



經濟部國際貿易局
Bureau Of Foreign Trade

TAIWAN AND EUROPEAN UNION TRADE AND ECONOMIC RELATIONS

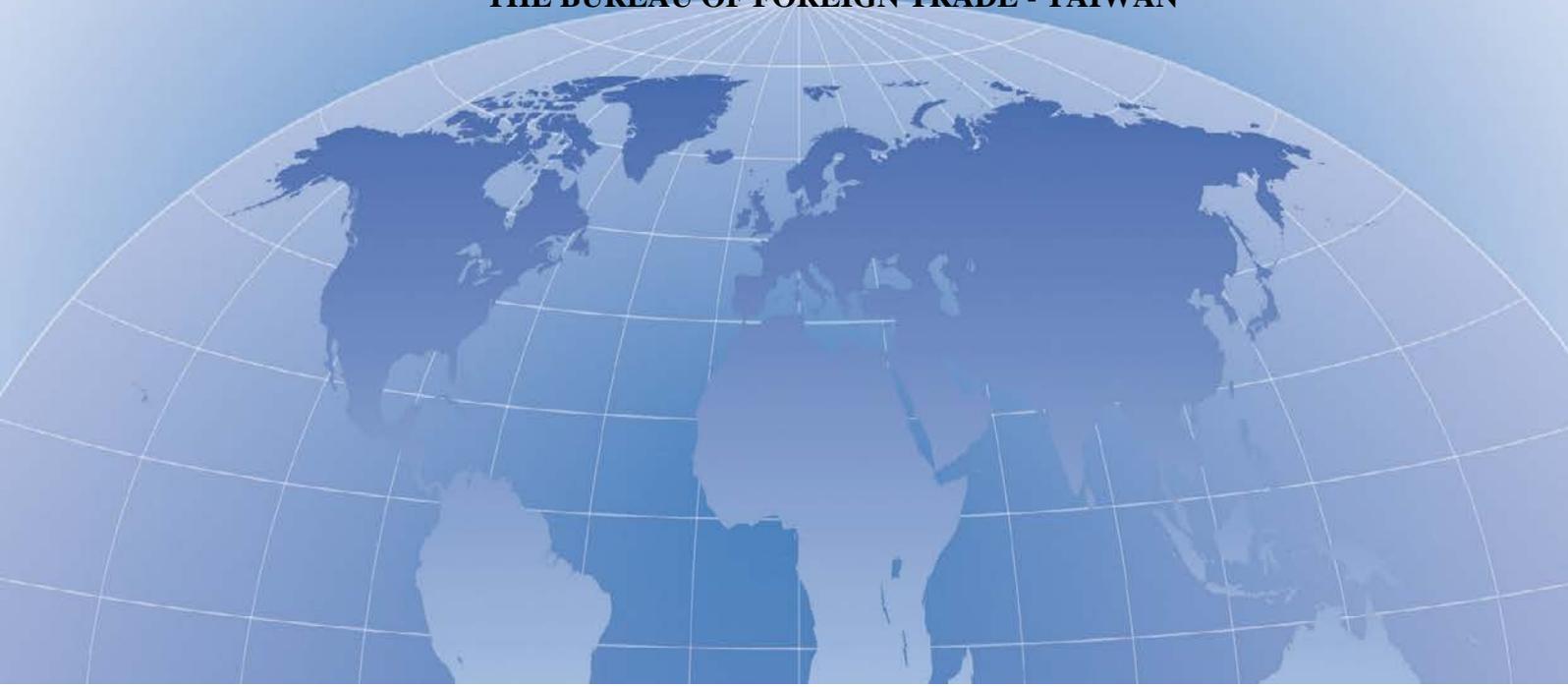
THE CASE FOR A DEEP AND COMPREHENSIVE BILATERAL INVESTMENT AGREEMENT

A REPORT BY

PASCAL KERNEIS, PHILIPP LAMPRECHT & PATRICK MESSERLIN

NOVEMBER 2016

**A SURVEY SPONSORED BY THE EUROPEAN SERVICES FORUM AND
THE BUREAU OF FOREIGN TRADE - TAIWAN**





European Services Forum



經濟部國際貿易局
Bureau Of Foreign Trade

This research report was prepared as a result of a survey conducted by the European Services Forum, with support from the Office of Trade Negotiations (OTN), Bureau of Foreign Trade (BOFT), Ministry of Economic Affairs of the Republic of China.

The report is researched, drafted and prepared by ESF team comprising – Pascal Kerneis, ESF Managing Director, Natascha Henri & Joseph Shaw, Trade Advisors -, Phillip Lamprecht, Researcher at the European Centre for International Political Economy (ECIPE), Brussels; and Patrick Messerlin, Professor of economics, Sciences-Pô Paris.

We would also like to acknowledge all the experts consulted, and the companies and trade associations that contributed to this report, in particular the European Chamber of Commerce in Taiwan (ECCT) and the Taiwan Coalition of Service Industries (TWCSI).

Disclaimer: The European Services Forum and the authors of this Report are the sole responsible for the content of this report, and is not in any case the official position of the government of Republic of China.

Copyrights 2016 ©  • Avenue de Cortenbergh, 168 • B – 1000 - Brussels • Belgium •
Email: esf@esf.be • Tel : +32-2-230 75 14 • Fax : +32-2-230 61 68 • www.esf.be

 The Bureau of Foreign Trade (BOFT), Ministry of Economic Affairs (MOEA)
1 Hu Kou Street ,Zhongzheng Dist.,Taipei, Taiwan 100-66, R.O.C. Tel: +886-2-23510271 Fax:
+886-2-23517080,23513603 - <http://www.trade.gov.tw/English/>

Executive Summary

In its new trade and investment strategy “Trade for All” published in October 2015, the European Commission highlighted the relevance of the Asia Pacific Region for European economic interests. As part of its Asia strategy, the communication states that “the EU will explore launching negotiations on investment with [...] Taiwan” to broaden its network of investment agreements in the region.

Furthermore, when analysis the economic situation of Taiwan, the trade relations of the country with the EU, with its neighbours and with the rest of the world, one can find strong reasons for improving the investment and trade environment between Taiwan and the European Union. Some encouraging developments in recent years include the enhancement of Taiwan’s investment and services trade regulatory regime, as well as the Trade in Services Agreement (TiSA) negotiations of which both Taiwan and the EU are participants.

With these two elements in mind, the authors of this report aimed at making a more in-depth survey on the potential benefits of an EU-Taiwan trade and investment agreement for the EU and Taiwan. The report focuses on assessing the potential gains for the European services sector that could result from liberalisation of the Taiwanese market, while references are also made to the manufacturing sectors.

