難度較高,而且純就台灣本身之角度而言,加入 RCEP 在政治與經濟上之利益低於加入 TPP,其理由將於本報告之第二章中加以討論。因此本研究將專注於研析臺灣加入 TPP 此一議題,就此,有下列數個面向值得討論²:

- (一) TPP之實質內容、其成立之動機與緣由、相關之區域政治與經濟背景,以及其成立後對於區域貿易的影響,與其在重新建構國際多邊貿易體制與商業模式上之角色;
- (二) TPP 設定之達成目標,以及 TPP 目前於本年 10 月完成談判後,在各成員國中進行批准程序時所可能遭遇之障礙為何?以及 TPP 對其成員間貿易之影響;
- (三) 亞太地區貿易環境近年來之變遷情形,以及此一環境改變對台灣地位

² CDDRL, Stanford University, Conference Report, "The Trans-Pacific Partnership and Taiwan's future development strategy", Jan. 13, 2014, p.2.

之影響;

- (四)外部貿易環境對臺灣經濟發展之影響,尤其考量到臺灣經濟對國際貿易之高度依存性,以及如何面對台灣對中國大陸的經濟依賴度日增, 而造成國家安全疑慮議題之情形;
- (五)臺灣加入 TPP 之經濟效益分析,可由:(1) TPP 對全球供應鏈之重組效應;(2)傳統自由貿易協定之經濟效益低於預期;(3)經濟自由化改革下,將會造成長期獲得利益效率之減損;(4)自由貿易協定之所得重分配的效果等,加以分析加入 TPP,對於台灣可能之經濟影響。
- (六) 貿易議題在臺灣地方政治中之影響性,了解並分析支持或反對區域貿易協定之關注政治與社會議題社群團體的特性,以及世代間對要求國家資源分配正義與對抗不當掠奪情形之反應,其對形成臺灣貿易政策過程中之地位;
- (七) 就 TPP 對台灣的政治效應分析而言,可從下列數點加以討論:(1) 降低對中國大陸經濟依存度之政治意義;(2) 增強我國民眾對自由貿易與經濟協定的信任度;(3) 國際間對於中國大陸因素之分析與應對;(4) 地緣政治之考量。
- (八) 依照目前談判完成之 TPP 內容,臺灣應有之相關作為,以符合加入 TPP 之條件。

本報告即就上述八項議題,分為下列章節加以討論:第一章為 TPP 簡介、第二章為加入 TPP 對我國之優先性、第三章為 TPP 之經濟效益分析、第四章為 TPP 之政治效應分析、第五章為我國加入 TPP 策略、及第 六章為結語。

第一章 TPP 簡介

第一節 TPP 之形成與發展背景

在多邊貿易體制的杜哈回合談判遭逢困境之時,甚至美國前貿易代表 Ms Susan Schwab 亦曾表示「杜哈已死」3。TPP 談判的適時出現,引入新的貿易議題,在21世紀的國際貿易規範體系中佔有重要之地位。

TPP 係根源於「跨太平洋策略經濟夥伴協定」(Trans-Pacific Strategic Economic Partnership)或簡稱 P4 協定,係由汶萊、智利、紐西蘭及新加坡於 2006 年簽署生效,其目的係在建立一模範協定以吸引其他亞太地區國家加入。2008 年 9 月澳洲、祕魯、美國及越南加入,2010 年 10 月馬來西亞加入,2012 年 10 月加拿大及墨西哥加入,日本則最後於 2013 年加入。所以目前加入 TPP 的 12 個談判國家為:澳洲、汶萊、加拿大、智利、日本、馬來西亞、墨西哥、紐西蘭、祕魯、新加坡、美國以及越南,有可能在談判成功簽訂協定後,繼續進一步擴充到其他 APEC 的成員國家。4

TPP 在經濟以及政治層面上的影響力皆非常深遠,2014年 TPP 成員國之 GDP 可達 25 兆美元,約佔全球之百分之四十;出口數額則達 4.8 兆美元,約占全球之百分之二十七。但 TPP 之價值遠超過進出口貿易與投資面向,因其可成為指標性的貿易談判實驗場,創造有用的相關貿易議題先例。 TPP 亦可望開拓 APEC 區域的經濟整合,並有可能引發全球貿易對話的契機,也許更重要的是 TPP 的戰略上功能,加強亞太地區國家間的政治以及經濟關係。

³ 参照 The Wall Street Journal, Doha is dead.., July 26, 2006 http://www.wsj.com/articles/SB115386173068716989

⁴ 参照 Schott /Kotschwar/Muir, Understanding the Trans-Pacific Partnership, p. 1-3.

√第二節 TPP 協定之內容

依照 2011 年 11 月各成員國的國家領導人支持創立 TPP 的宣言中表示: » a comprehensive, next-generation regional agreement tha liberalizes trade and investment and addresses new and traditional trade isses and 21st centtury challenges.«⁵ ([TPP]係全面性、下一個世代之區域貿易協定,將貿易與投資自由化,規範新型態以及傳統之貿易議題,以面對 21 世紀之挑戰)。從水平的面相而言,到今年四月份,全世界通知世界貿易組織 WTO 的自由貿易協定總共有 612 個,與這麼多的自由貿易協定相較之下,TPP 是最先進與高標準的,所以被稱為是 21 世紀的自由貿易協定。同時在涵蓋的內容上也遠超過其他自由貿易協定,TPP 是一項全面性的貿易協定,包括貿易相關的各種面向,例如環境保護、勞工權益保障、智慧財產權、投資爭端解決與各國法規一致化等各項重要全球性議題。

TPP 談判進行至達成決議,期間歷時超過 6 年之久,今年 10 月 5 日在亞特蘭大經過五天的馬拉松會談後,TPP 已達成最終協議,為全球貿易體制發展的重大里程碑。TPP 協定除了傳統的 WTO 議題外,尚將包含目前不受 WTO 規則規範的「超 WTO」(WTO-plus)的所謂「21 世紀」的貿易議題,也將包括跨界議題(cross-cutting issues)如:法規一致性以及供給鏈管理等。因此,TPP 與以往自由貿易協定的不同之處,在於其全面性以及先進的談判議程,有下列三點特別值得提出:

(一) 首先,TPP計畫中的貿易自由化程度以及政策的新規則,將超越其他自由貿易協定,對貨品/服務貿易與投資的影響更為深遠。 TPP將包括30個章節,目標為實質減少貿易障礙,以及更新與

⁵ Office of the United States Trade Representative, Trans-Pacific Partnership (TPP) Trade Ministers' Report to Leaders, November 12, 2011, www.ustr.gov.

