**New Directions in International Trade:  
 Implications for Taiwan**

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**USA[[1]](#footnote-1)**

Multilateral trade negotiations within the World Trade Organization are largely dormant as the contentiousness of the issues being considered and the domestic political pressures on the negotiators have made meaningful progress impossible. The stagnation at the multilateral level has caused the major trading countries to shift their attention to alternatives to the multilateral forum, most notably bilateral and regional free trade agreements. The global political economy also is evolving in ways that are having significant effects on international trade. So, while the WTO may be relatively quiet, international trade practices are undergoing profound changes. Some of these changes will have implications for Taiwan and for young lawyers entering the practice of international business, which is why the principal purpose of this essay is to consider how ten of the major trends in international trade practices may affect the Taiwanese economy and Taiwan’s international business lawyers. The paper concludes with suggestions on how to use the current international trade trends to diffuse China’s efforts to push Taiwan into further diplomatic and economic isolation.

1. **Ten Trends Influencing International Trade Practices**

The ten trends influencing international trade practices are:

* The rise of China, which tends to be overstated.
* The decline of the US, which often is exaggerated.
* Stagnation of multilateral trade negotiations.
* ECFA and Taiwan’s other bilateral agreements with China.
* Taiwan’s other free trade agreements.
* The Trans-Pacific Partnership.
* The Regional Comprehensive Economic Partnership.
* Russia’s tilt towards East Asia.
* Trade in financial services.
* Curbing bribery and corruption in international business.

1. **The Rise of China?**

China’s economic ascent in the last 30 years is beyond imagination. Never before in human history have 600 million people been lifted out of absolute poverty to enjoy at least modest prosperity while many others have moved from being poor with limited economic prospects to establishing a real middle class in China. What the Chinese Government has accomplished in the last 30 years in improving the living conditions for hundreds of millions of its people is most extraordinary. China is a country where the economic opportunities for the current generation are far beyond the wildest dreams of their parents.

As dramatic as China’s ascent has been, it has become fashionable to overstate its impact and to predict Chinese economic and political dominance in many parts of the world, especially in the Asia/Pacific region and Africa. A number of commentators also have suggested that China’s massive holdings of US debt obligations will give China the ability to influence US economic and foreign policy decisions. But China’s extraordinary accomplishments need to be put in context.

First, while China has experienced rapid economic growth over the last 30 years, that growth has been from a very low starting point. In 1980, China was one of the poorest countries in the world with a per capita income of about US$500.[[2]](#footnote-2) Even in 2011, after 30 years of exceptionally high growth rates have made it the second largest economy in the world, China’s per capita income of about US$5,000 ranked 114th in the world and over 170 million Chinese still live on less than US$1.25, which is the international poverty line.[[3]](#footnote-3) China is huge and there are pockets of astonishing affluence as a visit to many of China’s glamorous cities can attest, but in many respects China is still a developing country.

Second, China’s new leadership acknowledges that its capital investment and export oriented growth policies may be reaching their limits. As growth in China has moderated from double digits to 7 or 8 percent, Chinese policy makers understand the critical need to introduce market liberalizing forces to stimulate domestic consumption as a base for more sustainable future growth. This shift necessitates a cut in lending by state owned banks to inefficient or risky ventures favored by local officials, senior members of the Chinese Communist Party, and powerful state owned enterprises, so it is facing fierce opposition in spite of widespread acceptance of its necessity.[[4]](#footnote-4)

Third, the economic transition also has to be accomplished in an atmosphere of considerable domestic instability brought on by rampant corruption in government, forced and inequitable land acquisitions by local governments in their quest for revenues and economic growth, extraordinary income inequality, suffocating air pollution and poisoned water supplies, and tainted food supplies (including toxic baby food). China also has an increasingly sophisticated internet population of over 500 million people and they are not shy about voicing their unhappiness with the government and Chinese Communist Party.

Finally, China has been largely unable to use its economic prominence to develop international alliances and gain dependable allies. China does have a nascent relationship with Russia, but its depth and sustainability is suspect. The relationship also is driven more by compelling economic complementarities and the desire to curb American power than to project a positive image to the world. Burma used to be in the Chinese camp, but after twenty years of economic mismanagement and political repression Burma’s ruling party is aligning more with the democratic economies of East and Southeast Asia. China’s only other allies of note are North Korea and Iran and as of this writing (May, 2013) many Chinese leaders are questioning the wisdom of continuing Chinese support for North Korea.

So, China is not the monolith it is commonly made out to be. True; its economic accomplishments are unparalleled and it now is the number one trading partner for well over 100 countries in the world. But the serious domestic problems facing the Chinese Government and the CPC are likely to be exasperated by a slowdown in China’s economic growth rates and the increasing sophistication and skepticism of an emerging middle class. In sum, predicting China’s future prospects by using straight line extrapolation from China’s recent past is not likely to be either accurate or useful.