This report also looks at assessing whether Taiwan has the sufficient capacity to be a hub in East Asia for European companies. To run such an assessment, it looks at the intensity in services of Taiwan’s trade, with a close analysis on the value added components of Taiwan’s exports and the share of the domestic and foreign providers in Taiwan’s trade; it then tries to identify where are the remaining Taiwanese barriers to trade and investment; and it finally provides an in-depth assessment of Taiwan’s “regulatory quality”, based on “doing business” data provided by the World Bank and other institutions. Compared to 2010, Taiwan’s regulatory quality has substantially increased in 2015 based on DTF indicators constructed using the World Bank Doing Business Database. This economic analysis strengthens the views of the authors that time was ripe for moving towards a closer EU-Taiwan relationship.

Against this background, it appears relevant to identify the specific issues that a potential bilateral investment agreement between the EU and Taiwan should address. In addition, the potential of going beyond a sole investment agreement, i.e. the benefits of a fully-fledged free trade agreement, should be taken into consideration, or at least to explore all possibilities for a deep and comprehensive bilateral investment agreement (BIA). The second Part of the report therefore makes some recommendations towards the negotiations of such an agreement, taking into consideration the specific political environment with its neighbour and the fact that EU and Taiwan are both participating parties to the Trade in Services Agreement (TiSA).

TABLE OF CONTENTS

INTRODUCTION

PART I. TAIWAN ECONOMIC AND TRADE RELATIONS

SECTION 1. TAIWAN'S ECONOMY IN THE WORLD

- 1.1. Taiwan's trade in goods
- 1.2. Taiwan's trade in services
- 1.3. Taiwan's investment regime
- 1.4. Taiwan's multilateral and bilateral commitments
- 1.5. Trade Agreements with Mainland China

SECTION 2. EU-TAIWAN TRADE RELATIONS

- 2.1. An overall presentation
- 2.2. EU-Taiwan trade relations in services
- 2.3. Investment

SECTION 3. TAIWAN'S CAPACITY TO BE A HUB IN EAST ASIA

- 3.1. Intensity in services of Taiwan's trade
- 3.2. Taiwanese barriers to trade and investment: An overview of the ESF Survey
- 3.3. Taiwan's "regulatory quality"

PART II. THE COMPONENTS OF AN EU-TAIWAN BILATERAL INVESTMENT AGREEMENT (BIA)

SECTION 1. THE "MAINLAND CHINA" FACTOR

SECTION 2. THE "TABLE OF CONTENT" OF AN EU-TAIWAN BIA

- 2.1. What the BIA will not include
- 2.2. What the BIA will include

SECTION 3. THE SCOPE OF THE BIA SHOULD EXPAND BEYOND TISA

SECTION 4. AN IN-DEPTH ANALYSIS OF THE FUTURE CONTENT OF THE EU-TAIWAN BIA

- 4.1. Market access pillar
 - 4.1.1. The negative list as recommended method
 - 4.1.2. The Modes of services supply
 - 1. Cross-border trade in services
 - 2. Establishment of commercial presence abroad (FDI)
 - 3. Temporary movement of natural persons
 - a) Intra-Corporate Transferees (ICT)
 - b) Other categories
- 4.2. Investment protection chapter
- 4.3. Public Procurement: the BIA should go beyond GPA
- 4.4. Regulatory disciplines and cooperation pillar & Other Rules
 - 4.4.1. Domestic Regulation
 - 1. Regulatory Coherence
 - 2. Regulatory cooperation
 - 3. MRAs on Professional qualification
 - 4.4.2. Other rules
 - 1. Rules on cross border data flow
 - 2. Rules on State-owned enterprises
- 4.5. Rules on labour and environment

CONCLUSION

INTRODUCTION

Taiwan has one of the most advanced and flourishing economies in Asia and has historically been one of the world's fastest growing economies.¹The EU maintains good trade relations with Taiwan, but Taiwan's political relations with Mainland China has hindered its bilateral relations with the EU, which so far do not go beyond WTO commitments. As a result, trade barriers remain between the two parties despite clear benefits for both sides from their removal.

Since 2008, Taiwan was ruled by the Kuomintang party (KMT), which positively impacted the country's relation to Mainland China. This led to an easing of political tensions and to the signing of a bilateral trade agreement in 2010, which does not only facilitate trade between the two parties but also turned Taiwan into a potential hub for EU businesses to operate in China.

In January 2016, Ms. Tsai Ing-wen, candidate of the Democratic Progressive Party (DPP) was elected President with 56 percent of the votes. Her party is more assertive of Taiwan's independence. On 20th May 2016, Ms. Tsai Ing-wen assumed office as President of Taiwan. Although one of DPP's policy positions is to support clear separate identity from Mainland China, President Tsai has recently taken a more moderate stance with China, pledging for the continuity of the existing mechanisms for dialogue and communication across the Taiwan Strait. A peaceful relationship with its neighbour should allow further prosperity in the country and the region.

The EU supported Taiwan's accession to the WTO, which started in 2002. Consequently, a European Economic and Trade Office was opened in Taipei in 2003, and reciprocally a Taipei Representative office in the EU was open in Brussels. In December 2008, Taiwan fulfilled an important WTO accession commitment by joining the WTO Government Procurement Agreement (GPA). The EU has demonstrated its interest in the fast-growing Asia-Pacific

¹ *Copenhagen Economics, 2008. Taiwan: Enhancing Opportunities for European Business, p.24.*

Available at:

http://www.copenhageneconomics.com/dyn/resources/Publication/publicationPDF/1/21/0/53201_EU-Taiwan_Study.pdf

region by either starting or concluding trade and/or investment negotiations with South Korea, Japan, Mainland China, Vietnam, Malaysia, Thailand, Philippines, Singapore, possibly with Indonesia and ASEAN as a whole. Taiwan is one of the top investors in nearly all these markets. By concluding an EU-Taiwan investment and trade agreement, Taiwan could become a crucial and much-needed gateway for EU companies wishing to expand their presence in the Asia-Pacific region.²

In 2013, the European Parliament called on the European Commission to start talks for investment and trade agreements with Taiwan.³ The European Commission highlighted the relevance of the Asia Pacific Region for European economic interests in its new trade and investment strategy “Trade for All” published in October 2015. As part of its Asia strategy, the communication states that “the EU will explore launching negotiations on investment with [...] Taiwan” to broaden its network of investment agreements in the region.⁴

Against this background, it appears relevant to identify the specific issues that such a potential bilateral investment agreement between the EU and Taiwan should address. In addition, the potential of going beyond a sole investment agreement, i.e. the benefits of a fully-fledged free trade agreement, should be taken into consideration, or at least to explore all possibilities for a deep and comprehensive bilateral investment agreement (BIA).