擴充貿易規則;

- (二) TPP 可能是唯一一個貿易協定,在談判中仍陸續增加參與國家, 此種參與國擴充的情形加深談判的複雜度:談判經常必須重新校 準(recalibrate)「給予與取得」的內容,參與國也必須依此調整其 對貿易議題承諾減讓之範圍,以保證在最終簽訂協定時能夠獲得 國內之支持;
- (三) TPP被認為是一項中間性安排(interim arrangement),其更長遠的目標係邁向更廣闊、全區域的亞太自由貿易區(Free Trade Area of the Asia Pacific, FTAAP)的墊腳石。TPP談判不僅只設想讓新的特定參與國加入,同時也計畫及創造能使其他 APEC 國家參加與連結的貿易協定,此當然也包括中國大陸在內。

TPP達成決議之後,目前尚待十二國內部的批准程序,TPP始能生效。 雖然 TPP協定內容對各國要求遵守之貿易規範條件遠較一般的自由貿易 協定嚴苛,預期在各國的內部批准過程上會有一番苦戰。但 TPP目前已經 談判完成,僅餘何時取得所有國家批准通過之問題,縱使有國家未批准通 過之情形,仍存在由其他已批准國家先行生效施行之可能性。

由於 TPP 牽涉到許多全新的經貿議題,已遠超過傳統關於一般性的關稅減讓與人員流動的規範,並且踏出將各國內與貿易相關的法規一體化之劃時代進展,意圖彌平其他非關稅之貿易障礙,以達成實質自由貿易,撤除法規壁壘的目的。面對這項革命性的協定,不僅亞太區域未來之貿易型態將直接受到影響,甚至包括美洲與歐洲在內,也可能開始進入新一輪的國際貿易規範。

另外一個觀察 TPP 的重要方向,為其與 RCEP 間成員國之比較: TPP

包括 4 個東協國、日、澳、紐以及北美自由貿易協定(NAFTA)3 國,以及南美洲靠近太平洋岸的智利與秘魯,總共 12 國。RCEP 包括所有的東協 10 國,加上「中」、日、印度、韓、澳、紐這 6 國,總共 16 國。TPP 包括美加在內的美洲國家,而且其包含之東協國家與中國大陸有直接或間接之南海主權爭議,但沒有中國大陸、印度與韓國,而 RCEP 有「中」、印,韓,但沒有半個美洲國家。這是兩者在成員國涵蓋面上的最大差異。而且正因為 TPP 有美國卻沒有中國大陸,而 RCEP 有中國大陸卻沒有美國,所以不少人將「TPP vs. RCEP」引申附會為美、「中」在亞太區域的競爭關係,這點將在以下的章節中繼續討論。

第二章 加入 TPP 對我國之優先性

第一節 TPP 與 RCEP 之比較:實質內容之差異性

RCEP主要以東協 10 國與中國、日本、南韓、澳紐與印度等 6 國間簽訂之 5 個自由貿易協定之實質內容為基礎,整合其間不同之規定,進一步推動以東協為中心之區域整合,促進經濟貿易合作之深度及廣度。但 RCEP中包括之貨品貿易、服務貿易、投資、競爭政策、智慧財產權、經濟與技術合作及爭端解決機制,仍屬於傳統二十世紀自由貿易協定之範疇,並未如 TPP協定包含全球化進展下所衍生二十一世紀亟待解決之新貿易議題,因此就協定涵括貿易議題之設定上,RCEP 之範圍與雄心皆遠低於 TPP。

TPP協定中所涵蓋之國營企業私有化、環境保護、勞工權益、法規一致化、國家-投資者爭端解決機制,目前所了解的情形為被排除在RCEP協定之規範範圍外。因此,比較上而言。TPP的自由化程度遠超過RCEP,而且至少將不會低於美韓自由貿易協定所涵蓋之範圍與撤除貿易障礙壁壘的情形,否則將難獲美國國會之批准通過。TPP之參與談判國在加入之前即已深知此點,並且做出相應之承諾,否則亦無法獲得美國同意其加入。這些國家同時也了解到雖然TPP會要求其在國內政治上做出改變,但是同時也能夠增加國際競爭力,能夠保持與中國大陸在國內以及國際市場上並駕齊驅。這也是越南雖然會經歷長期間改革經濟結構的階段,卻仍然選擇加入TPP時的考慮因素。。

此外, TPP與 RCEP 這兩種不同區域整合典範的競爭,在 2014 年時被 突顯出來,當年於北京召開的亞太經合會中,強調未來亞太區域的自由貿

⁶參照 Schott /Kotschwar/Muir, Understanding the Trans-Pacific Partnership, p. 11.

易協定(FTAAP),會在 TPP 與 RCEP 的兩軌並進下發展。當時有許多分析家認為,由於以減讓關稅為主的 RCEP,不若 TPP 般會對國家有許多範圍廣泛的調整國內法規的要求,由於此一實質內容之差異性,外界多認為RCEP 談成的機會比 TPP 高。但是目前 TPP 已先於 RCEP 完成談判,亦可說明此一實質內容之差異性與難易程度之區別,並未影響完成談判之時程先後,反而是談判內容較難與複雜的 TPP 跑贏 RCEP,可能先成為下一步FTAAP 談判的標準設定者。

總結而言,透過此2個貿易協定實質內容之比較,由於加入TPP之標準、引入需要國際機制解決之新議題與涵括範圍皆高於RCEP,因此對於推進整合國際貿易環境以符合新時代考驗,以及在與時俱進之功能上,TPP亦應高於RCEP。

第二節 TPP 與 RCEP 之比較:參與條件之差異性

首先,對於接受新成員之參與條件,TPP與RCEP皆以加入需待完成 談判之後為條件,而目前TPP已於本(104)年10月完成,RCEP預計完成 談判時間雖訂為2015年,然而近來中國大陸與部分東協國家之間的南海 爭端之檯面化與白熱化,恐增加談判完成之困難度。

另外,就加入之資格條件而言,TPP允許APEC會員、其他國家以及個別關稅領域加入,我國為APEC會員,純就形式上而言,已符合加入TPP之資格要件。而就RCEP之加入形式要件,加入國必須先與東協國家間簽訂自由貿易協定後,始具有加入RCEP之資格。因此對於我國而言,加入TPP之條件較加入RCEP為容易,無須以簽署其他自由貿易協定為前提。而且縱使加入RCEP之條件,於其完成談判之最終結果中有所改變,改而採取與TPP相同之資格要件,而不再做其他要求,但是我國仍須考量

中國大陸在 RCEP 中具有重大影響力之事實,而可能成為對我參與 RCEP 之不利因素。

第三節 加入 TPP 符合台灣之國家利益

台灣國家利益目前面臨最大的挑戰,是如何繼續確保國家安全,以及經濟上永續發展。在討論這個問題之前,似有必要重新研析東亞之政經情勢之演進。中國大陸習近平於 2012 年取得政權之後,東亞的政治與經濟國際環境已產生急劇變化,美國的向亞洲再平衡外交政策,其主要緣起在於對應中國經濟與軍事實力日漸強大,改變區域原先的權力平衡態勢;此外,中國大陸目前已是全球第二大經濟體,更幾乎是東南亞區域全部國家之最大貿易夥伴,其軍事支出僅次於美國,佔全部亞洲國家軍事支出之百分之四十。更由於中國大陸之海軍實力日漸強大,在東海以及南海主權爭端區域嘗試改變現狀的擴張以及強硬政策,有可能結束美國近六十年來的海權獨霸局面,使得日本與東南亞國家陸續採取與美國圍堵中國政策互相相應之立場。

台灣在兩岸經濟關係日漸密切的發展下,如何維持適當之獨立性,以 維護自身國家安全,現已成為刻不容緩的議題。在馬英九總統主政八年之 外交政策下,我國目前面臨之主要挑戰,在於從以往爭取雙邊邦交國之零 和賽局,轉向為單向倚靠中國大陸肆放出之薄弱善意基礎下,如何重新定 位台灣在國際政治舞台中之地位,以達成繼續維護台灣之外交國家安全之 目標。過去幾年內,讓國人有感之外交成就,首推國人旅遊免簽證國家數 之大幅增加,以及成功簽訂台日漁業協定、台日投資協定、台紐與台新經 濟合作協定等,實質增進我國之國際地位;但毋庸諱言者,我國之外交政 策目前仍須尋求與調整總體之戰略方向,以達成前述繼續維護台灣之外交 國家安全之目標。

