

The New *Cross-Strait* Pact

New trade agreement takes the world stage

By Stephen Kho and Chris Lin

On June 30 this year, a momentous agreement was signed by unofficial representatives of China and Chinese Taipei, as they committed to reduce tariffs and commercial barriers between the two political entities.

The primary goal of concluding the Economic Cooperation Framework Agreement (ECFA), from Beijing's point of view, is to ensure that the economies on both sides of the Taiwan Strait fully complement each other. Together, the two will be in a stronger position to compete in the global economy. But to China, the benefits of the ECFA also go far beyond trade. As the broadest agreement ever signed between Beijing and Taipei across many sectors and industries, ECFA would boost the economic integration to an unprecedented level. This would both reduce the tension over the Taiwan Strait, as well as lay an economic foundation for ultimate "peaceful unification," which has been an unchanged goal for Beijing's leadership over the past half century.

Setting aside the political implications of this agreement, however, it is important to consider the international trade significance of the ECFA. Although not a free trade agreement (FTA) in name, the intent of the ECFA is essentially the same (i.e., it

is designed to liberalize the bilateral trading relationship).

Given the complementing nature of the two economies, such mutual access offers great potential for optimizing resources and strengthening collective competitiveness. As a concrete example, in textile, television and automobile manufacturing, Taiwan is stronger as an upstream player (for fabrics and screens), while China plays the role of putting the final products together and exporting them to Europe, North America and elsewhere. The removal of China's tariffs will make the price of Taiwan products more competitive while simultaneously lowering the cost for Chinese manufacturers and further making their products more competitive in the overseas markets.

"SUBSTANTIALLY ALL THE TRADE"

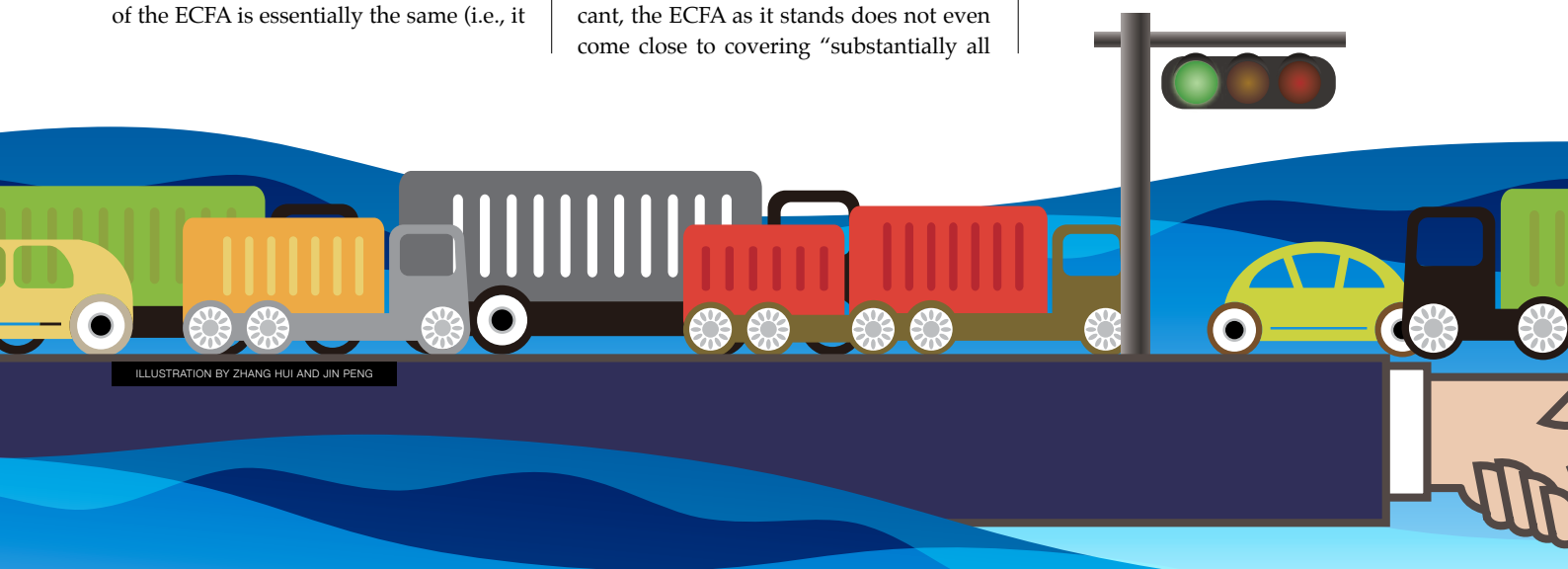
While this is a good start towards an FTA between the two entities, this cannot be the end of negotiations. The World Trade Organization (WTO) mandates that an FTA that gives better treatment to certain WTO trade partners is only permissible if the agreement covers "substantially all the trade" between the parties. While significant, the ECFA as it stands does not even come close to covering "substantially all