The report analyses the potential benefits of an EU-Taiwan trade and investment agreement for the EU and Taiwan. It focuses on assessing the potential gains for the European services sector that could result from a liberalization of the Taiwanese market. To a lesser extent, it also assesses the gains for the Taiwanese services sector resulting from liberalization of the European market. While the main focus of the report is on the services sector, references will also be made to the manufacturing sector when useful. In addition, it provides an assessment

² EIAS, 2015. *A Survey on 10 Leading Taiwanese Enterprises Investing in the EU and its Member States*, p.9. Available at: <http://www.eias.org/wp-content/uploads/2016/02/A-Survey-on-10-Leading-Taiwanese-Enterprises-Investing-in-the-EU-and-its-Member-States.pdf>

³ European Parliament, 2013. *European Parliament resolution of 9 October 2013 on EU-Taiwan trade relations (2013/2675(RSP))*. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0412+0+DOC+XML+V0//EN>

⁴ European Commission, 2015. *Trade for All. Towards a more responsible trade and investment policy*, p.31. Available at: http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf

of Taiwan's capacity to be a hub in East Asia and an analysis of the benefits of increased EU-Taiwan business cooperation in such a context.

- The first Part of the report make a deep analysis of the economic and trade situation of Taiwan, of its trade relationship with the European Union and then look at the intensity in services of Taiwan's trade, where are the remaining Taiwanese barriers to trade and investment and provide an in-depth assessment of Taiwan's "regulatory quality", based on "doing business" data provided by the World Bank and other institutions.
- The results of the economic and legal analysis show clearly that both economies would benefit from a better legal environment that could be enhanced by the negotiations of a trade and investment agreement. The second Part of the report therefore make some recommendations towards the negotiations of a deep and comprehensive bilateral investment agreement, taking into consideration i) the specific political environment with its neighbour, ii) the fact that EU and Taiwan are both participating parties to the Trade in Services Agreement (TiSA).

Methodology:

The analysis draws on legal texts, government websites and existing and ongoing studies by ECCT, Copenhagen Economics, ECIPE, Sciences-Po, Clingendael, EIAS and others studies. Its findings are also based on a survey conducted by the European Services Forum (ESF) in cooperation with the European Chamber of Commerce in Taiwan (ECCT) and Taiwan Coalition of services Industries (TWCSI). A questionnaire was sent to ESF, ECCT and TWCSI Members and other companies and trade associations from both the EU and Taiwan. Despite the heterogeneity of the responses, the survey allowed to draw general trends and recommendations.

PART I. TAIWAN ECONOMIC AND TRADE RELATIONS

The first section of this part, which is dedicated to economic analysis of the Taiwanese trade and investments flows, provides an overview of Taiwan's economy and Taiwan's international trade profile. A special emphasis is laid on the Taiwanese services sector and trade in services.

The second section lays a focus on EU-Taiwan trade and investment relations, again with an emphasis on trade in services and investment.

The third section presents the main findings of a business survey conducted on Taiwan's regulatory barriers. It assesses the "regulatory quality" of Taiwan and analyses Taiwan's potential to becoming a hub for EU companies in the Asia-Pacific region.

SECTION 1. TAIWAN'S ECONOMY IN THE WORLD

Capital investment and private expenditure helped Taiwan overcome the "Great Recession", resulting in a growth rate of 3.7% in 2013-2014.⁵ Although, the IMF has forecasted that Taiwan will perform better than other advanced Asian economies (IMF predicted 4.09 % per year from 2015 to 2020, which is higher than Hong-Kong, Singapore and South Korea⁶), these estimations are contradicted by the economic reality where the GDP growth for 2015 is now predicted down to 0.8%, and the economy could further contract in 2016, due to exports slump⁷.

Taiwan's economy has two specificities for an advanced economy. It is characterized by many small and medium size firms. It has a relatively higher share of manufacturing and,

⁵ EIAS, 2015. *A Survey on 10 Leading Taiwanese Enterprises Investing in the EU and its Member States*. Available at: <http://www.eias.org/wp-content/uploads/2016/02/A-Survey-on-10-Leading-Taiwanese-Enterprises-Investing-in-the-EU-and-its-Member-States.pdf>

⁶ IMF, 2015. *World Economic Outlook. Uneven Growth. Short- and Long-term factors*, p.171. Available at: <http://www.imf.org/external/pubs/ft/weo/2015/01/pdf/text.pdf>. According to IMF, the real GDP growth for Taiwan in 2015 is projected to be 3.8 %, and 4.5% in 2016, the highest among advanced Asia and Pacific countries. Taiwan's GDP in 2014 was 530 billion USD. <http://world-economic-outlook.findthedata.com/l/7151/Taiwan-Province-of-China>

⁷ See for instance <http://www.focus-economics.com/country-indicator/taiwan/gdp>

consequently, a relatively low share of services, compared to countries having the same income per capita level. However, things are changing on this front, and Taiwan is becoming more than a global high tech hub.

In particular, it is becoming an advanced service centre for businesses operating in Mainland China through expansions of the existing services into head office functions, R&D centers, marketing, professional training and medical services. Films and music from Taiwan are also a strong market in China. These service industries all grow rapidly and Taipei is likely to be a leading centre in greater China for some of these activities.

Current challenges to Taiwan's economy are relatively low wages in comparison to high housing prices, combined with youth unemployment and concerns about financial security after retiring.⁸ Taiwan's population was 23.4 million in 2014.⁹ Taiwan's fertility rate is low (approximately one child per woman) and Taiwan's population is aging rapidly: almost one out of five Taiwanese will be over 65 years old in 2025.¹⁰ This low birth rate and rapidly aging population are two major long-term challenges.

1.1. Taiwan's trade in goods

Taiwan is an important world trading partner, with a total world trade volume of 578.9 billion USD in 2014. In 2014, its exports of goods stood at 314 billion USD and its imports at 274 billion USD, constituting a share of world total merchandise exports of 1.65%, and a share of world total merchandise imports of 1.44%. In world trade for merchandise exports, Taiwan's rank is 20th, while it is 19th for merchandise imports in 2014. Taiwan enjoyed therefore a trade in goods surplus of 40 billion USD in 2014.¹¹

Taiwan's trade in goods is largely dominated by manufactures, accounting for 83.8% of exports and 61.7% of imports in 2014. The main destinations of Taiwan's goods exports were China

⁸ CIA, 2016. *The World Factbook*. Available at: https://www.cia.gov/library/publications/the-world-factbook/geos/print_tw.html

⁹ WTO, 2016. *Trade Profiles*. Available at: <http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language=E&Country=TW>

¹⁰ CIA, 2016. *The World Factbook*. Available at: https://www.cia.gov/library/publications/the-world-factbook/geos/print_tw.html

¹¹ WTO, 2016. *Trade Profiles*. Available at: <http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language=E&Country=TW>

(26.8%), Hong Kong (12.9%) and the United States (10.7%). The main origins of Taiwanese imports were Japan (accounting for 16.0%), China (15.8%) and the United States (9.5%).¹²

1.2. Taiwan's trade in services

In 2014, Taiwan's exports of services stood at 57 billion USD, and its imports at 45 billion USD, which make a total volume of 102 billion USD. Taiwan is the 23rd worldwide trade in commercial services exporter and the 29th importer. It enjoyed a trade in services surplus of US\$ 12 billion in 2014.¹³ Taiwan's share in world total exports in commercial services was 1.15%, while its share of world total imports in services was 0.95%.