進一步而言,中國大陸在促統之政策下,實行以經逼政,透過兩岸經濟統合以達成統一台灣之終極目標;而在中國大陸市場之磁吸效應以及中國政治經濟勢力崛起之大環境下,台灣對中國大陸之經濟依存度與日俱增,造成台灣國家安全嚴重傾斜之情況。台灣在此不利之情況下,實應採取加強擴展與國際社會之實質多邊外交經貿關係策略,以為因應;我國於過去八年間雖然成功簽訂台紐與台新經濟合作協定,但仍有極大之努力空間。

討論我國應採取之整體外交戰略,論者多有從「和陸、友日、親美」之基本思維出發,以討論具體外交戰術策略之推動。此一立論之觀點洵屬正確,但實質上仍面臨許多執行面上之問題;舉例而言,在成功簽訂兩岸經濟合作架構協定(ECFA),以及台日漁業協定、投資協定,達成「和陸、友日」之階段性目標,卻在推動「親美」簽訂台美經貿協定上,遭受美牛進口等議題之干擾,迄今仍無具體之進展。此一失衡之現象,將影響整體外交戰略之有效執行,殊值外交決策者之重視。

推動加入TPP對於台灣之國家利益而言,政治層面上,即在於填補上述之戰略缺口,以彌平可能過於傾「中」所造成對國家安全之疑慮。同時在經濟上,亦可利用TPP成為產業升級之機會,使台灣邁向已開發國家之成熟經濟體,發展高獲利的智慧型商業模式,妥善提升在金融服務、綠能以及資訊產業之競爭利基,健全相關之經濟競爭法規,與促進法治保障智慧財產權。基於此,加入TPP應可符合台灣長遠之國家利益。

第四節 加入 TPP 之外部障礙可予排除

與目前參加 TPP 的 12 個國家的經濟自由度相比較,台灣正好位於中

間值。2015年台灣的經濟自由度指標低於美國、加拿大、智利、新加坡、 澳洲與紐西蘭等六國,但高於墨西哥、秘魯、日本、越南、馬來西亞與文 萊等六國。台灣的經濟自由度指標分數是 75.1 分,高於日本的 73.3 分。⁷所 以純粹就經濟自由化層面之因素而言,台灣符合加入 TPP 的實質資格。

因此,台灣加入TPP的困難點,主要仍在於國際政治上所面臨的障礙, 但是此項外部障礙,可以透過與TPP成員國在國際場域的議題設定,以及 妥善的雙邊諮商加以解決。

就台灣與TPP 成員國在國際場域的議題設定上,由於目前TPP 已完成談判,可預期今年11月於APEC之議程,將受到TPP之影響,而往年亞太自貿區(FTAAP)整合模式的TPP vs. RCEP之爭,也可能朝向TPP之方向前進。因此,我國應積極參與APEC會議中對TPP之討論,在目前亞太自貿區的設計典範可能就是根據TPP的情勢下,因勢利導,爭取我國以APEC會員身分加入TPP之有利戰略位置,並排除相關之外部政治障礙。

另一方面,在與TPP目前12個成員國進行妥善的雙邊諮商上,則有賴分別尋找我國與個別國家間互利之政治與經濟誘因,爭取對我國加入TPP之支持。由於目前亞太地區經濟政治情勢之變遷,增加我國可資運用之外交與經貿之談判空間,允宜善加研析。此點在討論完第三章與第四章之TPP的經濟與政治效應後,亦可獲得進一步之指引方向。

第五節 加入 TPP 我國具有策略上之主動權

就決定是否推動加入 TPP 此一議題上,實際上操之在我,我國具有策

⁷ 2015 Index of Economic Freedom, Terry Miller/Anthony B. Kim, The Heritage Foundation.

略上之主動權。而在進入解決台灣加入 TPP 的難題之前,瑞士經驗對於台灣或許可以提供未來發展方向的啟示。瑞士缺乏自然資源,處於週遭德國、法國與意大利等大國環伺的情況。而且國內的語言有德法義三種不同的語言,宗教上有新教與天主教對立,各種政治立場分歧。雖然今日的瑞士是全世界最富裕的國家之一,但在十九世紀工業革命前卻曾是歐洲最貧窮的國家,在貧無立錐之地的情況下,瑞士的成年男子在國外充當傭兵,常常在激戰中,交戰雙方死傷的士兵都是瑞士傭兵。在這樣的歷史因素下,瑞士人對戰場上傷兵無人救護的悲慘情況體會最深,也因此提倡成立國際組織紅十字總會,提供戰爭中的人道援助,也因為這樣的背景,瑞士也逐漸發展成為國際組織的中心,基本上將環境先天的劣勢轉化為競爭的優勢,此類例子在瑞士的政經發展史上不勝枚舉,但是其中一項最重要的政治與社會制度因素,則在於瑞士的直接民主制度與法治精神下,保障公民各項自由權,由於尊重個人人權,使每個人的能力都能達到最大的發揮,促進了國家的發展。

台灣目前所處的國際與國內環境的現勢,也有許多和瑞士相似之處,台灣位處美國、日本與中國大陸等大國權力競逐的暴風圈當中,內部也有統獨等政治立場分歧的問題,加上近年經濟的成長緩慢,很多國人都有經濟邊緣化與衰退的恐懼感。這些因素對於我國要加入TPP表面上看起來都是不利的,所以我們要如何將這樣的不利轉化為有利呢?台灣也可以像瑞士一樣能夠化劣勢為優勢嗎?仔細分析,所提到台灣在國際上、國內政治上、以及經濟上所遭遇的三項難題,基本上都可以轉化為我們推動加入TPP的助力。

所以要如何將劣勢轉化為我國主動加入 TPP 的優勢呢 ?關於台灣在國際政治上的劣勢,我國可以利用 TPP 在地緣政治上的考量,使台灣成為關鍵的區域和平穩定力量,成為主動的優勢。面對國內政治立場上的分歧,

我國可以透過繼續推動改善台灣的民主法治的建全,以及提升台灣的公民社會,成為符合 TPP 高標準國際規範的最佳基礎。台灣在經濟上面前遭遇成長緩慢的問題,可是已經累積的高素質人力資源以及台商在亞洲各地投資的經驗,我國是 TPP 要重構全球供應鏈的重要知識與資金來源國,我們可以成為區域經濟自由化的推手。

綜合上述,我國可在地緣政治上、改善與修正國內法規與體制、以及區域經濟自由化上,皆具有加入 TPP 策略上之主動權,以下第三章至第五章也將遵循此一脈絡,繼續討論各項相關議題。

第三章 TPP 之經濟效益分析

由於美、日於過去 10 年間各自面臨不同的經濟危機,中國大陸在此同時則伺機崛起,成為世界工廠。我國在馬政府執政後的政策下,採取進一步與中國大陸經濟整合的策略,希望能夠共蒙經濟成長之利,中國大陸並配合採取對台灣經濟「讓利」政策,共同嘗試透過建構經濟上的緊密關係,逐步將兩岸關係體制化;而此一發展將涉及到我國在長期地緣政治上之政策目標,以及對其他周邊國家在亞太區域產生戰略上的影響。但是在目前我國對於亞太區域的政治與經濟目標仍混沌不清的情況下,兩岸的快速經濟整合,卻已先造成台灣對中國大陸之經濟依存度與日俱增,且內部經濟上亦未蒙其利,反而在政治上招致國家安全疑慮之後果。