the trade" between Taiwan and mainland China. More goods and services must be covered, as well as non-tariff trade barriers such as technical and safety standards.

The ECFA explicitly recognizes this, as it commits both sides to negotiate further trade liberalization, including in the areas of non-tariff trade barriers, services, investments and trade remedies. However, in the interim, between the time the ECFA goes into effect next year and when "substantially all the trade" is liberalized, the cross-Taiwan Strait pact may run the risk of being challenged in the WTO. Therefore, it will be in their best interest if the two parties can avoid limited coverage of the ECFA by moving to conclude further trade liberalization negotiations as quickly as possible.

DISPUTE SETTLEMENT

The ECFA contains a dispute settlement provision which states that issues arising out of the ECFA may be resolved through this bilateral dispute mechanism, although the agreement has yet to set forth the exact procedures. This is an important component to this agreement as neither party has



been willing to challenge the other in the WTO for political reasons.

The ECFA dispute settlement mechanism will give the two parties a forum for resolving trade issues, easing tension that may arise from unsettled disputes. Indeed, one of the main purposes of a dispute settlement mechanism in any trading relationship is to ensure that the relationship is not hurt by any disagreements. While inevitable in such relationships (particularly one as robust as the cross-strait relationship) the forum will stabilize and perhaps even grow during those times of disagreements.

INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT

Included in the ECFA is a separate agreement on intellectual property rights (IPR). In particular, this agreement requires that Beijing and Taipei grant priority rights to patent applications. Essentially, this affords Taiwanese manufacturers (who file for patent or trademark applications in Taiwan) priority patent or trademark protection in mainland China for up to one year and vice versa. The IPR agreement commits both sides to coordinate enforcement efforts in the area of internet piracy and counterfeiting, well-known marks and geographical indications, among other IPR issues.

While there are “most-favored nation” (MFN) exceptions in the area of services and goods for FTAs, there is no MFN exception in IPR. Both entities must be prepared to provide the necessary resources to meet the IPR obligations under the ECFA, not just for each other,

but for the rest of the WTO countries.

BROADER POLICY IMPLICATIONS

For China, the ECFA is part of its plan to become the center of international trade in Asia. Earlier this year, China-ASEAN free trade came in to force, and mainland China is now actively working on potential trade arrangements with Korea and Japan. China has the economic strength to command interest to develop closer economic relations. Arguably the only real difficult negotiation was with Taipei for political reasons. However, the ECFA has essentially bridged that gap.

Moreover, by bringing its regional partners together, China is lessening the commercial influence of the US in Asia. Indeed, the ECFA is further evidence of the degree to which the US is being left behind in the region. US economic interests continue to erode as Asia draws tighter together around China without US inclusion. If anything, the signing of ECFA should serve as the impetus for the US to reengage Taiwan through the US-Taiwan Trade and Investment Framework Agreement (TIFA), to implement the US-Korea Free Trade Agreement, to speed up negotiations on the Trans-Pacific Partnership Agreement and to engage China cooperatively through a bilateral investment treaty.