1. **The Decline of the US?**

Evidence of the US decline is easy to find.

* In 2012, the national government borrowed 40 percent of what it spent, a practice which is generating massive overseas debt obligations, especially to the Chinese.
* After more than a decade of bloody, costly wars in Afghanistan and Iraq, the world is no safer, but Americans have grown weary and much more wary of foreign involvement.
* The political polarization in Washington, D.C. has meant the government cannot deal effectively with important policy issues, such as the rising debt burden, health care policies, defense spending, and immigration.
* American schools are mediocre and the powerful teachers unions have blocked many of the efforts at meaningful reforms.
* American roads, airports, bridges and ports are old and in bad need of repair.
* During the last 25 years, income inequality in the US has grown enormously and it now is apparent that the benefits of globalization have not been evenly distributed. By some measures, the income of the average worker in 2013 is less than in 1990, while the one percent at the top of the economic pyramid have seen their incomes rise by 20 or 30 times.

But, as with China’s ascendency, America’s decline is exaggerated. First, there is no doubt that US prosperity and influence have declined in relative terms. But the US decline is not because it has suffered an absolute decline; instead, it is because many other countries in the world have become richer and more assertive in pressing their national interests. The US in 2013 is much richer and more powerful than it was in 1988, but countries in Europe, Asia and South America have grown at even faster rates than the US, with the consequence that the gap between the US and many other countries is now smaller than it was in 1988.

In spite of the serious problems facing the US, there also are many reasons for optimism about American prospects for the 21st Century. Among the more important reasons are:

* America is nation of immigrants and immigration adds youth, energy, and intellectual and entrepreneurial skills to American society. For the last several years, however, US immigration laws and policies have had an adverse effect on immigration, which is very much against America’s long term interests. Now, in spite of the political stalemate in the US Congress, it appears likely that the US Congress will adopt more sensible immigration laws so that immigration can again become an important contributor to America’s growing prosperity.
* The dysfunctional national government masks many creative state and local government initiatives, a vibrant and entrepreneurial private sector, and a system of higher education that is the best in the world.
* The enormous growth in production of oil and gas from previously inaccessible deposits has transformed the US from one of the world’s largest net importers of oil and gas to one of the largest net exporters of energy products, all within less than 10 years. The impact of this transformation is not yet fully realized, but US energy intensive industries are set to benefit from natural gas prices that are 1/3 the German price and ¼ the Korean price. The foreign policy effects of energy self-sufficiency also are likely to be very significant.
* Perhaps most importantly is that US failings are open for all to see. But evidence of the failings prompts debates about how to deal with them and in some instances the debates result in constructive measures to correct them.

So, it may be premature to discount the US as a major economic and political presence well into the 21st Century.

1. **Stagnation of Multilateral Trade Negotiations.**

The Doha Round is the ninth and latest series of multilateral trade negotiations among WTO members.[[5]](#footnote-5) The Doha Round was launched in November, 2001. Its goal was to achieve a major reform of the international trading system by lowering trade barriers and revising trade rules. The agenda of the Doha Round extended to 20 areas of trade, including an objective of improving the trading opportunities for developing countries.[[6]](#footnote-6)

Although the Doha Round trade negotiations have been ongoing for more than a decade, there has been no progress. In January, 2013, because of the lack of results, WTO trade ministers agreed to concentrate on a few areas from the Doha Round that seemed most open to agreement.[[7]](#footnote-7) The limited negotiations focused on customs procedures and other trade facilitation measures and goal was to have a limited agreement in time for the Ministerial Conference in Bali, Indonesia in December, 2013. But a few months after the negotiations began, many were pessimistic about a favorable outcome.[[8]](#footnote-8)

The causes of the stalemate in the multilateral negotiations are not universally agreed upon, but there is no doubt about some of the contributing factors. The WTO negotiations proceed generally on the basis of consensus and with 159 WTO members consensus under any circumstances would be difficult to achieve. In the Doha Round, however, the difficulties are accentuated because the 159 members are at various levels of economic development and their perspectives on the issues under negotiation vary widely. As this is the ninth round of multilateral trade negotiations, the issues also are more contentious than in previous rounds. Another contributing factor is that some of the economies in transition, such as India and Brazil, are more willing to challenge the trade liberalization agenda being pushed by the US and other industrialized countries. But whatever the causes, the result is that the multilateral trade negotiations are stalled and there is a serious question whether they can be restarted.

The failure of the Doha Round has raised concerns about a growth in protectionism among member states and diminished relevancy for the WTO.[[9]](#footnote-9) The most notable consequence of the failure, however, is the proliferation of bilateral and regional trade agreements. The major agreements affecting Taiwan are the subject of the next four sections.