Amongst the services sectors, transportation, travel and other commercial services are the most important sectors: transportation accounted for 19.5% of exports and 24.8% of imports, while travel accounted for 25.7% of exports and 30.9% of imports. The corresponding figures for other commercial services were 54.7% for exports and 44.3% for imports in 2014.¹⁴

1.3. Taiwan's investment regime

Taiwan also hosts a welcoming environment with respect to investment. Inward investment in Taiwan in 2013 amounted to 4.9 billion USD. The Caribbean Islands accounted for 29.22% of foreign investment, followed by Asia as a whole with 24.31%. 13.92% of investment came from Europe, with the Netherlands being a main source (4.8% alone).¹⁵ Mainland China remains the main destination for Taiwan's outward investment with a share of 63.7 percent of all outward investment in 2013. Other important destinations in Asia were Vietnam (12.04%), Hong Kong (2.19%) and Japan (1.18%). The United States accounted for 2.88% of Taiwanese outward investment.¹⁶ Outward investment to the European Union remain very modest, with

¹² WTO, 2016. *Trade Profiles*. Available at: <http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language=E&Country=TW>

¹³ WTO, 2016. *Trade Profiles*. Available at: <http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language=E&Country=TW>

¹⁴ WTO, 2016. *Trade Profiles*. Available at: <http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language=E&Country=TW>

¹⁵ Taipei Representative Office Brussels, 2015. *Taiwan Economic and Trade Development*, pp.6-7. Available at: <http://www.roc-taiwan.org/public/Attachment/491823151771.pdf>

¹⁶ Taipei Representative Office Brussels, 2015. *Taiwan Economic and Trade Development*, pp.6-7. Available at: <http://www.roc-taiwan.org/public/Attachment/491823151771.pdf>

only 1 billion USD stocks in 2014¹⁷, accounting for 2% of Taiwan outward FDI¹⁸. Finally, Taiwan's has the fifth largest foreign reserves in the world, after China, Japan, Saudi Arabia and Switzerland, with a total estimated at 426 billion USD in December 2015.¹⁹

1.4. Taiwan's multilateral and bilateral commitments

Taiwan became a member of the WTO on 1st January 2002 and thereby opened many sectors to international competition. It also signed the Reference Paper on basic telecommunications and acceded to the Government Procurement Agreement (GPA) in 2009.

Free trade agreements have proliferated in East Asia over the past several years. Leaving aside the Agreement with Mainland China (see next sub-section), Taiwan has signed so far seven preferential trade agreements.²⁰ As far as Central America is concerned, Taiwan has FTAs with Nicaragua, Guatemala, Panama, Honduras and El Salvador in place.²¹ Singapore was the first South-East Asian country to sign a bilateral deal with Taiwan when the two parties concluded "ASTEP" (Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership) in November 2013.²²

Since 2012, Taiwan also has a bilateral investment arrangement with Japan which was, according to the Taipei Representative Office in Brussels, "warmly welcomed by the private sector, as evidenced by the resulting 30 percent growth of Japanese investment in Taiwan".²³ Joint feasibility studies on economic cooperation agreements have been conducted with

¹⁷ European Commission – Directorate General for Trade. Available at: <http://ec.europa.eu/trade/policy/countries-and-regions/countries/taiwan/>

¹⁸ See Figure 3 of this Report, page 14

¹⁹ CIA, 2016. *The World Factbook*. Available at: https://www.cia.gov/library/publications/the-world-factbook/geos/print_tw.htm

²⁰ Bureau of Foreign Trade, 2016. *FTAs signed with trading partners*. *Note: the link does not yet include the agreement with Singapore*. Available at: <http://www.trade.gov.tw/english/Pages/List.aspx?nodeID=672>

²¹ Bureau of Foreign Trade, 2010. *Bilateral Trade between the R.O.C. and Central and South America*, p.2. Available at: http://www.trade.gov.tw/english/Pages/Detail.aspx?nodeID=661&pid=321424&dl_DateRange=all&txt_SD=&txt_ED=&txt_Keyword=&Pageid=0

²² Taipei Representative Office, 2015. *Taiwan Economic and Trade Development*, p.9. Available at: <http://www.roc-taiwan.org/public/Attachment/491823151771.pdf>

²³ Taipei Representative Office, 2015. *Taiwan Economic and Trade Development*, p.9. Available at: <http://www.roc-taiwan.org/public/Attachment/491823151771.pdf>

Indonesia in 2012 and with India in 2013. Furthermore, various kind of investment agreements with the US, Malaysia and Thailand have also been signed.

In 2013, Taiwan and New Zealand concluded the Economic Cooperation Agreement (ANZTEC) that entered into force the same year.²⁴ Finally, it is negotiating a variety of issues of mutual interests under the Investment Framework Agreement (TIFA) with the United States since 2013.²⁵

All of the above efforts are creating favorable conditions for Taiwan's participation in regional economic integration and also bring the country closer to its long-term goal of joining the Trans-Pacific Partnership regional trade agreement and the Regional Comprehensive Economic Partnership in Asia (RCEP).²⁶

1.5. Trade Agreements with Mainland China

The most important trade agreement Taiwan currently holds is undoubtedly the Economic Cooperation Framework Agreement (ECFA) with China and its related agreements. In June 2010, Taiwan signed this landmark agreement with China. Even if the ECFA starts with fairly modest trade liberalization (so far it falls well below the standard of an FTA that is GATS-consistent), it should be seen as a framework for the progressive elimination of bilateral trade and investment barriers.

On August 9 2012, the Cross-Strait Bilateral Investment Protection and Promotion Agreement was signed. In 2013, Taiwan and Mainland China signed the Cross-Strait Service Trade Agreement, commonly abbreviated CSSTA and sometimes alternatively translated Cross-Strait Agreement on Trade in Services²⁷. Under the terms of the agreement, service industries such as banking, healthcare, tourism, film, telecommunications, and publishing would be

²⁴ <http://www.taiwan.gov.tw/ct.asp?xItem=126570&CtNode=3766&mp=1>

²⁵ Taipei Representative Office, 2015. *Taiwan Economic and Trade Development*, p.9. Available at: <http://www.roc-taiwan.org/public/Attachment/491823151771.pdf>

²⁶ EIAS, 2015. *A Survey on 10 Leading Taiwanese Enterprises Investing in the EU and its Member States*, p.78. Available at: <http://www.eias.org/wp-content/uploads/2016/02/A-Survey-on-10-Leading-Taiwanese-Enterprises-Investing-in-the-EU-and-its-Member-States.pdf>

²⁷ The CSSTA was negotiated and signed by the [Straits Exchange Foundation](#), representing Taiwan, and the [Association for Relations Across the Taiwan Straits](#), representing China, on June 21, 2013, in [Shanghai](#)

opened to investment and businessmen would be able to obtain indefinitely renewable visas for the other territory. It would become easier for businesses to set up offices and branches in the other territory and for large stakes in businesses to be sold to the other party's investors²⁸. As a result, China would open 80 service sectors to Taiwan, while Taiwan would open 64 to China.