因此,目前亞太地區已經成為世界經濟的「重力中心」,不僅在製造業上舉足輕重,更在吸引外資與人才上,競爭力與日俱增。TPP 在經濟上可提供我國更多元化的經濟貿易選項,不至於形成把所有雞蛋放在中國大陸一個籃子的偏頗情形。本章希望就 TPP 對全球供應鏈之重組效應為出發點作分析(第一節);並且討論由於傳統自由貿易協定之經濟效益低於預期,造成 TPP 出現嘗試創造新形態之貿易協定(第二節);另一方面,經濟自由化改革下,並未使所得分配更公平,因此造成長期而言,獲得利益效率之逐漸減損之問題(第三節);也因此如何透過自由貿易協定,使得所得重分配效果能更符合社會正義,必須是 TPP 追求之主要目標(第四節)。

第一節 TPP 對全球供應鍵之重組效應

在傳統的國際經濟學理論中,認為在自由貿易的情形下,各國將專注於

本身具有相對優勢的產業,使得全體之生產產能增加,最終可使參與自由貿易的各國皆共蒙其利。

而現今的全球貿易結構下,由於跨國企業掌控了大部分之全球貿易, 供消費者購買之產品,其組成部分經常係由不同國家分別生產,最終才組 裝完成,其間之生產供應鏈往往遍布全球各國,亦連帶影響傳統自由貿易 協定間對原產地認定標準之轉變,並因應半成品貿易適用優惠關稅之各項 問題。在 TPP 規定新的原產地規則後,將會影響原有之生產供應鏈,例如 原先於中國大陸生產之半導體元件,有可能移轉至越南或馬來西亞生產。

由於傳統自由貿易協定中對於勞工與環保議題著墨較少,但由經驗證明,各國間不同的勞工與環境保護標準,將影響其間的生產成本以及競爭關係。因此,TPP中制訂此類標準,將直接影響生產成本,亦將進一步影響全球生產鏈的重組。

第二節 傳統自由貿易協定之經濟效益低於預期

在傳統的自由貿易協定中,期待藉由消除關稅壁壘,增加全球貿易總量,進而達成促進經濟福祉之目的。但是創造貿易所得出之利潤,有很大一部分仍流入跨國財團手中,反而更擴大全球貧富差距,並未達成貿易利益共享之目標。

為解決此一問題,其中一項方案為促進各國中小企業參與國際貿易的機會,一方面使用國際合作發展援助之方法,扶助中小企業建構具備產品出口外銷之能力,另一方面則是推動各國貿易法規之一致化,使得中小企業不至於因為繁複之進出口法令,影響其進行貿易之機會。因此,TPP中法規一致化的章節,將具有改善自由貿易經濟效益之功能,亦期能朝向縮

小全球貧富差距的目標邁進。

第三節 經濟自由化改革造成長期獲得利益效率之減損

目前世界經濟之現狀,係歷經二次大戰以來透過「布列頓森林體系」 (Breton Forest)的貿易自由化過程,「關稅貿易總協定」(GATT)以及其後之 「世界貿易組織」(WTO)創造持續性的關稅減讓,使得世界貿易蓬勃發展, 頻繁的人員、貨品以及資訊的跨境流通,皆是前所未見之盛況。

但無可諱言,目前世界經濟自由化之改革,長期而言仍無法避免邊際效應遞減,使得獲得之利益逐漸減損。全球自 1990 年代末期數度發生的全球金融海嘯,一方面也反應出此種全球經濟成長逐漸疲軟的現況。解決之道,在於尋求下一階段經濟自由的進一步深化,造成國際貿易規範對象必須更形擴張,以保持全球經濟持續整合的驅動力。此一背景下,促使TPP的出現,引入新的貿易規範議題,期能解決經濟自由化改革,造成長期獲得利益效率之減損的問題。

第四節 自由貿易協定之所得重分配效果

一項具有實際效益的自由貿易協定,除了在國與國之間造成貿易移轉替代與貿易創造增加產能之效果外,在國內也將造成產業結構的轉變,這也是一般討論自由貿易協定的經濟效果時,經常會提到國內經濟輸家與贏家的問題。因為在自由貿易協定的效果下,國內缺乏相對競爭優勢的產業,將被較低廉進口價格之產品所替代,這也常是國內反對自由貿易的聲浪來源之一。

就 TPP 協定所設定的自由貿易發展方向而言,則可能提供台灣經濟轉

型的契機,也是本節所要討論自由貿易協定對於國內所得重分配效果。 對於加入 TPP,一般分析下認為對台灣經濟的益處,是在於關稅降低後對 促進台灣出口與經濟成長的效果,雖然此為 TPP 的功能之一,但就台灣之 經濟發展與轉型而言,此並非最重要之收穫。因為藉由關稅降低的貿易自 由化,雖短期內可能有助於台灣出口擴張,但仍只是降低成本、削價競爭 的思維,這對台灣目前最急需的產業升級而言,恐難有助益。

台灣經濟目前面臨之難題,即在於從開發中國家之低價競爭貿易模式, 進一步轉換為已開發國家的創新貿易利潤。因此雖然各方對加入 TPP 的利 弊數據雖多有研析,但這些評估多是在現有產業結構的假設下進行,台灣 更需要的是掌握 TPP 對既有產業結構的顛覆性衝擊。實際上,TPP 對台灣 未來最重要的意義並不在於關稅降低的貿易自由化,而是可帶來台灣轉型 改革的契機。

長期以來,台灣以加工出口或是代工產品出口,做為主要的經濟成長驅動力,而為了增加此種型態的貿易出口,台灣犧牲了薪資成長和環境保護,造成了現今最嚴重經濟問題:低新化。由於台灣欲借助內部力量改善低薪化問題,困難重重。但是經由TPP要求成員國符合國際勞工組織標準、國際環保標準,將是台灣經濟轉型的重要動力。

第四章 TPP 之政治效應分析

台灣加入 TPP 面臨許多政治上之挑戰,內部而言,由於 TPP 高度貿易自由化的要求,必然造成國內部分產業之衝擊,進而反對 TPP 之簽訂;就外部而言,中國大陸一貫之外交立場為反對台灣之國際參與,其運用日益強大的經濟政治影響力以阻擾台灣加入 TPP,亦將是預期中的反應。因此本章第一節與第二節將討論如何凝聚台灣之內部支持加入 TPP之共識:第一個因素為討論 TPP 可提供台灣多元之貿易聯繫,降低對中國大陸單一市場之經濟依存度,從而減少在政治上遭受中國大陸挾制之風險;第二個因素則為如何增強我國民眾對自由貿易與經濟協定之信任度,從而使台灣政府獲得足夠的民主授權進行參與 TPP 之談判。

第三節則進一步討論國際間對於中國大陸因素反應之分析,以及我國應對之方。首先,我國可強調 TPP 可作為中國內部改革之外部壓力,近年來雖然中國大陸在美日經濟停滯下崛起,但其經濟亦已逐漸面臨轉型期,亦需要新型之 TPP 自由貿易協定作為其改革之動機與方向,另一方面,台鈕及台新自由貿易協定顯示中國大陸之彈性立場,不再以全面圍堵台灣之國際交往與生存空間為其外交政策指導原則之一。

第四節則回顧台灣在過往是否曾有喪失加入 TPP 的機會之窗,同時也 兼論太陽花學運與台灣政黨間對 TPP 與 ECFA 之立場,分析台灣社會對於 自由貿易協定之立場。就台灣在 2010-2012 間申請加入 TPP 之可能性加以 分析,討論此一假設性問題之意義在於提供對日後加入策略提供反思與方 向,以供鑑往知來,了解台灣在未來應掌握的時機何在。