1. **ECFA and Taiwan’s Other Bilateral Agreements with China.**

Since December 2008, Taiwan and China have concluded 18 bilateral agreements and dramatically increased exchanges across the Taiwan Straits.[[10]](#footnote-10) According to a survey conducted jointly in Taiwan and China, the major effects of these agreements are that Chinese tourists now are allowed to visit Taiwan, mainland investment in Taiwan is permissible in some sectors of the economy, Chinese students can study in Taiwanese universities, mainland diplomas are recognized in Taiwan, there are direct flights between Taiwan and China, banking and other financial activities are becoming much more efficient, and the Taiwan and Chinese law enforcement officials are working together to fight crime.[[11]](#footnote-11)

The Economic Cooperation Framework Agreement (ECFA) is the most contentious of the bilateral agreements with China. ECFA was signed in June, 2010 and the “early harvest” provisions became effective in January, 2011. In substance, ECFA resembles a bilateral free trade since many parts of ECFA are designed to reduce cross straits trade barriers and promote investment flows. The early harvest provisions, for example, introduce tariff reductions for 539 Taiwanese products and 267 Chinese products.[[12]](#footnote-12) While there is some debate about the economic benefits of ECFA for Taiwan,[[13]](#footnote-13) most trade experts have concluded that ECFA has had a favorable impact on Taiwan. Not only has trade in key commodities increased for Taiwanese businesses, but Taiwan now is increasingly recognized as an attractive destination for foreign direct investment seeking trade favored access to the Chinese markets.[[14]](#footnote-14) Cross-strait transportation links, a stable labor market, formidable manufacturing capacity, globally competitive R&D capabilities, strengthened protections for intellectual property rights, and, in contrast to China, a more rule based society have made Taiwan an exceptionally strong candidate for new foreign direct investment.[[15]](#footnote-15)

The most important aspect of ECFA for Taiwan is that it has diminished the threat of economic marginalization. Without ECFA, Taiwan’s prospects of concluding free trade agreements with other countries were nearly zero. China would have fought strongly against any free trade agreement before Taiwan had first agreed to ECFA. With ECFA in place and pressure to accelerate the pace of the continuing ECFA negotiations,[[16]](#footnote-16) China’s acquiescence to additional FTAs between Taiwan and other countries is now much more likely. Additionally, with Taiwan established as an attractive platform for trade favored access to the Chinese market, Taiwan’s trade advantages will not be markedly diminished by the growth of regional integration promoted by the Trans-Pacific Partnership (TPP) or the Regional Comprehensive Economic Partnership (RCEP). Even after China concludes free trade agreements with Japan and South Korea, goods produced in Taiwan will still retain their competitiveness in the mainland market.[[17]](#footnote-17)

1. **Taiwan’s Other Free Trade Agreements.**

As part of Taiwan’s strategy to avoid economic marginalization because of China’s continuing efforts to isolate it, Taiwan has concluded free trade agreements with several small countries from Central America: Panama (2003), Guatemala (2005), Nicaragua (2006), El Salvador (2007) and Honduras (2007).[[18]](#footnote-18) Because of the small size of the partner countries, these bilateral free trade agreements may have some political significance, but they have little effect on the Taiwan economy.

Taiwan also is negotiating agreements with several other countries, some of which are economically notable. The most significant agreement nearing completion is the free trade agreement with Singapore. According to sources within the Taiwan Government, the free trade agreement with Singapore should be completed sometime in 2013.[[19]](#footnote-19) In deference to China’s rigid adherence to the One China Policy, the Taiwan/Singapore Free Trade Agreement is officially known as the Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership (ASTEP).[[20]](#footnote-20)

Another agreement of some note is the New Zealand/Taiwan Economic Cooperation Agreement (ECA). The Taiwan Government is predicting that this agreement will be concluded sometime in 2013.[[21]](#footnote-21)

From Taiwan’s perspective, the biggest prize among free trade agreements would be an agreement with the US. Taiwan and the US already have a Trade and Investment Framework Agreement (TIFA) under which the two governments work to improve relations between the two governments and build up bilateral trade and investment flows.[[22]](#footnote-22) The main obstacle to concluding a fully fledged Taiwan/US Free Trade Agreement is China and its One China Policy. As a result, if Taiwan is successful in concluding ASTEP with Singapore and ECA with New Zealand, those agreements may serve as a template for a Taiwan/US Free Trade Agreement. ASTEP and ECA also may suggest a path for Taiwan to join one or the other of the two new regional trade initiatives, TPP and RCEP. These initiatives are the subjects of the next two sections.