However, follow-on components of the ECFA, including the signed agreement on trade in services and negotiations on trade in goods and dispute resolution, have stalled due to domestic political turmoil. Indeed, In March 2014 the Sunflower Student Movement began. The movement opposed the CSSTA, protesting the agreement on the grounds that the Kuomintang (KMT) leadership in Taiwan negotiated and attempted ratification through undemocratic processes. They also criticised the components related to mobility of services providers from China to Taiwan and the lack of public consultation thereof.²⁹ Now that the new government is in place, there is some hope however that this agreement will be ratified and implemented in a near future.

Just as important as the agreements' opportunities to enhance trade with China are for Taiwan and its economic partners, is the political stability they bring: more stable and constructive relations between Taiwan and Mainland China will reduce some of the uncertainty and concerns that foreign investors and exporters had in the past.

The conclusion of these agreements is an important factor contributing to Taiwan's attractiveness for international investment. In particular, in combination with a free trade agreement between the EU and Taiwan, they could represent large opportunities of EU companies, especially in the ICT sector. Such agreements could enable European companies to use Taiwan as a gateway to East Asian supply chains.³⁰ It could also provide a further opportunity for Taiwan to establish itself as a regional and global export platform.³¹

²⁸ https://en.wikipedia.org/wiki/Cross-Strait_Service_Trade_Agreement

²⁹ Politicsandwar, 2016. *National Factbook*. Available at:

<https://politicsandwar.com/nation/id=37854&display=factbook>

³⁰ Taipei Representative Office, 2015. *Taiwan Economic and Trade Development*, p.7. Available at:

<http://www.roc-taiwan.org/public/Attachment/491823151771.pdf>

³¹ ECIPE, 2010. *Beyond Geopolitics – The Case for a Free Trade Accord Between Europe and Taiwan*, p.11. Available at: <http://www.ecipe.org/app/uploads/2014/12/beyond-geopolitics-the-case-for-a-free-trade-accord-between-europe-and-taiwan.pdf>.

SECTION 2. EU-TAIWAN TRADE RELATIONS

Currently, the EU is Taiwan's fifth trading partner after China, the United States, Japan and the ASEAN. Taiwan's rank as EU trade partner in 2015 was 13th for imports and 22nd for exports.

2.1. An overall presentation of trade in goods

Total trade in goods between the EU and Taiwan was 43.9 billion Euros. Imports of the EU from Taiwan accounted for 25.5 billion Euros, while exports to Taiwan accounted for 18.4 billion Euros. This results in a negative trade balance with Taiwan of -7.1 billion Euros in the year 2015. Trade with Taiwan has been increasing constantly over the last two decades, but EU-Taiwan trade has been characterized by a chronic trade deficit of the EU.³²

Overall, Taiwanese exports to Europe focus on electrical items, telecom and office equipment, metals, transport materials, property management services and ICT equipment.³³ 92.6% of the EU exports are industrial products, illustrating that the EU is an important industrial supplier to Taiwan's industry.³⁴ Important manufactured imports of the EU are office and telecommunication equipment (34.7% of goods imports), transport equipment (10.5%) and other machinery (17.9%). Important export products of the EU are chemicals (20.6%), other machinery (23.2%) and transport equipment (18.5%).³⁵

Despite the constant growth of EU-Taiwan trade over the last two decades, the EU-Taiwan trade relationship is still only relatively small when compared to EU trade with other Asian partners (see Table 1).

³² European Commission, 2016. Taiwan. Available at: <http://ec.europa.eu/trade/policy/countries-and-regions/countries/taiwan/>

³³ EIAS, 2015. A Survey on 10 Leading Taiwanese Enterprises Investing in the EU and its Member States, p.10. Available at: <http://www.eias.org/wp-content/uploads/2016/02/A-Survey-on-10-Leading-Taiwanese-Enterprises-Investing-in-the-EU-and-its-Member-States.pdf>

³⁴ European Commission, 2016. Taiwan. Available at: <http://ec.europa.eu/trade/policy/countries-and-regions/countries/taiwan/>

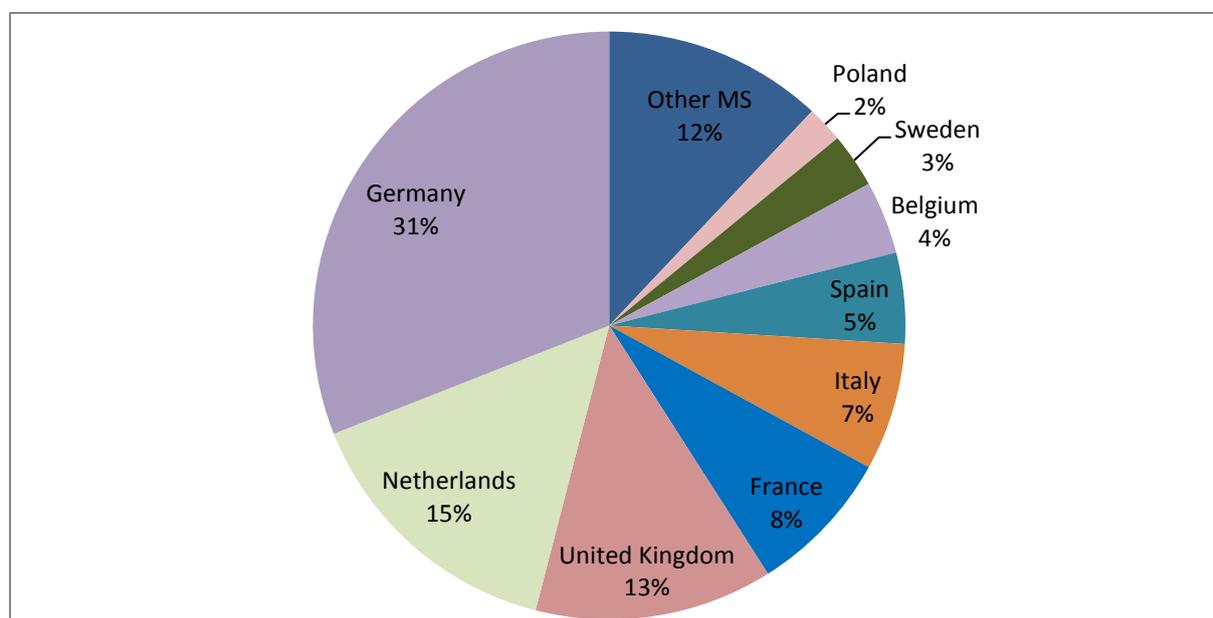
³⁵ European Commission, 2016. European Union, Trade in Goods with Taiwan. Available at: http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113452.pdf

