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Taiwan attracts more investors with signing of the ECFA

A milestone agreement between Taiwan and mainland China will buoy Taiwan exports as customs duties are wiped out for over 500 products and services covered in a special "early harvest" list. But more than just saving on tariffs, the pact offers a greater profile for Taiwan as a launch pad for investors wishing to enter the Chinese market.

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The Economic Cooperation Framework Agreement (ECFA) is a special economic framework agreement to be signed between the Taiwanese government and mainland China. Though both Taiwan and mainland China are members of the World Trade Organisation (WTO), cross-strait trade is still clogged by many restrictions. Therefore, the goal behind the ECFA is to achieve the normalisation of cross-strait trade relations.

I. Background

The ECFA was initially proposed in 2009 by Mr. Ma Ying-jeou, the President of Taiwan. Before June 13 2010, representatives from Taiwan and mainland China conducted three rounds of preparatory talks. On June 24 2010, representatives of both sides conducted the fourth round of talks, during which the text of the ECFA, including its early harvest items and an agreement on protecting intellectual property rights, was finalised. Most importantly, the two parties are scheduled to sign the ECFA on June 29 in Chongqing.

II. Structure and contents of the ECFA

The text of the ECFA includes five chapters and 16 articles. According to the ECFA's design, it will likely cover the following areas:

Trade and investment liberalisation: The ECFA will set out, among other things, the scope and timetable for future negotiations over agreements on trade of goods, services, and investment, and the removal of tariff and non-tariff barriers.

Early harvest: The early harvest list is a major component of the ECFA, which is expected by both sides to include a list of items and services eligible for early tariff reductions and early market access.

Economic cooperation: The scope of cooperation is planned by both sides to include, among other things, industrial cooperation, customs cooperation, customs clearance facilitation, goods inspection, and food safety.

Other supporting arrangements for the implementation of the ECFA: Such arrangements include, among other things, the establishment of the executive board, the exception clause to temporarily bar the importation of unsafe food, and the dispute settlement mechanism.

Furthermore, mainland China and Taiwan have agreed in the fourth round of talks to establish a "cross-strait economic cooperation committee" to continue negotiations on the relevant trade issues between mainland China and Taiwan.

With regards to the early harvest list, mainland China has agreed to confer benefits to 539 Taiwanese goods and services, while Taiwan agrees to do the same for 267 Chinese goods and services.

The early harvest list is regarded as the most central issue by relevant industries. After the ECFA takes effect, more than one hundred types of products sold to mainland China from Taiwan will be immediately exempt from tariffs. Tariffs on the remaining types of products will be reduced on three occasions over the course of two years. The goal is to reduce tariffs on the remaining products to zero by the end of the two-year period. According to news reports, Taiwan will benefit by the amount of US\$13.8 billion (NTD443 billion), while China will benefit in the amount of US\$2.8 billion (NTD90 billion).

The majority of early harvest items fall under the following major categories:

(i) Goods

Taiwanese products benefiting from the ECFA include the following:

- agricultural products including fresh fish, frozen fish, fresh turtle eggs, fresh orchids, mushrooms, bananas, oranges, lemons, melons, dragon fruits, tea, etc.;

- petrochemical goods including petrochemical materials, special chemicals, and plastic materials and products;

- machine goods including machinery and its spare parts, machine tools, digitally-controlled machine tools, and related spare parts;

- textile goods including upstream textile fibres, downstream fabrics, textile products and footwear products;

- transportation-related goods including automobile spare parts and bicycles and bicycle spare parts; and
- other goods and materials including steel wire, stainless steel, certain cement products, certain dyes and dye-related products, golf equipment and other sports-related apparatus, medical supplies, measuring instruments, molding tools, aluminum and aluminum products, copper and copper foil products, LCD glass, automobile and bicycle tires, paint and other paint-related products, microphones and camera-related products, transformer components, inductor components and other components, small household electrical appliances, hand tools, etc.

Mainland Chinese products benefiting from ECFA include the following:

- petrochemical goods including petrochemical materials, special chemicals, plastic materials, etc;

- machine goods including machinery and its spare parts;

- textile goods including upstream textile fibers and downstream fabrics;

- means of transportation including baby carriages and their spare parts and bicycles and their spare parts; and

- other goods including certain chemicals, certain dyes, sports-related apparatus, measuring instruments, molding tools, metal products, rubber, glass, recreational equipment, electronics, engines, etc.

Certain LCD panel-related products, machine tools, and materials derived from polypropylene (PP), polystyrene (PS), polyethylene (PE), or polyvinyl chloride (PVC) are currently not included on the early harvest list. However, both sides expect to commence negotiations on the future inclusion of these goods after the signing of the ECFA.