1. **The Trans-Pacific Partnership.**

TPP’s origins can be traced to the Trans-Pacific Strategic Economic Partnership (also called the P-4), signed in 2005 by the governments of Chile, Singapore, New Zealand and Brunei Darussalam.[[23]](#footnote-23) The objectives of this group of four small countries were threefold: first, to establish a free-trade area with unprecedented market access by agreeing to eliminate all tariffs by 2017; second, to create the first free-trade link specifically between the Asia Pacific Region and South America; and finally, to provide a template for the expansion of free trade throughout the region by allowing additional countries to adhere to the agreement.[[24]](#footnote-24)

When the US joined the P-4 in 2008, the objectives became much more ambitious and contentious. Now, with the US negotiators largely dominating the agenda, TPP is seeking to become a comprehensive agreement that goes well beyond the WTO rules with the elimination of all tariffs and government commitments to significant regulatory reforms on domestic policy issues.[[25]](#footnote-25) Although the details of TPP negotiations are not widely known, the evidence that has surfaced indicate that participating states will be obligated to provide strong protections for foreign investors, greater safeguards for patent holders, limitations of subsidies for state-owned enterprises, and more aggressive enforcement of environmental and competitions laws.[[26]](#footnote-26) With the addition of Japan to the TPP negotiations in March, 2013, the TPP countries now include the original four members of the P-4, plus the US, Australia, Malaysia, Peru, Vietnam, Canada, Mexico, and Japan.

TPP was originally scheduled to be concluded by the end of 2012, but negotiators now estimate that the agreement will be finished in late 2013. The recent addition of Japan to the negotiations, however, may push the completion date to sometime in 2014.

1. **Regional Comprehensive Economic Partnership.**

RCEP has a very different origin than TPP.[[27]](#footnote-27) In November, 2012, at the East Asia Summit in Phnom Penh, the ten member countries of ASEAN agreed to launch the RCEP negotiations. ASEAN has bilateral and regional free trade agreements with non-ASEAN countries, such as China, South Korea, Japan, India, Australia and New Zealand, which are separate from one another. The basic idea underpinning RCEP is to harmonize all of these free trade agreements into a single regional economic agreement. RCEP also is intended to establish deeper economic integration than the existing free trade agreements by liberalizing more trade in goods, eliminating trade barriers, gradually liberalizing trade in services, and establishing a more hospitable environment for inbound foreign direct investment.[[28]](#footnote-28) The countries now participating in the RCEP negotiations are the ten member countries of ASEAN (the Philippines, Singapore, Brunei, Malaysia, Indonesia, Thailand, Vietnam, Cambodia, Myanmar, and Laos) plus China, Japan, India, South Korea, Australia and New Zealand.

The RCEP timetable is to conclude the negotiations sometime in 2015. Given the volume of free trade agreements to be coordinated and the ambitious goals for expanded trade liberalizations, 2015 may be an overly optimistic goal.

China is not included in the TPP negotiations and the US is excluded from the RCEP negotiations. Between TPP and RCEP, however, every major economy in the Asia- Pacific region is represented, with only two notable exceptions: Taiwan and Russia. With Russia’s tilt towards Asia, which is the subject of the next section, Russia may soon join either RCEP or TPP, with RCEP the most likely possibility. That would leave Taiwan as the only major economy in the Asia-Pacific region not participating in either RCEP or TPP. Success in bilateral free trade negotiations, as mentioned in the previous section, may suggest a path for Taiwan to follow in joining RCEP. Given that China stands as the major obstacle to Taiwan’s participation in any international agreements, China is likely to block Taiwan’s efforts to join TPP unless it first becomes a member of TPP.

1. **Russia’s Tilt Towards Asia.**

Russia’s tilt towards Asia has two components. The first component is to develop and modernize the infrastructure of the nine provinces that make up the Russian Far East (RFE) so that it becomes an attractive hub for expanded economic relations with the East Asia and the Pacific region.[[29]](#footnote-29) The RFE is a vast area about two-thirds of the size of the US and 36 percent of Russia’s total area, but it contains only 6.3 million people.[[30]](#footnote-30) During the 1990s, after the collapse of the USSR, the national government largely ignored the RFE, its population declined by 15 percent and it lost 90 percent of its industrial base, as well as the substantial presence of the Russian Pacific Fleet and the Russian Air Force.[[31]](#footnote-31) In the last decade, Moscow has attempted to reverse the declines by devoting about US$30 billion in state investments in stimulating the RFE’s economy and new infrastructure, with most of the investment directed at urban improvements in Vladivostok.[[32]](#footnote-32) The two new bridges, airport renovation, major new roads, and the expansive, newly constructed campus of Far Eastern Federal University in Vladivostok are the result of these investments.

The second component of Russia’s Asia strategy is to strengthen economic relations with the dynamic economies of Asia-Pacific Region. The Asia-Pacific Region certainly is deserving of the increased attention. While the US struggles with a gridlocked national government, bloody and costly entanglements in the Middle East, and an improving, but still tepid domestic economy, and the European Union lurches from one financial crisis to the next and faces stagnant economic growth rates, the Asia-Pacific Region stands out as the most economically dynamic part of the world. Enhanced economic cooperation between Russia and the Asia-Pacific Region is made especially attractive because the high growth Asian economies often lack the primary resources that the RFE has in abundance, while the Asian economies have the capital and technical expertise to assist in development of the RFE. In other words, the RFE and the Asian economies have precisely what the other party needs: the RFE and the Asian economies have remarkable complementarities.