第五節進一步探討國際地緣政治因素,在亞洲成為世界經濟重心之後, 各國彼此間的利益衝突也產生了「亞洲矛盾」,美國繼續推動「向亞洲再 平衡」之政策下,TPP之戰略意義分析。

第一節 降低對中國大陸之經濟依存度

台灣經濟結構上的最大隱憂在於對國際貿易的依存度極高,有必要改善此項對大國經貿過度依賴的問題;而且在目前兩岸間貿易大幅擴張情況下,台灣對中國大陸之依存度已與日俱增,馬總統就職以來,政策選擇上以加強與中國大陸經貿往來關係,以發展台灣經濟,但如今證明只是使所得低薪化與產業空洞化更加嚴重。在目前兩岸關係中仍存有如何維護台灣國家安全課題,因此,為避免發生台灣喪失經濟自主權後,連帶失去政治自主權之情形,現階段應積極研討如何降低對中國大陸之經濟依存度,維持我國必要之自主性空間。

為了降低整體對外經貿依存度,根本解決之道在於朝向發展內需市場的方向邁進。在此值得注意者,加入TPP對於達成此一目標將有所助益,因為加入TPP有助於出口結構的優化,帶動產業升級與薪資提高,進一步提升國內消費力,以逐步建構與擴大內需市場。

雖然台灣必須考量加入TPP,可能會造成進一步融入受美國經濟掌控之範圍內。事實上,台美緊密的經貿關係由來已久,縱未加入TPP,我國仍需繼續維持台美友好經貿關係。在此之政策選擇,係為了平衡簽署ECFA後過度向中國大陸傾斜之情況,加入TPP是擺脫或緩和中國大陸對台灣經濟威脅的可能方法。

另一方面,美國主導的 TPP 固然有其維護自身利益的策略考量,但其中先進的規範模式,也是台灣目前為達成轉型經濟的目標,並可成為台灣出口結構優化的驅動力量。當前台灣經濟最大的問題是過度依賴低成本的

製造環境,低價拓銷以驅動出口,達成經濟成長的目標。但是此種開發中國家應採取之經濟成長策略,已不符台灣下一階段的經濟發展目標,目前必須朝向產業升級與薪資提升。從經濟升級的角度而言,加入 TPP,是台灣產業與出口結構調整的契機,來扭轉變過去以血汗與低成本以擴充出口的模式。因此,對於加入 TPP,縱有若干疑慮,我們應要勇敢接受它並克服它,因為下一次的契機可能再難出現。

第二節 增強我國民眾對自由貿易與經濟協定之信任度

我國於過去治簽對外經貿協議時,與民眾之溝通並未循一定之模式, 因此民眾可能擔心加入 TPP 的談判與決策過程中,是否會產生如過往簽署 與審議兩岸服貿協議所產生黑箱作業疑慮。惟台灣必須儘速建立簽訂 FTA 之公民參與意見表達之模式,以面對與克服此一政策雙向溝通之問題。

加入TPP必須面對民意的挑戰,此一課題無從迴避,有賴於政府致力建立制度與全民努力監督加以解決。政府必須妥善回應反對TPP的各項理由,除了化解對經貿自由化的一般疑慮外,此外對ISDS(投資爭端解決機制)、食品安全、藥品專利等制度引入國內時,對於在自由化的過程中是否會造成主權讓渡效果等問題,亦須與民眾維持良好溝通。

但事實上,這些我國可能面臨的疑慮,以及TPP將帶來對某些產業的衝擊,加上國內經貿相關法規修正所需之成本,在TPP的12個成員國中也同樣可能存在。而TPP在本年10月終能達成協議,似可說明了這些國家仍然在評估後,認為加入TPP可帶來的整體利益,應大於國內各項經貿調整成本及受衝擊產業之補償,台灣似可從中汲取相關經驗,以妥善對民眾與產業界說明相關情形。

第三節 國際間對於中國大陸因素之分析與應對

一、 TPP 作為中國內部改革之外部壓力

進一步討論國際間對於中國大陸因素反應之分析,以及我國應對之方。 首先,我國可強調 TPP 可作為中國內部改革之外部壓力,近年來雖然中國 大陸在美日經濟停滯下崛起,但其經濟亦已逐漸面臨轉型期,亦需要新型 之 TPP 自由貿易協定作為其改革之動機與方向。

回顧中國大陸加入世界貿易組織 WTO 的經驗,當年中共總理朱鎔基 係以積極推動加入 WTO,作為迫使中國大陸內部不得不積極進行改革之 外推手,因為中國大陸基於本身政治制度,從內自發性之經濟改革有其困 難度。當中國大陸在 2002 年完成入會談判後,逼使內部亦儘快完成經濟 自由化,事實亦證明此幫助中國大陸大幅擴展貿易。

二、台紐及台星自由貿易協定顯示中國大陸之彈性立場

另一方面,台紐及台星自由貿易協定顯示中國大陸之彈性立場,不再以全面圍堵台灣之國際交往與生存空間為其外交政策指導原則之一。新加坡與紐西蘭皆為 TPP 之成員國,我方以此做為雙邊諮商加入 TPP 之起始點。

第四節 國際地緣政治因素

在影響 TPP 之國際地緣政治因素中,有 5 點可供考量:(一)亞洲成為世界經濟重心及「亞洲矛盾」;(二)美國繼續推動「向亞洲再平衡」之政策;(三)美中台三角地緣政治關係;(四)東海主權爭議與日本扮演之角色;(五)南海主權爭議

美國受到金融風暴以及對伊與對阿兩大戰爭之影響,國力受到減損,相較於中國於 2009-2010 年間迅速恢復經濟活力,美國在亞洲安全提供者的地位受到嚴峻之挑戰。雖然美國歐巴馬政府一再強調其向亞洲在平衡政策並非針對中國,而是在於加強與這個全球最有發展動能與最具經濟重要性區域的連結,因此也包含與中國加強雙邊既合作又競爭之關係,以其共同解決區域的衝突熱點如北韓之問題。

雖然並未明言,但美國實際上已經意識到,縱使美國之前扮演協助亞 洲國家在經濟上迅速發展的角色,其中也包含中國,但目前美國的國力已 無法獨力維持亞洲的安全與穩定,歐巴馬政府因此期望加強與亞洲國家加 強多邊之同盟關係,共同維護區域安全。

在 1989 年後的後冷戰時期至 2008 年間,美中台三角關係可大致分析 共歷經三個階段: (1)融冰期(thaw); (2)急凍期(freeze); (3)緩和期(dé tente)。

在第一個階段之融冰期,兩岸關係由原先之互不接觸,藉由台灣於 1980年代後期開放赴大陸探親後,各項雙邊接觸逐漸擴展,促成了於 1992 年雙方首度接觸談判之辜汪會談;但大陸仍嘗試在各個國際場域切斷台灣 之外交生存空間,而台灣則係以務實外交,發展實質雙邊關係以回應中國 大陸孤立台灣之企圖。

在第二個階段的急凍期,則是源於中國大陸對於台灣的民主化以及本土化的過程產生疑慮,認為台灣執政當局逐步推動台灣獨立,在1995年以後採取文攻武嚇之策略,並在台灣於1996年舉行第一次民主直接總統選舉時,嘗試以試射飛彈軍事演習之方式恫嚇台灣民眾,藉此干預影響選舉結果。在1997年香港、以及199年澳門回歸中國後,增強中國之民族主義,由原先共產主義意識形態的政權正當性基礎,轉換為愛國主義以化

