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The Outlook of the Trans-Pacific Partnership (TPP) – Potential 2nd Round Members

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Thank you to the organizers for inviting me to be present and speak to you today.

New Zealand is one of two countries that do not recognize the Government of the Republic of China to have a FTA with Taiwan. The other is Singapore. There are no immediate prospects for a launch of any more FTAs with countries of our type, and as Singapore doesn't really compete with New Zealand in the international trade arena, New Zealand is in a hugely advantageous position in the Taiwan market. It is in New Zealand's interests to see this market advantage continue for as long as possible. And therefore it is tempting for me to stand here and simply advise Taiwan to adopt a business as usual approach and rely on Japan and US to sponsor Taiwan into the TPP when there is next a discussion about taking on new members. Because if Taiwan does try and gain membership of TPP through this mechanism I can pretty much guarantee that Taiwan will not get what it is wanting, and New Zealand will continue to enjoy a substantial tariff advantage over our competitors in Taiwan for many years to come. Membership of TPP for Taiwan is going to be no more formidable a challenge than the launching and conclusion of the New Zealand and Singapore FTA negotiations. As those who were involved know, this was approximately a ten year exercise.

My view is that Taiwan would in normal circumstances be one of the strongest candidates for membership of TPP. It is an APEC member. It wants to join TPP. And, as has been demonstrated in ANZTEC – the Taiwan-New Zealand FTA, Taiwan has far exceeded the standard needed to be part of TPP. Unfortunately Taiwan is a normal circumstance. Chinese attitudes pose an enormous challenge.

Let me explain. And because this paper may be published let me get back to the basics.

The vast majority of countries, including the 12 participants in the ongoing TPP negotiation, maintain diplomatic relations with the People's Republic of China (China). As a result these States are restricted in their relations with the Republic of China, commonly referred to as Taiwan. Cultural, commercial and people to people interaction is tolerated by China, but formal Government to Government activity is severely constrained.

In the case of New Zealand this means that formal contact between the Government of New Zealand and the Taiwanese Government normally takes place at working level, in the Chinese terminology "at Director-General level or

below”, and is restricted to trade, investment, and cultural diplomacy. Day to day relations are managed by the New Zealand Commerce and Industry Office in Taipei and the Taipei Economic and Cultural Office in Wellington (there is a TECO office also in Auckland) as opposed to Embassies and Consulates. The New Zealand Commerce and Industry Office is a subsidiary of a private company and the staff it employs are “seconded” from the New Zealand Ministry of Foreign Affairs and Trade and New Zealand Trade and Enterprise. Most countries use a similar formula.

Taiwan’s near unique international status also means that the majority of countries are unable to enter the range of binding “Agreements” that is the norm in international relations. For fear of implying Diplomatic Recognition most countries rely on non-binding “Arrangements”, usually signed by the head of the representative offices in Taiwan and their TECO counterpart. Taiwan will usually treat these “Arrangements” as if they were “Agreements” and will put these through the Treaty ratification process in Taiwan, but the other party cannot. These “Arrangements” are sometimes called “Agreements” but even those called “Agreements” are written as non-binding “Arrangements”. New Zealand’s double tax arrangement with Taiwan is an example of this.

Taiwan’s Membership of APEC and WTO accession have changed this situation to some degree. APEC has to date proven itself unable to pull off a region wide “Agreement” of any substance, but it has allowed interaction at much more senior levels than had occurred previously. For example, the New Zealand Trade Minister and other Ministers meet their Taiwanese counterparts regularly at APEC meetings. And while it is early days, the Free Trade Area of the Asia Pacific could be very beneficial for Taiwan.

WTO membership has been even more beneficial for Taiwan’s international space. WTO membership not only means that there is another forum for high level contact, WTO members have become party to a number of international “Agreements”. These include the General Agreement on Tariffs and Trade and the General Agreement on Trade in Services and the Government Procurement Agreement , Information Technology Agreement (II) etc.

Significantly the WTO Agreements form a growing body of international law and under its umbrella it allows members to also negotiate bilateral and regional trade liberalization agreements so long as they meet certain conditions. This has created new opportunities for both Taiwan and those WTO members that do not have diplomatic relations with Taiwan.

New Zealand and Singapore have been amongst the first to take advantage of this opportunity. Both have signed agreements with Taiwan negotiated under the WTO framework in recent years. And even more interestingly they followed in the footsteps of China. The ECFA process between China and Taiwan is also being negotiated under the WTO framework. The ECFA outcomes are written in “Agreement” language and are being notified to the WTO.