Of course, Moscow’s tilt towards Asia involves much more than making better use of the economic opportunities presented by the RFE’s geographic location. It appears that Moscow’s tilt has at least three major policy underpinnings:

* To strengthen Moscow’s control over its eastern territories and discourage outsiders from meddling in RFE’s affairs;
* To make clear that Russia is intent on establishing the RFE as an integral part of the APR and an attractive option for expanded economic exchanges with the APR; and
* To reverse the population outflows and economic decline in the RFE, both of which are critical to the success of Moscow’s ambitions in the APR.[[33]](#footnote-33)

In some notable instances, Russia has already begun to exploit the complementarities it has with the Asia-Pacific Region.

* Sakhalin-2 is one of the world’s largest integrated, export-oriented oil and gas projects, as well as Russia’s first offshore gas project. Sakhalin Energy Investment Company Ltd., the project operator, is owned by Gazprom, Shell, Mitsui and Mitsubishi. The project infrastructure includes three offshore platforms, an onshore processing facility, 300 kilometres of offshore pipelines and 1,600 kilometres of onshore pipelines, an oil export facility and a liquefied natural gas (LNG) plant. Almost all of the gas from Sakhalin-2 has been sold under long term contracts to consumers in the APR.[[34]](#footnote-34)
* China is the dominant trading partner for the border provinces of the RFE. The Chinese import metals, coal and timber from the RFE and in exchange supply foodstuffs, clothing and electronic products to the inhabitants of the RFE.[[35]](#footnote-35) With the growing cooperation between the two national governments, this trade is likely to expand. In 2009, then presidents Dmitry Medvedev and Hu Jintao agreed to link the development of China’s northeast provinces with development in the RFE.[[36]](#footnote-36) Most recently, new Chinese President Xi Jinping made Moscow his first foreign destination after taking office in March, 2013. During their meetings in Moscow, presidents Xi Jinping and Vladimir Putin concluded a series of agreements, including an agreement under which Russia’s state controlled oil giant, Rosneft, has agreed to supply China with a million barrels of oil per day, which will make China Russia’s number one consumer of oil. China in turn is providing Rosneft with US$30 billion in loans to assist in Rosneft’s acquisition of the Russian-British joint venture TNK-BP.[[37]](#footnote-37)
* Japanese automaker Mazada has opened its first foreign assembly plant in Vladivotok. When operational, the plant is scheduled to produce 50,000 vehicles per year.[[38]](#footnote-38)
* Although it seems to be on a relatively small scale, the RFE has high end tourism that offers some of the best fresh water fishing adventures in the world in Kamchatka, Sakhalin Island and Primorsky Krai. The potential for all forms of nature tourism within the RFE is extraordinary. The two Chinese provinces closest to the RFE, Jilin Province and Heilongjiang Province, have a combined population equal to about 50 percent of the entire Russian population and the newly affluent Chinese are increasingly looking outside of China for their tourist destinations.

1. **Trade in Financial Services.**

The US and the United Kingdom traditionally have pressed for liberalizations in trade in financial services, which is not surprising because of the economic successes and political power of the financial services industries in the US and the UK. The key argument for liberalizing financial services is that a robust financial services industry contributes to a country’s economic growth and global competitiveness. In its current negotiations involving TPP, the US is urging further liberalizations in financial services, akin to what was concluded in the US free trade agreement with South Korea that came into force in March, 2012.[[39]](#footnote-39)

Recent history has raised serious questions about the benefits of liberalizing financial services. The “Great Recession” was largely attributed to imprudent (or worse) conduct in the US financial sector. The recent bank crises in Iceland, Ireland and Cyprus are painful examples of financial sectors that have lost touch with the underlying economy. In addition, with 50 to 70 percent of the trading on major capital markets in the form of computer generated “flash trades” that occur in a small fraction of a second, are intended to take advantage of miniscule price variations, have no significant economic value and introduce uncertain levels of volatility in the capital markets, a growing number of policymakers now think that financial liberalizations above certain minimums may hurt national economies and limit growth potentials.[[40]](#footnote-40) As a consequence, even as the US continues to push for liberalizing financial services, some jurisdictions are moving in the opposite direction and imposing tighter restrictions on the financial services industry. Beginning in 2012, France has imposed a security transactions tax and this is to be followed in 2014 when 11 countries in the EU also introduce security transactions taxes. At about the same time, Switzerland and countries in the EU have passed new laws that limit employee compensation in the financial sector.

The result is that within the industrialized countries and countries in transition there is a healthy debate about financial services liberalizations. Many wonder whether capital markets are too liquid and financial institutions have lost sight of their principal role as the intermediary between creditors and debtors. Perhaps promising young university graduates should be encouraged to be scientists, medical doctors or engineers rather than investment bankers or hedge fund managers.