Of course, if the US does not reengage the region, that would probably be just fine with China. Beijing’s goal is to exert its influence in the Asia region while decrease American influence simultaneously. To accomplish this goal, it was in

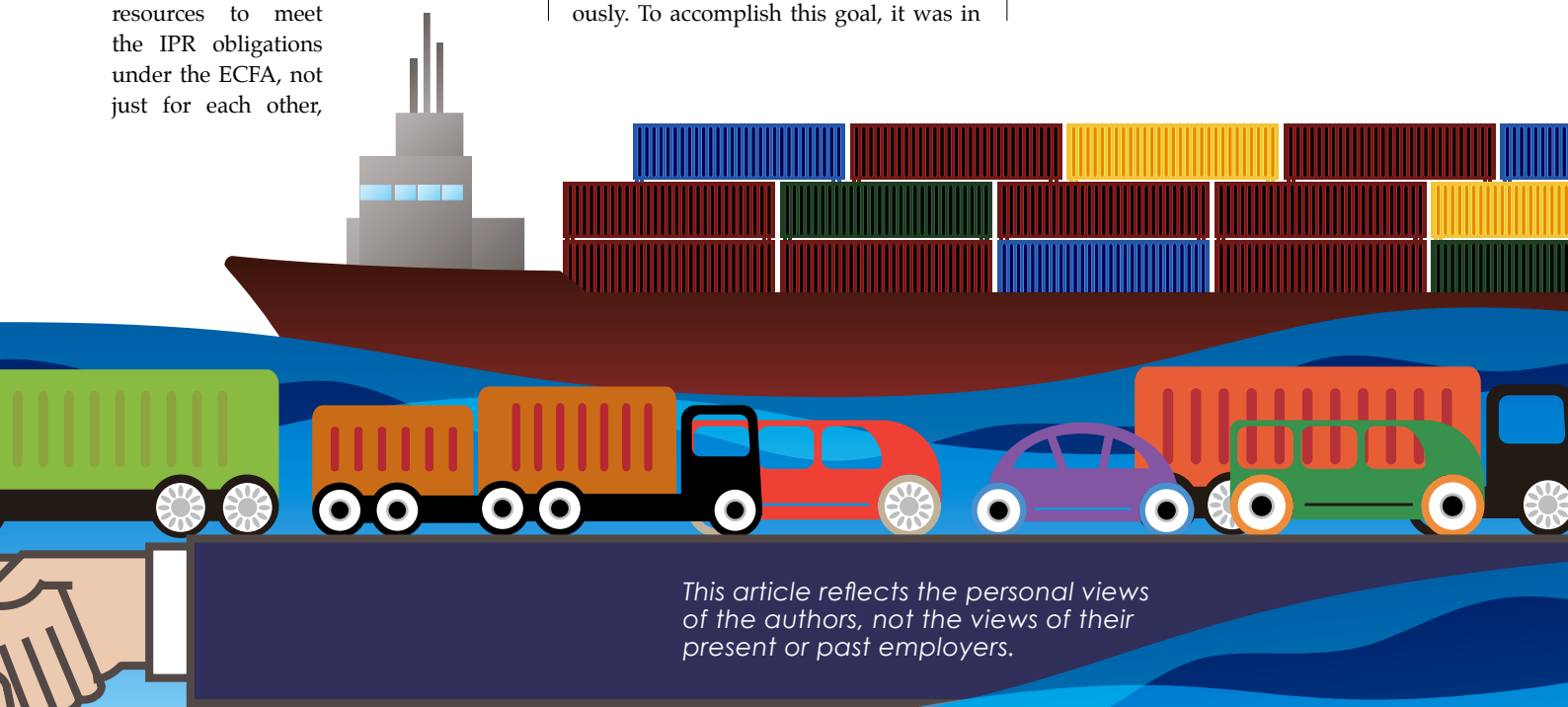
China’s best interest to sign the ECFA, and it is in China’s best interest to continue to negotiate as quickly as possible full coverage of all substantial trade—including reducing non-tariff barriers and erecting effective dispute settlement procedures—under the ECFA.

After 30 years of rapid growth, China is on track to emerge as a major world market, and not just a “world factory.” Therefore, losing the China market is a consequence no country can take lightly. One reality Taipei must face is the FTA between the ASEAN countries and Beijing will enable these Southeast Asian countries to export to China at zero customs tariff, whereas Taiwan exports are now imposed with an average nine percent tariff. This makes it very difficult for Taiwan goods to compete with those from ASEAN countries.

For the same reason, the signing of the ECFA will generate the same pressure on Japan and Korea to speed up their own FTA negotiations with China. And this may trigger further rippling effects across, and beyond, the region. 🌐

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