Table 1: EU's trade in goods with its main Asian trading partners in 2014 (billion Euros)³⁶

| | China | Japan | South Korea | India | Hong Kong | Singapore | Taiwan |
|----------------------|--------|-------|-------------|-------|-----------|-----------|--------|
| EU exports | 164.7 | 53.3 | 43.1 | 35.5 | 34.7 | 28.2 | 17.0 |
| EU imports | 302.6 | 54.6 | 39.0 | 37.1 | 10.6 | 16.6 | 23.2 |
| Total trade in goods | 467.3 | 107.9 | 82.1 | 72.6 | 45.3 | 44.8 | 40.2 |
| Trade balance | -137.9 | -1.3 | 4.1 | -1.6 | 24.1 | 11.6 | -6.2 |

When it comes to the level of EU member states, Germany is Taiwan's largest trading partner (31 percent of the total EU-Taiwan trade, accounting for 21.5 billion Euros). The Netherlands and the UK are Taiwan's second and third largest EU trading partners.³⁷ Taiwan's trade with the new EU member states is also expanding fast as a result of their accession to the EU since 2004. Within this group of countries, Latvia, the Czech Republic and Slovakia show the highest growth rate in trade with Taiwan since their accession to the EU.³⁸

Figure 1: Share by EU Member State of the bilateral trade volume with Taiwan, 2014 (%)³⁹



³⁶ Eurostat, 2016. Database. Available at: <http://ec.europa.eu/eurostat/data/database>

³⁷ EEAS, 2015. *EU-Taiwan Factfile 2015*. Available at:

http://www.eeas.europa.eu/delegations/taiwan/documents/more_info/eufactfile2015.pdf.

³⁸ EIAS, 2015. *A Survey on 10 Leading Taiwanese Enterprises Investing in the EU and its Member States*, p.10.

Available at: <http://www.eias.org/wp-content/uploads/2016/02/A-Survey-on-10-Leading-Taiwanese-Enterprises-Investing-in-the-EU-and-its-Member-States.pdf>

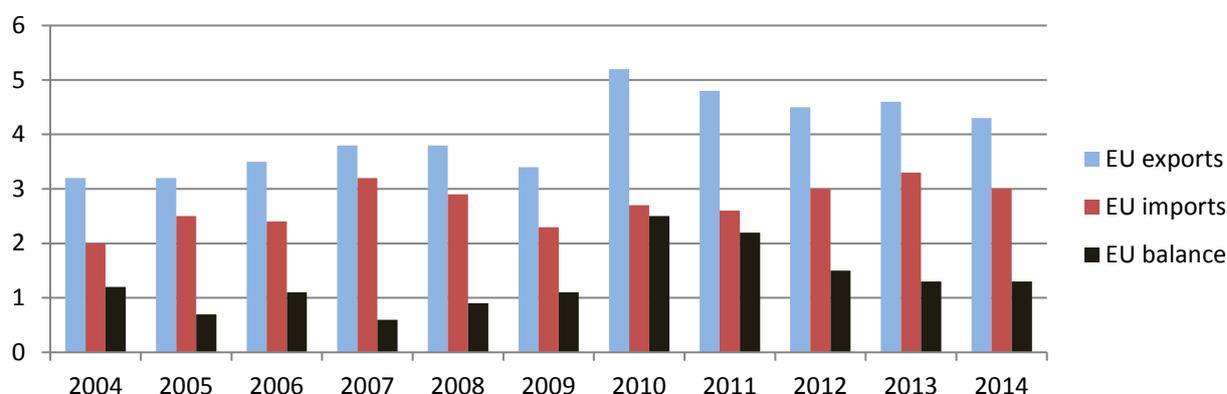
³⁹ EEAS, 2015. *EU-Taiwan Factfile 2015*. Available at:

http://www.eeas.europa.eu/delegations/taiwan/documents/more_info/eufactfile2015.pdf.

2.2. EU-Taiwan trade relations in services

As for the trade in services, total trade between the EU and Taiwan was 7.3 billion Euros in 2015. Imports of the EU from Taiwan accounted for 3 billion Euros, while exports to Taiwan accounted for 4.3 billion Euros. This results in a positive trade balance with Taiwan of +1.3 billion Euros in the year 2015. The EU surplus in trade in services does not however compensate the deficit in goods (€7.1 billion). EU-Taiwan bilateral trade accounted for 1.2 percent of EU's world trade. The EU's surplus in trade in services has registered a continued fall since 2010 due to the weak performance of EU exports of services to Taiwan (2.2 percent in 2013 and -6.3 percent in 2012, amounting to €4.6 bn. in 2013 and €4.3 billion in 2014) and due to the fast growth of Taiwan's exports of services to the EU over the last years (+15.4 and +10 percent in 2012 and 2013, amounting to €3.3 bn. in 2013, but with a decrease down to €3.0 billion in 2014) (See Table 2).

Table 2: EU-Taiwan Trade in services, 2004 – 2014 (billion Euros)⁴⁰



Services trade between Taiwan and the EU is also below potential when measured against Taiwan's neighbours. For instance, EU services exports to South Korea represent more than the double of EU services exports to Taiwan. Taiwan has by far the lowest trade in services activities with the EU compared to the other Asian EU trading partners listed in table 3.

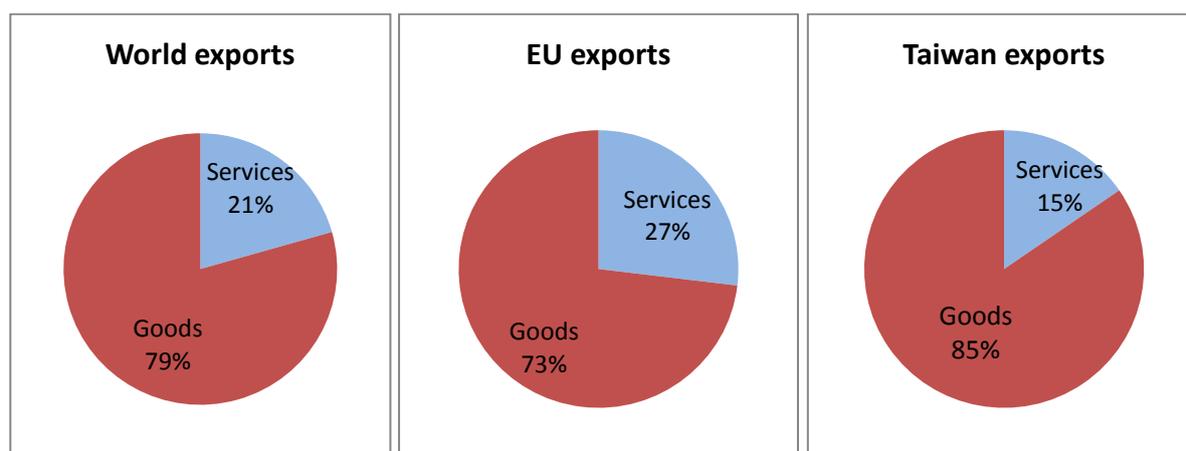
⁴⁰ Eurostat, 2016. Database. Available at: <http://ec.europa.eu/eurostat/data/database>