1. **Curbing Bribery and Corruption in International Business.**

In the mid-1970s, after a series of revelations by large American corporations about bribery and corrupt dealings within the US political process and in foreign business operations, the US passed the Foreign Corrupt Practices Act (FCPA), which made it illegal for US business people to bribe foreign government officials. At the time of its passage, many in the international business community laughed at the US efforts. They considered the US Government as naïve and excessively patronizing. Bribery, it was commonly thought, was just another cost of doing business.

Now the world has changed markedly. The debilitating effects of corruption in government are well documented and several major international organizations and national government now have followed the American legislation with attacks on corruption. The OECD, for example, has the Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions.[[41]](#footnote-41) Thirty-four OECD countries and 6 other countries have ratified the convention.[[42]](#footnote-42) Similarly, the UN Convention Against Corruption has 140 signatories and 166 parties.[[43]](#footnote-43) At the national level, the UK, Germany, France, Italy, China, and Belgium all have anti-bribery legislation.[[44]](#footnote-44) The new leadership in China also has indicated that it plans to be especially aggressive in dealing with domestic corruption. As a result, the international standard now much more closely approximates the US position under the FCPA than when the act was first introduced almost 40 years ago.

Although there is fairly widespread condemnation of bribery and corruption in international business, the US Government is by far the most aggressive in enforcing its anti-bribery laws. The US law also has an extraordinarily long reach. The FCPA applies to US corporations, US citizens and residents, but it also applies to the actions of foreign agents of US corporations and to foreign corporations that are registered on US security exchanges. As a result many of the largest cases have involved foreign corporations engaged in corrupt conduct in third countries. The largest case under FCPA, for example, involved Siemens, a German company, for widespread bribes and other improper dealings in the Middle East. Siemens had a pay US$1.6 billion in fines and compliance costs as a result of its violations of the US FCPA and its German counterpart.[[45]](#footnote-45)

Because of its broad reach, the US FCPA has an effect on many international transactions with little connection with the US. It is this aspect of the US law that continues to be so controversial and makes the US Government look excessively paternalistic. It also puts added pressure on local advisors in foreign jurisdictions to be aware of the potential impact of the FCPA even when their business has no relationship with the US economy and the only connection to the US is that the stock in the parent company is listed on a US security exchange.

1. **Implications for Taiwan and International Business Lawyers in Taiwan.**
2. **International Business Lawyers in Taiwan.**

The ten trends described above are creating important opportunities for Taiwan’s international business lawyers. The increased interaction with China means that lawyers conversant in cross-straits business laws and practices will be very much in demand. Establishing working relationships with Mainland counterparts will be essential since so many of the legal issues on the Chinese side require a detailed understanding of the local laws, practices and personalities. For Taiwanese lawyers, emerging areas of importance are:

* Cross-straits trade law, including ECFA tariff preferences, customs procedures, and rules of origin;
* Contractual and equity joint ventures with Mainland enterprises with operations partly in Taiwan and partly on the Mainland;
* Mainland direct investment in Taiwan;
* Taiwan’s direct investment in China;
* Cross-straits mergers and acquisitions;
* Cross-straits securities regulation;
* Cross-straits trade and investment finance;
* Intellectual property protection on the Mainland;
* Tourism, including cross-straits transportation; and
* Immigration as China’s entrepreneurs and intellectuals seek to avoid the heavy thumb of the CPC and the extraordinary congestion and the heart stopping pollution of Chinese urban life.

Assuming successful conclusion of Taiwan’s free trade agreements that are now in the final stages of negotiation, Taiwan’s legal community will need to be conversant with how these free trade agreements depart from the WTO. Customs procedures, trade preferences, expanded trade opportunities in service industries, and rules of origin all will be important topics under the new free trade agreements. Professional alliances with international business law firms in Singapore and New Zealand also are likely to be mutually beneficial.

Given the turmoil in China, Taiwan may become a preferred destination for foreign direct investment originating in North America, Europe and other parts of East Asia as companies seek trade favored access to the Chinese markets without the political turbulence, labor instability, and environmental risks associated with investment in China. Taiwanese lawyers conversant in mergers and acquisitions and green field investments should see increased opportunities for their expertise.

The extended reach of the US FCPA means that Taiwan international business lawyers need to be aware of the basic dimensions of the law. The FCPA does apply to many Taiwanese and Chinese companies as well as other foreign companies and their agents, so some knowledge of the potential liabilities it creates is essential. The FCPA also makes it necessary for larger companies to employ compliance officers to insure that the companies do not violate the law. The FCPA is rightly criticized as being exceptionally paternalistic and an unwelcome intrusion in economic affairs with little American connection, but Taiwanese international business lawyers need to be well aware of its effect in Taiwan.