(ii) Services

Various services including certain R&D activities, hospital, insurance, and banking are covered by the early harvest list.

With regard to the non-financial sector, the following benefits, among others, will be conferred to Taiwan:

- Taiwanese accountants may apply for temporary one-year permits allowing them to conduct audits in

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mainland China:

- Taiwanese computer service enterprises and Taiwanese accounting enterprises will be granted access to the mainland Chinese market;
- Joint ventures, partnerships, or wholly-owned Taiwanese enterprises specialising in the field of professional design will be granted full access to the mainland Chinese market;
- Quotas imposed on the importation of Taiwanese movies will be abolished;
- Taiwanese enterprises will be granted access to the Chinese market in airplane maintenance and repair; and
- Taiwanese service providers may set up joint ventures, partnerships, or wholly-owned Taiwanese enterprises in mainland China to provide research and laboratory development services in natural science and engineering.

Mainland China will allow the establishment of wholly-owned Taiwanese hospitals in Shanghai, Jiangsu, Fujian, Guandong, and Hainan.

With regard to the non-financial sector, the following benefits, among others, will be conferred to China:

- mainland Chinese service providers may set up joint ventures, partnerships, or wholly-owned mainland Chinese enterprises in Taiwan to provide airline electronic seating services;
- mainland Chinese service providers may set up joint ventures, partnerships, or wholly-owned mainland Chinese enterprises in Taiwan to provide special product design services (with the exception of interior design services);
- mainland Chinese service providers may set up joint ventures, partnerships, or wholly-owned mainland Chinese enterprises in Taiwan to provide sports-related and recreational services; and
- mainland Chinese R&D enterprises will be granted access to the Taiwanese market.

With regard to the financial sector:

If certain conditions are met, Taiwanese banks may set up loan operations in mainland China to service Taiwanese enterprises doing business in mainland China.

Mainland Chinese banks may set up representative offices in Taiwan and then after one year, establish subsidiaries in Taiwan.

III. Implications for foreign investment

Foreign companies in the industries covered by the early harvest list may choose Taiwan as their gateway for entering the Greater China market.

One of the purposes of the ECFA is to remove or reduce custom duties and non-custom barriers to trade. Early harvest foreign goods may pass through Taiwan and enter mainland China without the burden of tariffs. Therefore, foreign enterprises may reduce operating costs by setting up companies and/or factories in Taiwan because as a result of the ECFA, tariff charges for goods sold to mainland China from Taiwan will be lower than tariffs for the same goods sold to mainland China from Europe, Japan, or the U.S. The policy of free movement of goods and workers between mainland China and Taiwan facilitated by the "three direct links" provides an additional incentive for foreign enterprises to establish operations in Taiwan.

High-tech and R&D companies may wish to choose Taiwan as their R&D centre for expansion into the Mainland market

Taiwan has become a place of global strategic importance in the field of high technology. It has a complete high-tech industry chain and an abundance of technical talent. Furthermore, the Taiwanese government confers substantial benefits to those enterprises that choose to establish R&D centers in Taiwan. A more sound legislative system has been established in Taiwan, and intellectual property rights also receive better protection. As the protection of intellectual property rights is addressed by the ECFA, the protection of these rights owned by companies in Taiwan will be enhanced.

Prioritising the listing of small and medium-sized technology companies

Generally speaking, compared to other countries, Taiwan has lower capital requirements for listing. As such, small and medium-sized technology companies may choose Taiwan as their main listing place. In anticipation of the signing of the ECFA, over 50 foreign companies have expressed interest in or have applied for listings in Taiwan.

Companies may choose Taiwan as the place to initiate litigation or arbitration

A dispute resolution mechanism may also be included under the ECFA in the future. Currently, the rights and benefits of Taiwanese enterprises may be protected under the Law of the People's Republic of China on the Protection of Investment by Companies from Taiwan and other relevant regulations, which recognise the judgments rendered by Taiwanese courts and the awards granted by Taiwanese arbitration institutions. However, in practice, uncertainty and numerous restrictions are still not uncommon in the implementation of those rules in China. If the protection of a dispute resolution mechanism is eventually offered under the ECFA, foreign companies may choose Taiwan as the place for litigation or arbitration for better protection of their rights.

Integration of the regional economies

The signing of the ECFA may encourage the signing of free trade agreements (FTAs) between Taiwan and other areas or countries. It is now reported that many countries including Japan, Singapore, New Zealand and the Philippines intend to sign FTAs with Taiwan, which would benefit foreign investors in the Asia-Pacific region as a whole.

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Aaron has been a member of the Taiwan Bar Association since 2006, and will be sworn in to the Bar of China in September 2010.



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