解其內部矛盾;兩岸間接三通的交往雖然日漸密切,但在台灣內部的族群之爭下,統獨問題逐漸浮現,兩岸關係並未獲得實質進展。

第三個階段則為緩和期,2000年台灣總統選舉政黨輪替後,中國大陸仍然延續一貫在國際上打壓的手法,但在兩岸同時加入世界貿易組織後,台灣對中國大陸投資持續升溫,雙方生產供應鏈之整合亦日趨密切。2002年胡溫體制上台後,提出中國和平崛起論,以降低國際間對中國之疑慮,並取得國際政治與經濟之利益。2004年民進黨再度勝選後,中國大陸採取兩手策略,一方面於2005年制定「反分裂法」,片面劃定兩岸關係紅線,另一方面於同年成立「國共論壇」,營造兩岸平等對談之氛圍。2008年時中國大陸以維持現狀說,有效降低台灣民眾對於中國大陸武力統一威脅吞併台灣之疑慮,亦成功影響部分台灣總統選舉之取向。

2008年馬英九總統就任後,採取先經濟後政治之推動兩岸統合政策, 首先開放直接三通,繼而開放陸客、陸生與陸資,於 2010年簽署兩岸經濟合作協定(ECFA),2012年馬英九總統續任後,亦有趨勢朝向促成兩岸領導人會面政治突破之方向,惟因簽署兩岸服務貿易協定引發 2014年3月之太陽花學運,凸顯台灣民眾對於兩岸經濟進一步統合之疑慮,以及習近平上任後在國際與國內皆採取強硬政策,使得目前兩岸關係並未進展至討論政治整合之階段,中國大陸之促統政策亦在轉變之中。

在三角地緣政治關係之中,可分析為下列四種可能情形: (1)結 盟關係:由其中兩方結盟,以對抗另外一方; (2)等距關係:一方與其他 兩方皆保持相同之關係,不偏重任何一方; (3)對抗關係:三方間互相對 抗,彼此間不相結盟; (4)協和關係:三方間互相友好,互不侵犯。

目前伴隨著中國國家主席習近平取得權力後,在東海以及南海主權爭議問題上,採取擴張與對抗的態勢,影響美國在亞洲地區之既有利益,美

國與中國間的大國競逐之對抗賽局情勢已逐漸明朗,上述三角關係中第四種之協和關係短期內在國際現勢上無法達成,而且協和關係下常造成強者剝奪弱者之情形,將使弱者陷入情勢不明之區域(terra incognita),對於弱者甚為不利。

而採取第三種之三方對抗關係,就我國而言,實力遠小於美中兩國, 在現實上亦非可行之選擇,尤其我國目前之國防支出 85 億美元(占 GDP 之 2.4%),遠低於中國大陸之 2160 億美元(占 GDP 之 2.1%)與美國之 6100 億美元(占 GDP 之 3.5%),軍事力量相差懸殊。因此,對抗關係亦非我國 在此三角關係中之應然選項。

而就第一種之結盟關係分析,如果台灣與中國大陸結盟美國基於其本身之國家安全與區域安全之考量,並不樂見兩岸統合下,給予中國大陸突破第一島鏈後,除了強化其 A2AD (Anti-Access/Area Denial,反介入/區域拒止)、ASMD(Anti-ship ballistic missile,反艦彈道導彈)及斬首戰等不對稱戰術運用之能力外,在東海以及南海主權爭議問題上,亦將使其進一步獲取地緣政治上之優勢。反之而言,如果台灣與美國結盟,因此,中國大陸亦將運用其對台灣的經濟影響力全力阻止台美結盟關係的形成。

基於上述分析,對台灣而言,剩餘之唯一選項僅有與中國大陸與美國皆保持等距之地緣政治關係。無庸諱言者,兩岸間經濟實力之差距日形擴大,1992年時中國大陸之 GDP 僅為台灣之 2 倍,2000年時擴大為 4 倍,到了 2008年則已達 10 倍;而且中國大陸已經成為台灣的最大貿易伙伴以及最大的對外投資接受國,台灣對中國大陸的貿易依存度已超過 40%,台商極度依賴在中國大陸的投資,所造成之經濟依存度亦已大到無法忽視。也因此,目前台灣要採取等距關係,則在經濟層面上必須強化與美國的經濟合作關係,同時降低對中國大陸的經濟依存度,始有可能達成平衡的等

距狀態。

由於兩岸間之經濟合作框架協定(ECFA)已於 2010 年生效,並且於 2013 年簽署服務貿易協定,雖然因為 2014 年 3 月的太陽花學運,使得兩岸經濟整合的時程受到阻礙,但是兩岸經貿協定涵蓋範圍,已遠遠超越台美間之經濟以及貿易自由化的程度。雖然台美間透過 TIFA(貿易暨投資架構協定)進行貿易對話,但距離簽訂實質之自由貿易協定路途仍甚遙遠。

另一方面,中美兩大強權競逐的國際態勢已逐漸明朗,此種持續兩極化的結果將非常不利於台灣的國家安全策略,應極力避免成為兩強相爭下的犧牲者。台灣如何採取精緻的「等距外交平衡」手段,以化解此一地緣政治上之劣勢,甚至成為國際競爭之優勢,實為一重大課題。因此,TPP提供了台灣一個難得之契機,得以在分析各項地緣政治因素後,取得加入TPP的有利位置。

第五章 我國加入 TPP 策略

第一節 了解分析 TPP 談判議題與革新國內法規以符合 TPP 之標準

TPP 的主要目標有三:(一)建立全面性的協定,消除貨品及服務貿易的障礙;(二)開創新的貿易規則,規範諸如:勞工、環境、投資、競爭政策、以及國營事業等領域;(三)對於影響貿易與投資流向的政策,尋求發展更具一致性的跨部門規則。換言之,TPP 在於透過減免關稅以及消除非關稅之貿易障礙,以改善農產品與工業產品的市場進入,自由化服務業之貿易與投資,並在如競爭政策、投資與國營事業等領域引入「超WTO」之規範,開創新的國際貿易規則⁸。

因此,我國要加入TPP,也必須要全面盤點國內法規現狀,與現有 TPP 議題做一比較分析,了解需要革新的部分,修正法規與改善國內產業 結構,以期能達到符合TPP標準之目標。原產地規則、發展議題、國際智 慧財產權保護、菸品管制措施、農產品、服務業貿易、國對國爭端解決機 制、投資者對國家爭端解決機制、環境及氣候變遷、以及法規一致化等 10項領域,分析目前TPP規則的發展情況。

以下擬以 TPP 環境及氣候變遷章節之相關規定為例,了解分析 TPP 談判議題,以及如何革新國內法規以符合 TPP 之標準。

國際貿易的發展使得全球生產力與消費程度提高,其中一項結果即為 造成自然資源之加速消耗,進而影響生態環境與產生各項工業與廢棄物之 汙染,從此一角度而言,增加全球貿易並不利於環境之保護。但從另一角

⁸参照 Schott /Kotschwar/Muir, Understanding the Trans-Pacific Partnership, p. 12.