1. **Implications for Taiwan.**

The major issue facing Taiwan is the threat of economic marginalization as the Asia Pacific Region moves towards greater integration of national markets. Although China is the principal obstacle to Taiwan’s full participation in the global community, ECFA offers two important antidotes to the marginalization threat. First, ECFA is establishing Taiwan as a platform for trade favored access to Chinese markets without many of the problems associated with direct investment in China. Second, without ECFA, China would block Taiwan’s efforts to conclude free trade agreement with other countries, but with ECFA Taiwan has been able to move forward with its free trade negotiations with Singapore and New Zealand. In fact, concluding these two free trade agreements in the near future seems plausible.

The mechanism used in the Singapore Free Trade Agreement - Taiwan as the “Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu”, seems to adequately deal with the “One China” policy as demanded by China and it may be an important precedent for future free trade negotiations, including even with the US. It also may provide the base for Taiwan’s participation in RCEP or eventually TPP, although TPP is unlikely until China first joins the group.

Between RCEP and TPP, the latter offers more substantive trade liberalizations and a more significant trade bloc. As a result, TPP is likely to have a greater positive impact on Taiwan’s economy if Taiwan can become a member. But, because China is not a party to TPP, Taiwan is not likely to become a member of TPP anytime soon. There is, however, one strategy the Taiwanese Government can use to obtain some of the benefits of being a part of TPP even without being a fully fledged member of TPP. That is to unilaterally alter its trade laws so they are largely TPP compliant. In other words, the Taiwan Government should undertake a study to determine which tariff schedules, customs procedures and other laws in Taiwan need to be changed to make them TPP consistent. Even before the full text of TPP is published, the Taiwan Government can get some understanding of what the agreement will look like by examining the US free trade agreement with South Korea, which is apparently the model being used to shape important sections of the TPP agreement.[[46]](#footnote-46)

Besides making Taiwan a more comfortable place for TPP members to do business, unilateral action by Taiwan may have another notable consequence. One of the bigger themes at stake in the competing RCEP and TPP negotiations is who will control the global trade agenda. Both China through RCEP and the US through TPP are seeking to establish a model that will be used for future negotiations, either broader regional negotiations or global negotiations under the WTO. By making Taiwan more TPP compliant, Taiwan is siding with the more aggressive trade liberalizations forces that dominant many of the most affluent and sophisticated markets.

It is not clear what effect Russia’s tilt towards Asia will have on Taiwan. As described in Part 1, Section H, Russia’s Tilt Towards Asia, there are a number of political and economic reasons why the Russian Far East and China are likely to become more economically integrated. Whether a greater Chinese presence in the RFE will create opportunities for Taiwanese businesses cannot be predicted. It is clear, however, that the RFE has an astonishing array of natural resources, so whatever natural resources Taiwan has in short supply, the RFE may be able to provide. Although the RFE is an exceptionally corrupt and highly bureaucratic place to do business, it still may be worth a look.

1. This paper is based on a series of talks presented at four universities in Taiwan in March and April, 2013. I am grateful for research support from UW LLM/SJD candidate Yingying Hu and the comments and criticism from Robert W. Irish and many of the people who attended the talks. Any factual or judgmental errors, however, are entirely my responsibility. [↑](#footnote-ref-1)
2. <http://www.chinaglobaltrade.com/fact/real-gdp-capita-us-and-china-1980-2030> (visited May 3, 2013). [↑](#footnote-ref-2)
3. <http://www.worldbank.org/en/country/china/overview> (visited May 3, 2013). [↑](#footnote-ref-3)
4. *See* Buckley, *For China, economic change must chase politics*, **International Herald Tribune** (June 22 – 23, 2013) at p. 1. [↑](#footnote-ref-4)
5. <http://www.wto.org/english/tratop_e/dda_e/dda_e.htm> (visited May, 13, 2013). [↑](#footnote-ref-5)
6. Id. [↑](#footnote-ref-6)
7. <http://www.ft.com/intl/cms/s/0/5a559ce8-a2c1-11e2-bd45-00144feabdc0.html#axzz2TCfS516N> (visited May 13, 2013). [↑](#footnote-ref-7)
8. Id. [↑](#footnote-ref-8)
9. *Stakes high in battle to lead troubled WTO*, **Financial Times** at p. 3 (US edition, May 7, 2013). [↑](#footnote-ref-9)
10. <http://www.taiwaninsights.com/tag/ecfa/> (visited may 14, 2013). [↑](#footnote-ref-10)
11. Id. [↑](#footnote-ref-11)
12. <http://brandeisear.wordpress.com/2012/11/16/383/> (visited May 14, 2013). [↑](#footnote-ref-12)
13. Some reports claim that the early harvest has been more favorable for China than Taiwan. *See* <http://www.taipeitimes.com/News/taiwan/archives/2012/10/02/2003544180> (visited May 14, 2013). [↑](#footnote-ref-13)
14. <http://taiwantoday.tw/ct.asp?xItem=200062&ctNode=413> (visited March 16, 2013). [↑](#footnote-ref-14)
15. <http://www.taiwantoday.tw/ct.asp?xItem=190503&CtNode=426> (visited May 14, 2013) [↑](#footnote-ref-15)
16. <http://news.xinhuanet.com/english/china/2013-04/10/c_132298732.htm> (visited May 14, 2013) [↑](#footnote-ref-16)
17. Id. [↑](#footnote-ref-17)
18. <http://www.bilaterals.org/spip.php?rubrique99> (visited May 14, 2013). [↑](#footnote-ref-18)
19. <http://www.bilaterals.org/spip.php?article22521> (visited May 14, 2013). [↑](#footnote-ref-19)
20. Id. [↑](#footnote-ref-20)
21. <http://www.wantchinatimes.com/news-subclass-cnt.aspx?id=20130314000078&cid=1102> (visited May 14, 2013). [↑](#footnote-ref-21)
22. <http://www.taipeitimes.com/News/front/archives/2013/03/11/2003556783> (visited May 14, 2013). [↑](#footnote-ref-22)
23. T.A. Kahn, *How the Trans-Pacific Partnership Lost Its Way*, The Santiago Times, Feb. 1, 2013,