Table 3: EU’s trade in services with its main Asian trading partners in 2014 (billion Euros)⁴¹

| | China | Japan | South Korea | India | Hong Kong | Singapore | Taiwan |
|-------------------------|-------|-------|-------------|-------|-----------|-----------|--------|
| EU exports | 29.1 | 25.6 | 11.9 | 12.3 | 10.7 | 20.4 | 4.3 |
| EU imports | 22.9 | 15.3 | 5.9 | 12.0 | 10.8 | 15.7 | 3.0 |
| Total trade in services | 52 | 40.9 | 17.8 | 24.3 | 21.5 | 36.1 | 7.3 |
| Trade balance | 6.2 | 10.3 | 6 | 0.3 | -0.1 | 4.7 | 1.3 |

The ratio exports of goods compared to exports of services in the bilateral EU-Taiwan trade mirrors the same reality. The ratio of trade in goods compared to trade in services for Taiwan (15.3%) is lower than the world average (20.6%). It is clear that there is a significant margin for improvement in trade in services for the two parties (see Figure 2).

Figure 2: Ratio of trade in goods vs. trade in services, total trade, BoP, 2014 (%)⁴²



2.3. Investment

The EU is the first major world investor in Taiwan, with investment to the island amounting to about EUR 10.7 billion Euros in 2014. Over the past years, the EU has been one of the major sources of investment in Taiwan.

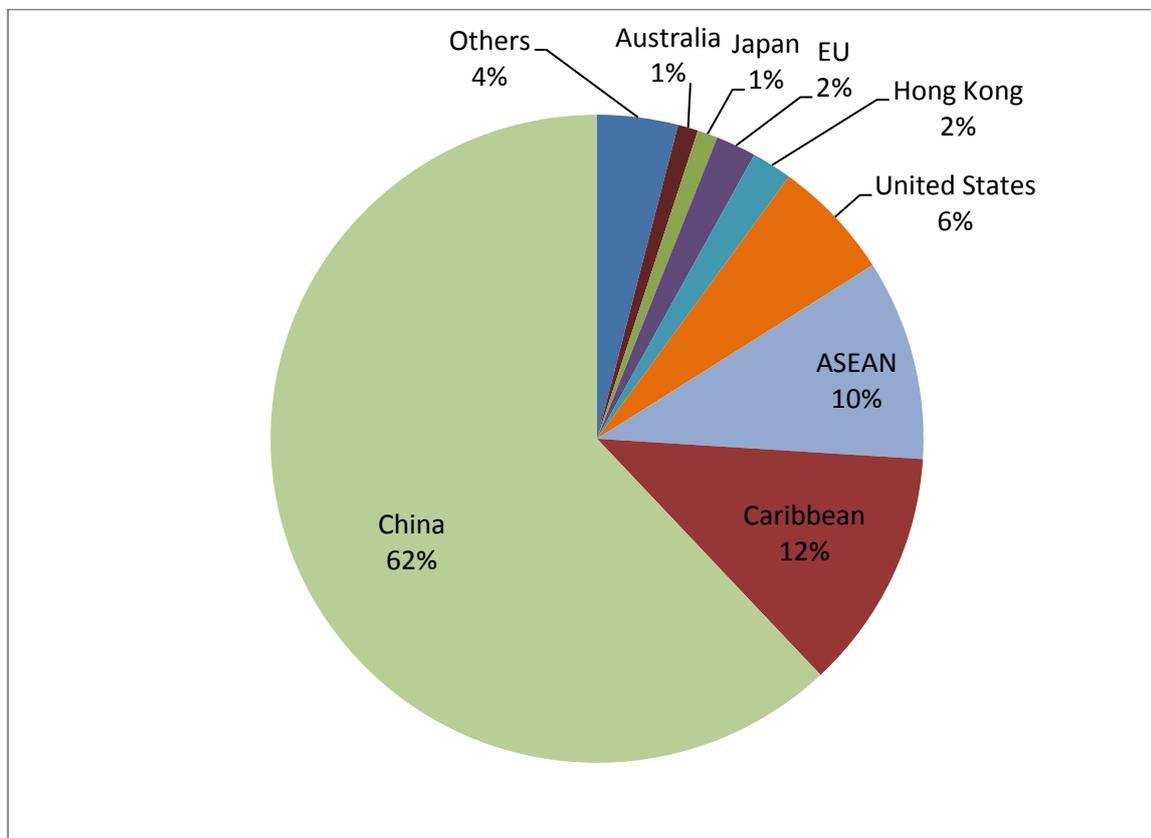
⁴¹ Eurostat, 2016. Database. Available at: <http://ec.europa.eu/eurostat/data/database>

⁴² WTO, 2016. International Trade Statistics 2015. Available at: https://www.wto.org/english/res_e/statis_e/its2015_e/its15_toc_e.htm. World exports including intra-EU exports.

Taiwan is also investing strongly in the EU, with investment stocks worth 1 billion in the EU in 2014. Overall, this results in an investment balance of +9.7 billion Euros for the EU.⁴³ According to interviews carried out by EIAS, both the Netherlands and Germany are particularly attractive for Taiwanese investment.⁴⁴

However, the overall share of Taiwanese investment is located in China, and the EU only accounts for 2% of Taiwan’s overall investment in 2014. It becomes clear that there is a large room for expansion of Taiwanese investment in the EU (see Figure 3).

Figure 3: Taiwan FDI Stocks in foreign countries in 2014⁴⁵



⁴³ European Commission, 2016. Taiwan. Available at: <http://ec.europa.eu/trade/policy/countries-and-regions/countries/taiwan/>

⁴⁴ EIAS, 2015. A Survey on 10 Leading Taiwanese Enterprises Investing in the EU and its Member States, p.66. Available at: <http://www.eias.org/wp-content/uploads/2016/02/A-Survey-on-10-Leading-Taiwanese-Enterprises-Investing-in-the-EU-and-its-Member-States.pdf>

⁴⁵ EEAS, 2015. EU-Taiwan Factfile 2015. Available at: http://www.eeas.europa.eu/delegations/taiwan/documents/more_info/eufactfile2015.pdf. World total: 233875 million USD.