度而言,貿易帶動國家之經濟發展,得以取得更多資源與技術投入環境保護,解決環境損害與污染之問題,並可取得更佳之生產技術,促進工廠環保標準之升級。

而國際貿易協定更應以強化各國政府解決環境問題之能力為目標,力如透過降低對環境商品之貿易障礙,可以減少綠色技術之成本,以支持全球面對解決氣候變遷挑戰之努力。⁹ 另一方面,由於國際貿易協定往往未能有效規範環境議題,使得環境標準較低之國家,產品之生產與出口之成本較低,產生不公平之貿易競爭優勢,更有可能造成各國競相降低環境標準之向下沈淪效應,此種市場機能失效之情形,有待貿易協定中之國際規範來加以調整。因此,二十一世紀新形態之貿易協定之任務有三:其一在如何在如何利用貿易規範之制定,使促進貿易與環境保護間取得平衡。其二為在貿易自由化以及消除貿易障礙之前提下,仍然保證政府在制定國內環境保護法規之空間。其三為如何有效規範非法危害環境保育貿易,如非法盜伐林木貿易以及過度漁撈之問題。

目前 TPP-12 談判國共佔 40%之全球 GDP,33%之全球貿易量,對國際貿易議題具舉足輕重之地位,而 TPP 作為二十一世紀之貿易協定,將可對國際貿易與環境議題提供重要的解決之道。其中美國之 GDP 佔 TPP 之60%,因此美國對環境議題之立場,對於決定談判之結果具有重大之影響,也因此在此處之討論將以美國之立場為出發點,以了解美國在其自由貿易協定中如何規範環境議題。

A、美國談判貿易協定之授權

⁹ Joshua P. Meltzer, The Trans-Pacific Partnership Agreement, the environment and climate change, Ch. 10, in: Tania Voon (edt.), Trade Liberalization and International Co-operation, 2013.

依照美國憲法第一條第八項之規定,國會有權規定與外國之貿易,第二條則賦予總統專屬之議約權,依照國會「促進貿易授權」法案(Trade Promotion Authority, TPA),國會授與總統貿易談判之權限(由美國貿易談判代表 USTR 執行),但藉由決定談判議題而保留貿易政策權限。惟國會僅得表决同意或反對 USTR 談判完成之條約,而不得修正條約內容或增加附款。與此相對,總統在貿易協定談判期間必須與國會諮商,並在簽訂協定之九十天前通知國會。目前歐巴馬政府尋求國會更新 TPA,雖先獲參議院通過,但在 2015 年 6 月 12 日眾議院遭致挫敗,未來發展仍難以預料。

2007年美國國會之兩黨貿易協議(Bipartisan Trade Deal)中,關於環境議題上提出多邊環境公約之列表,要求自由貿易協定之當事國必須執行表列公約之義務,以及違反公約義務時可使用自由貿易協定之爭端解決機制加以裁決。更進一步,許多參議員要求 USTR 必須將自然資源與野生生物貿易之永續性列入自由貿易談判議題。10

氣候變遷議題並未在美國國會之貿易法案或兩黨貿易協議中出現,但是 TPP 談判中含括降低對環境商品以及服務貿易之障礙,以面對氣候變遷問題在貿易上之挑戰。

B、美國簽訂自由貿易協定中之環境章節及其對 TPP 談判之影響

美國與 TPP 之六個談判國間簽訂有自由貿易協定,惟其皆於 2007 年之前簽訂,皆未包含 2007 年美國國會兩黨貿易協議中關於環境議題之內容。以美國與澳洲間自由貿易協定為例,僅述及雙方同意執行其環境法律,但未將其置於爭端解決機制之適用對象中。

Letter from Senators R. Wyden, J.F. Kerry, J.A. Merkley, K.E. Millibrand, B. Cardin, O. Snowe, B. Boxer, S. Brown, S. Whitehouse and T. Udall to United States Trade Representative Ron Kirk, 17 October 2012.

2010 年簽訂之美國與南韓間之自由貿易協定 (KORUS),其包含之環境章節規範,對於自由貿易協定如何符合 2007 年美國國會兩黨貿易協議之要求,提供對 TPP 協定之重要指引。11

第二節 台灣單方面提高市場自由化之程度

在台灣的國際參與過程中,由於受到中國大陸的打壓,以及自 1971 年後即被排除在聯合國國際體系之外,有許多國際義務的承擔,台灣必須單方面做出承諾。其中一項顯例即為台灣遵守國際環境公約之情形,多年來台灣的作法,乃採用「自願遵守」之方式,自行進行國內相關法規修訂,從而符合國際環境相關公約之規範。如我國國內修改相關法律,恪守不進出口相關保育野生動植物,來達到自我遵守「瀕臨絕種野生動植物國際貿易公約(CITES)」(又稱華盛頓公約)的相關規定。在此種情況下,雖然我國並非聯合國會員,僅係以國際自然生態保育協會觀察員名義,參與該等組織相關會議與活動,而實質上我國已嚴格遵守 CITES 的義務。

因此在參與TPP的進程上,部分提升市場自由化的規範,如我方評估可達到與TPP相關規範接軌之目的時,即可考量採取單方面「自願遵守」之方式,深化我國之市場自由化。

第三節 爭取 TPP 現有談判國家之支持

在爭取 TPP 現有談判國家支持我國加入 TPP,我方最有利論點之一為 台灣民主與經濟制度符合 TPP 之價值,加入後可融入 TPP 體制內,擴張 TPP 之適用範圍,卻不致於與 TPP 個成員國間有太大之利益衝突,而係富

Jeffrey Scott, Barbara Kotschwar and Julia Muir, Understanding the Trans-Pacific Partnership, Peterson Institute for International Economics, 2013, p. 45.

蒙其利之情形。同時也進一步強調台灣在地緣政治中之重要性,台灣長期以來即為東亞之海上政治與經濟之槓桿支點,透過台灣可將 TPP 貿易自由化之成效與以加成。

另一方面,台灣必須繼續盤點與 TPP 現有談判國家之雙邊關係,廣泛尋求各國支持之利基點。

第四節 加強參與多邊與雙邊經濟貿易談判

我國自從加入 APEC 及 WTO 後,已累積成熟之參與多邊與複邊經濟貿易談判之人才,在推動加入 TPP 之過程中,仍然需要加強參與目前 TiSA (服務貿易協定),EGA (環境商品協定),ITA (資訊產品貿易協定)之相關貿易協定談判,交互獲取推動談判之動能。

第六章 結語

對台灣而言,TPP的衝擊來自外部與內部影響兩方面:(一)在外部方面,TPP勢將改變台灣所處的亞太經濟貿易架構,就我國之貿易結構而言,主要必須觀察 TPP 所造成之貿易移轉效果,亦即原先中國大陸生產鏈以美國為出口市場之產業,移轉至其他 TPP 成員國之類別與產值,例如在中國大陸之紡織業生產線,有可能為符合 TPP 優惠關稅之原產地規則,而大規模移往越南。基於這樣的變化,其他國家可能之反應,以及此將帶給台灣何種機會與挑戰。(二)台灣內部法規與體需要做出與 TPP 相應的調整,就與 TPP 規範有所衝突之法律應做之修正,以及受衝擊之產業應如何因應轉型,對於國民消費習慣有何影響等。以上之課題,皆須進一步深入研討。