    <http://www.santiagotimes.cl/opinion/op-ed/25684-how-the-trans-pacific-partnership-lost-its-way> (visited April 15, 2013). [↑](#footnote-ref-23)
24. *Id.* [↑](#footnote-ref-24)
25. *Id.* [↑](#footnote-ref-25)
26. ### *Id.* For a good general discussion of the TPP negotiations, see Congressional Research Services, *Trans-Pacific Partnership Negotiations and Issues for Congress* (April, 2013) at www.fas.org/sgp/crs/row/R42694.pdf.

    [↑](#footnote-ref-26)
27. Research Institute Network, *Regional Comprehensive Economic Partnership*, [www.pids.gov.ph/files/2nd%20RIN%20Statement\_R3.pdf](http://www.pids.gov.ph/files/2nd%20RIN%20Statement_R3.pdf) (last visited Apr. 15, 2013). [↑](#footnote-ref-27)
28. Beginda Pakpahan, *Will RCEP Compete with the TPP?,* East Asia Forum, Nov. 28, 2012), <http://www.eastasiaforum.org/2012/11/28/will-rcep-compete-with-the-tpp/> (last visited March 20, 2013). [↑](#footnote-ref-28)
29. Moscow’s commitment of assistance to the region actually includes the Trans-Baikal Region, which adjoins the RFE, but 95 percent of the government’s assistance is directed to the RFE, with two-thirds going specifically to the City of Vladivostok. *See* Rens Lee, Foreign Policy Research Institute, *The Russian Far East: Opportunities and Challenges* Dec. 22, 2012, <http://www.fpri.org/news/2012/12/russian-far-east-opportunities-and-challenges> (last visited Apr. 12, 2013). [↑](#footnote-ref-29)
30. In contrast, the three provinces and one autonomous region in China just to the south of the RFE have a combined population of 134.1 million. *See* 32 Chinese Political Units in Population Order, <http://www.paulnoll.com/China/Provinces/China-Political-pop-rank.html> (last visited Apr. 14, 2013). [↑](#footnote-ref-30)
31. Rens Lee, *supra* note 28. [↑](#footnote-ref-31)
32. Rens Lee, *supra* note 28. [↑](#footnote-ref-32)
33. Rens Lee, *supra* note 28. [↑](#footnote-ref-33)
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35. Rens Lee, *supra* note 28. [↑](#footnote-ref-35)
36. Rens Lee, *supra* note 28. [↑](#footnote-ref-36)
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39. Congressional Research Service, *The Trans-Pacific Partnership Negotiations and Issues for Congress* at p. 21, [www.fas.org/sgp/crs/row/R42694.pdf](http://www.fas.org/sgp/crs/row/R42694.pdf) (visited May 20, 2013). On the US/Korea Free Trade Agreement, see <http://www.ustr.gov/trade-agreements/free-trade-agreements/korus-fta> (visited May 20, 2013). [↑](#footnote-ref-39)
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41. <http://www.oecd.org/corruption/oecdantibriberyconvention.htm> (visited May 20, 2013). [↑](#footnote-ref-41)
42. Id. [↑](#footnote-ref-42)
43. <http://www.unodc.org/unodc/en/treaties/CAC/> (visited May 20, 2013). [↑](#footnote-ref-43)
44. McDermott, Will and Emory, *Comparison of Anti-Bribery Laws.* [↑](#footnote-ref-44)
45. <http://www.secactions.com/the-siemen-fcpa-case-a-record-settlement-and-a-warning-to-all/> (visited May 20, 2013). [↑](#footnote-ref-45)
46. #### Congressional Research Service, Trans-Pacific Partnership Negotiations and Issues for Congress (April, 2013) at www.fas.org/sgp/crs/row/R42694.pdf‎ (visited May 20, 2013).

    [↑](#footnote-ref-46)