In the case of New Zealand the Agreement has had immediate positive impact on trade flows for both parties. If global dairy prices had not halved since the NZ-Taiwan Agreement entered force the trade impact would have been even more spectacular. The New Zealand Taiwan Agreement also includes a number of the issues that had previously only been covered by non-binding arrangements – eg Air Services. The new open skies regime between New Zealand and Taiwan is subject to dispute settlement. The framework for the broader trade, economic and cultural relationship between New Zealand and Taiwan is now much more similar to New Zealand's relations with other major trading partners (Taiwan is now New Zealand's seventh largest export market) than it was previously.

As competitors see New Zealand doing so well in the Taiwan market one would expect pressure to grow for more such Agreements to be signed. This is probably Taiwan's strategy, and probably explains why such a high standard agreement has been signed, even including the politically "sensitive" agriculture and fisheries sectors. The agreement both demonstrates that Taiwan can meet the standard of agreements under negotiation such as TPP. It also dangles the possibility of rapid comprehensive liberalization of the Taiwan market in front of prospective partners.

New Zealand had been seeking a FTA with Taiwan since the first term of the Chen Shui-bian administration. Singapore had likewise been in a dialogue with Taiwan on a possible FTA from around that period.

Why did it take so long for negotiations to begin?

It is hard to be definitive on this but there are some clues out there to guide our assessment.

It seems very clear that countries the size of Singapore and New Zealand for whom China is one of the most important economic and political partners will not be going out of their way to anger China by beginning a negotiation with Taiwan in the face of strong Chinese opposition. New Zealand officials and Ministers have stated publicly several times that they would not have begun negotiations with Taiwan if they believed that this would do any damage to relations with China. It would seem that there has therefore been a dialogue between New Zealand and China on this matter. This dialogue may even have been underway for some years before the FTA negotiation began.

The initial period of interest in a FTA negotiation between Taiwan and New Zealand dating back to 2003 and 2004 also occurred at a time of unstable relations between Taiwan and the mainland. China wanted direct shipping and air services to be agreed and was clearly uncomfortable with the DPP Government of the time. It is significant that the Singapore and New Zealand FTAs have been negotiated with the KMT in power and the backdrop was one of improving cross strait relations. Direct shipping, air services and the first tranche of goods liberalisation between Taiwan and China was in place, and a negotiation on services liberalization was underway. It is therefore possible that

China's comfort level with Taiwan embarking on new FTA initiatives was linked to the state of cross strait relations at that time.

It is also important to note that both Singapore and New Zealand have excellent relations with China. FTA linkages are an important part of these relationships. Indeed New Zealand and Singapore had FTAs in place with China for some years and New Zealand also had a FTA with Hong Kong before it began negotiations with Taiwan. It is also possible that FTAs with Taiwan become feasible when a threshold is reached in a third party's relationship with China. Part of that threshold may be the negotiation and entry into force of a FTA with China (and possibly Hong Kong).

There are some who would seem to have very good and improving relations with China (and have FTAs at least negotiated with China) who still have not begun negotiations with Taiwan. Why might this be?

One strong possibility is the current state of politics in Taiwan and the impasse currently underway in the development of cross-strait economic relations. Taiwan has yet to ratify the ECFA service outcome and there seems to be continuing uncertainty over whether it can. At the time that the Singapore and New Zealand FTA outcomes were begun and even completed, there were no signs that the current Administration in Taiwan would be unable to continue the momentum in cross-strait relations that it had commenced.

If the above hypothesis about the link between the Chinese attitude to FTAs with Taiwan and the state of the cross-strait relationship is correct, it should give Taiwan's policy makers (both KMT and DPP) some cause for deep reflection. Taiwan is a trading nation. Trading nations must remain competitive. Taiwan's more direct competitors are all deeply involved in bilateral and regional FTA activity. In the absence of any chance of a comprehensive WTO negotiation being restarted or launched anew, to remain competitive Taiwan must continue also to be part of this regional and global process. Singapore and New Zealand are good starts, but FTAs with much larger players must be a goal for Taiwan if it is to keep Taiwanese exports competitive. It would be most unfortunate if further negotiations were to be made impossible because of short term political point scoring.

Longer term, of course, Taiwan faces in 2016 a new Presidential election. How the issue of the development of cross-strait economic relations is handled in the campaign and in the initial period of the new Administration will also have potential implications for Taiwan's FTA diplomacy should the above hypothesis be correct. This should also be a matter for deep reflection for the leaders of the KMT and DPP.

What does this mean for Taiwanese membership of TPP?