就TPP的地緣政治而言,TPP是美國向亞洲再平衡外交政策的一部分,由於中國大陸近年來在國際政治以及經濟影響力日益增強,引起亞洲鄰國以及美國在安全上的疑慮,所以要求美國重新思考在亞洲地區的外交定位,除軍事上加強與亞洲國家的合作外,在經濟上也希望能夠利用簽訂自由貿易定加強聯繫,避免中國在經濟上取得獨霸亞洲的地位。最近中國政府在習近平上台後,陸續與日本、菲律賓與越南等國發生在東海以及南海發生主權爭議,更加深各國對中國是否為和平崛起的疑慮。而馬總統的東海和平倡議主張擱置主權爭議、共享資源開發,有效促成台日簽訂漁業協定,目前亦繼續推動南海和平倡議。因此台灣也能夠在TPP中發生相同的和平締造者的角色與功能,是TPP地緣政治因素中不可或缺的一環。

一般人常常會把台灣政治上民主發展的陣痛期,描述成是在內耗,可 是其實從國際民主政治的比較觀點而言,台灣是在破繭而出前的成長期。 我們在民主與議會政治的成長轉型經驗,在華人歷史中是獨一無二的。各 項公民自覺運動的蓬勃發展,使我們對周遭的各項政治、民生以及環境等 議題有更深的討論與認識,培養一個更健康、人民互相尊重的公民社會。 同樣的,台灣也在摸索學習言論自由與新聞自由的實踐,這也是經濟自由 化的重要環節。TPP是一項 21 世紀的自由貿易協定,它所帶來的經濟利 益必須要在民主與法治的社會中,才能夠有效的被全民共享,同時 TPP 的高標準國際規範,也需要一個民主法治的社會才能有效加以實踐。

最後一點,台灣可以成為區域經濟自由化升級的推手。我們可以回顧兩岸加入世界貿易組織WTO的經驗,當年由於台灣積極推動加入WTO,使得中國大陸不得不積極跟進,因為中國大陸基於政治因素,不希望比台灣晚加入;而當台灣在1999年就完成入會談判後,逼使中國大陸儘快在2001年完成,後來事實證明,加入WTO幫助了中國大陸的經濟自由化以及大幅擴展貿易。而台灣一直是中國大陸以及東南亞國家的主要外資來源,台商協助建立了東亞經濟圈的生產供應鏈。同樣的,台灣透過加入TPP來健全貿易法規,例如勞工權益、智慧財產權保障、環境保護、電子商務、投資爭端解決等,可以成為亞洲自由貿易體制的模範生,長期間亦將提供中國大陸寶貴的發展經驗。

出國報告書:中華民國(臺灣)參加「跨太平夥伴協定」(TPP)之政治與經濟因素障礙及解決之道

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四、 建議

本次進修之研究方法主要採取文獻分析,首先針對目前 TPP 與 RCEP 之談判進展及談判內容蒐集專書、期刊、政府出版物及新聞訊息,整理與分析相關資訊中與我外交政策具有參考及關聯性者,釐清我國推動加入 TPP 與 RCEP 中面臨政治與經濟上難題之具體情形,並期針對研究議題提出未來情勢發展之預判,並進而提出供本部參考制定外交政策之初步建議。

進修研究目的與相關建議如下:

(一) 當前相關國際情勢:

- (1) 美國以推動 TPP 為重要外交策略,部分觀察家認為係為其「向亞洲再平衡」政策之經濟層面戰略之一部分,以藉此強化其於亞太地區之影響力,而其同時多次表示歡迎我國於日後加入,亦有聯繫整合我國經貿關係至其整體策略中之考量,似乎亦反應美國期待將兩岸關係融入其主導之區域經濟秩序當中。未來加強臺美在此領域加強對話合作之作法及可能達到的具體成果,則上述外交政策考量下之政治與經濟面向即觸及我國推動加入 TPP 與 RCEP 之策略;
- (2) 中國大陸則在 RCEP 之談判中具有重大之影響地位,屬於中國大陸崛起之全方位之政治、經濟與安全面向之一環。
- (3) TPP 包含美國而排除中國,RCEP 包含中國而排除美國,其間之競爭 與合縱連橫關係,基本上也與目前建構中之美國與中國大陸間之「新 型大國關係」相關,此一當前國際關係基本態勢,構成我國在推動加 入 TPP 與 RCEP 時外交政策上之主要限制;然而,從相對之角度言之, 此一國際態勢亦為我國制定外交政策時之利基,如何審度時勢發揮關

鍵性之角色,為我國應深入加以研究之課題。

(4) 在上述之國際基本情勢上,美國「向亞洲再平衡」政策下,我國可扮演之角色,以及綜合近期東海情勢及當前兩岸關係之發展,探討我國如何強化與美國之政治、經濟與安全關係,以及與美國及日本發展三邊關係,並且考量我國與美國在亞太地區具共同戰略安全利益,在與「東南亞國協(ASEAN)」建立更緊密合作關係之目標上亦復如此。

(二) 在政治面上:

- (1) 我國如何持續推動「活路外交」之戰略方針,以及在「和陸、友日、 親美」之戰略運用下,應對新型之美「中」關係;
- (2) 持續觀察中國大陸領導人習近平本年度訪美後之美「中」關係後續發展;美「中」經貿對話機制(S&ED、JCCT、JEC)及雙邊投資條約(BIT) 談判進程,也將影響臺美經貿要案 BIA、TPP 之推動;
- (3) 就兩岸關係之後續發展與變化而言,中國大陸目前強力打貪下形成之 政治鬥爭氛圍等內部情勢下,我國如何繼續穩健發展兩岸關係;
- (4) 在美國繼續推動「向亞洲再平衡」之政策下,繼續關注美國國內政治 之發展,於該政策下尋找機會外;本研究也將觸及以 TPP 為例,研析 美行政部門經貿決策體系(白宮、國安會、國務院、商務部…)及美商 界、農業、環保、勞工等團體對國會遊說,以增加我國推動參與 TPP 之助力。
- (5) 在美國及中國大陸兩大強權之間,我國如何確保安全與繁榮之總體思維下,據以擬定我國推動參與 TPP 與 RCEP 之策略;

(6) 我國應同時加強與亞洲其他主要國家如日本、新加坡間之關係,並以我國「東海和平倡議」之精神,持續扮演東南亞地區之「東海爭議」 ——與「南海爭議」中之和平締造者之角色,以期為我推動加入TPP與——RCEP提供政治動能。

(三) 在經濟面上:

- (1) 我國應持續調整並改善國內經濟發展之體質,健全經濟貿易相關法規,提供良好工商業環境;TPP標榜為高標準與廣泛性之自由貿易協定,其涵括之規範範圍甚廣;除較傳統RCEP中包括之貨品貿易、服務貿易、投資、競爭政策、智慧財產權、經濟與技術合作及爭端解決機制外,TPP之談判範圍尚包括環境、勞工、政府採購、電子商務等議題,我國官及早檢討國內法規以為因應;
- (2) 定位我國於區域投資、外勞、產業供應鏈及價值鏈之優劣勢,並積極參與多邊、複邊以及區域經濟整合;
- (3) 善用 WTO、APEC 以及雙邊對話機制平台,爭取 TPP-12 國以及 RCEP-16 國等談判參與國之支持;
- (4) 我國與 TPP-12 及 RCEP-16 等國間之經濟互動關係各有不同,但縱使 與我政治互動較為欠缺之東協新興市場國家:柬埔寨、寮國、緬甸等 國之貿易往來頻繁度亦日益增加,我國在推動參與 TPP 與 RCEP 應突 顯我國產業在各國經貿發展過程中扮演不可或缺之角色。
- (5) 透過推動臺美洽簽「雙邊投資協定」(BIA)及加入美國主導之「跨太平洋夥伴協定」(TPP),將進一步深化臺美經貿關係及強化我國參與區域經濟整合。