Let me begin by analyzing the failure of the Maui TPP Ministerial Meeting in late July. This meeting was expected to conclude negotiations. But it failed. Taiwanese policy makers should take careful note of the reasons for this failure.

Some months ago the US and Japan met and negotiated a bilateral deal which resolved differences on agriculture and automobiles between the two large economies. It is my understanding that Japanese policymakers expected the United States to persuade the rest of the TPP membership to accept the terms of what the US and Japan had agreed. And much to Japan's surprise the US failed to do this. Dairy access has attracted much attention, because the New Zealand and Australian Governments made clear that what was on offer was unacceptable. But the real reason why the Ministerial meeting failed was because Mexican and Canadian negotiators were only informed about the proposed rules of origin to apply to the automotive sector at last minute, and they could not agree to what was being proposed.

I recommend to Taiwanese policy makers that you do not rely on the US and Japan to deliver TPP membership. Putting aside questions about whether Japan and the US would actually expend some of their limited political capital vis a vis Beijing to buy a fight on this matter, it seems clear that the US and Japan don't even have the ability to enforce their preferred rules of origin on automobiles on the full TPP membership. Taiwanese membership of TPP, in the face of potential Chinese opposition, is I believe a much bigger ask than a 65% area content rules on autos.

So by all means lobby hard for support in Washington and Tokyo, support from these large economies will be essential. But you need to be equally active in all TPP member capitals. Anyone of them could express discomfort and effectively veto your membership.

As noted above, Taiwan is very well qualified for TPP membership. It has been a good and active APEC member and has demonstrated through the FTAs with New Zealand and Singapore that it can exceed the quality threshold. This means that concern is not going to be expressed on quality grounds. The reasons members might express discomfort are all related to China.

So, just as is the case with regard to further bilateral FTAs, it is going to be extremely difficult to sell Taiwanese participation in TPP if it faces strong opposition from Beijing.

Here Taiwan has a few cards to play. It can ratify the ECFA Services Protocol and it can continue to expand the scope of ECFA. It can also start advocating for Chinese and Hong Kong membership of TPP to occur in tandem with Taiwanese membership – in effect the APEC membership solution and WTO membership solution. Chinese opposition to Taiwan's participation is likely to disappear if China is participating also. In terms of the state of economic integration between Taiwan and China this solution makes absolute sense. And, as an important stepping stone towards the eventual goal of achieving a Free Trade Area of the Asia Pacific (an official APEC goal supported by China) this makes perfect sense also.

Those who want Taiwan to be part of TPP outside of Taiwan can be very helpful here also. I believe that China is seriously interested in TPP membership, and in its FTA outcomes has also demonstrated an ability to agree high standard outcomes. The impediment does not lie in Beijing. It lies in some of the capitals of existing TPP participants where far too often I am hearing TPP being described as a vehicle to contain China. This is not the case. TPP was never designed with this in mind. And several participants have formally stated that they would walk away from TPP if it was used as an anti-China mechanism.

So if you want Taiwan to be part of TPP stop mischaracterizing TPP as anti-China and start trying to argue the case for China joining. Taiwan joining TPP in the second tranche without China is not impossible. But it will be far more likely if China joins also. That outcome is also better for APEC, the Asia Pacific economy and world trade.

Let me finish by saying a few words about TPP and timing.

As we meet there is intense TPP related activity going on in Kuala Lumpur in the margins of the ASEAN Economic Ministers' Meeting. Officials and Ministers have been in close communication since the Maui meeting. No timing for a meeting of all TPP Ministers has been set. No meeting will be called unless there is near absolute certainty that a final agreement can be achieved. I am hopeful that agreement can be reached in 2015 but a final ratified TPP is looking unlikely until some time in 2016. I suspect that new members will not be considered until well after the US Presidential election is over and a new Administration in place. This will give the new Taiwanese administration well over a year to build the case.

Bio

Charles Finny is a partner at the Wellington government relations company Saunders Unsworth. He was the lead negotiator for New Zealand of ANZTEC (Taiwan-NZ FTA) and first phase of the NZ-China FTA. He is a former Director of the New Zealand Commerce and Industry Office in Taipei, Deputy Head of Mission in Beijing, and former senior trade policy official working on WTO, APEC and bilateral and regional initiatives. He Chairs the Board of Education New Zealand, is on the Boards of New Zealand Trade and Enterprise, the New Zealand Film Commission, and the Council of Victoria University of Wellington. Charles was the inaugural Chair of the New Zealand Contemporary China Research Centre and still sits on the Board.