Most of Taiwanese investment is focused in the manufacturing or assembling of computers, electronics and optical products.⁴⁶

In conclusion, it becomes clear that there is significant room for improvement. Taiwan still receives less FDI than comparable economies such as South Korea, Singapore and Hong-Kong. A bilateral investment agreement between the EU and Taiwan, that will contain commitments to open further the markets in manufacturing and services sectors will contribute to improve the EU and Taiwan trade and investment relationship.

⁴⁶ EIAS, 2015. *A Survey on 10 Leading Taiwanese Enterprises Investing in the EU and its Member States*, pp.10ff. Available at: <http://www.eias.org/wp-content/uploads/2016/02/A-Survey-on-10-Leading-Taiwanese-Enterprises-Investing-in-the-EU-and-its-Member-States.pdf>

SECTION 3. TAIWAN'S CAPACITY TO BE A HUB IN EAST ASIA

What could be the main sources of benefits from a Taiwan-EU Agreement centered on services? A focus on services makes sense since existing studies estimate that large percentage changes in trade and investment between the EU and Taiwan are expected to emerge in services sectors (Copenhagen Economics 2008). EU exports to Taiwan could increase by 1.1 percent in the case of transport services to 3.4 percent in the case of sectors such as tourism, health care services or recreational services. It is important to note that these differentiated increases reflect the existing barriers estimated (in 2008) as equivalent to tariffs of 25-35 percent. Turning to foreign direct investment, the services sectors are once again where large gains would be made because services tend to require local presence to be provided efficiently.

The benefits of a Taiwan-EU Agreement largely depends on three main components:

1. the intensity in services of Taiwan's trade,
2. the main Taiwanese barriers to trade and investment in services,⁴⁷
3. the "regulatory quality" of Taiwan.

This section examines these three points.

That said, it is important to stress that past liberalisation in services (including within the EU) suggest that the third aspect is probably the most decisive one in the long run. This importance flows from the fact that a good regulatory regime is flexible enough to adjust to the new economic realities that emerge over time from better market access, hence to ensure that the corresponding dynamic benefits will not be suffocated by inefficient regulations. This flexibility aspect is particularly crucial in the case of Taiwan if Taiwan wants to position itself as a key hub (or bridge) between developed but somewhat rigid economies such as those of the EU and emerging but fast moving economies such as China and other ASEAN countries.

⁴⁷ EU barriers have been investigated in two recent studies by EIAS (2013, 2014).

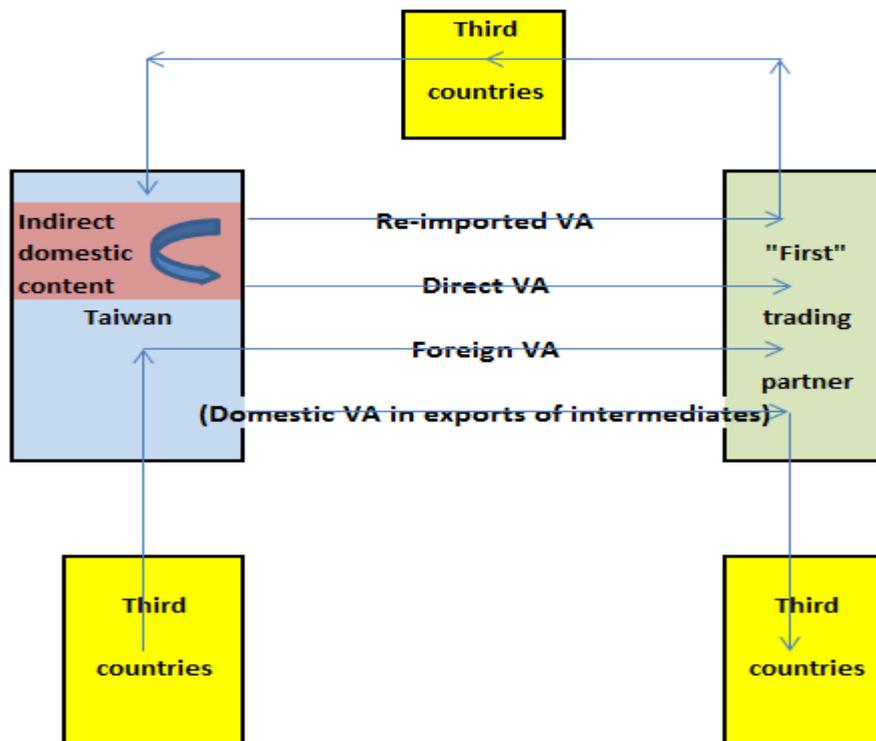
3.1. Intensity in services of Taiwan's trade

During the last decade, increasing attention has been devoted to “trade in value added” (see Box 1). Measuring trade on the basis of gross exports offers a distorted view of the trade reality because gross exports are based on production data, instead of value added data (value added is production minus the intermediate products used in the production). Indeed, it is quite different to export 100 TWD worth of goods produced in (say) Taiwan and 100 TWD worth

Box 1. Trade in value added: an overview

The graph below shows the decomposition of gross exports into domestic and foreign value added. Domestic value added can be split into three sub-components:

- “direct” domestic value added corresponds to the domestic value added embodied in final or intermediate goods or services that is directly consumed by Taiwan's trading partner.
- “indirect” domestic value added is the value added that supplier industries within Taiwan provide to an exporting industry in Taiwan before it exports to third countries.
- “re-imported” domestic value added is contained in exported intermediate goods or services that are sent back to Taiwan.



Finally, domestic value added in exports of intermediate products as a share of total gross exports is also of some interest for detailed analysis. It is not examined in this report.

of goods whose 90 percent come from foreign imported products (as in the case of assembly plants).

Increasing foreign content in Taiwan's gross exports

Taiwan's value added components of gross exports have dramatically changed from 1995 to 2011. There are two ongoing processes: an increased foreign value added in Taiwan's gross exports and an increased intensity in services in Taiwan's gross exports. This sub-section documents the first process.

As shown in table 1, in 1995, the domestic value added of goods sent to foreign countries accounted for US\$ 46.6 billion, that is, 53.4 percent of gross exports, while the foreign value added share of exports amounted to US\$ 37.8 billion, that is, 30.6 percent of gross exports. In 2011, the share of domestic value added content has decreased to 32.1 percent whereas the foreign value added share accounts for 43.5 percent of gross exports. In other words, the foreign value added component has increased 3.9 times in less than 8 years, compared to 2.7 times for the gross exports. This increase has largely been achieved at the expense of a slower growth of the share of indirect domestic value added (only 1.8 times its 1995 value). The re-imported domestic value added share has increased 6.2 times, but it remains very small (hence will be ignored in what follows). This evolution is a clear sign of a deeper integration of Taiwan's economy in the rest of the world, especially from the input perspective.

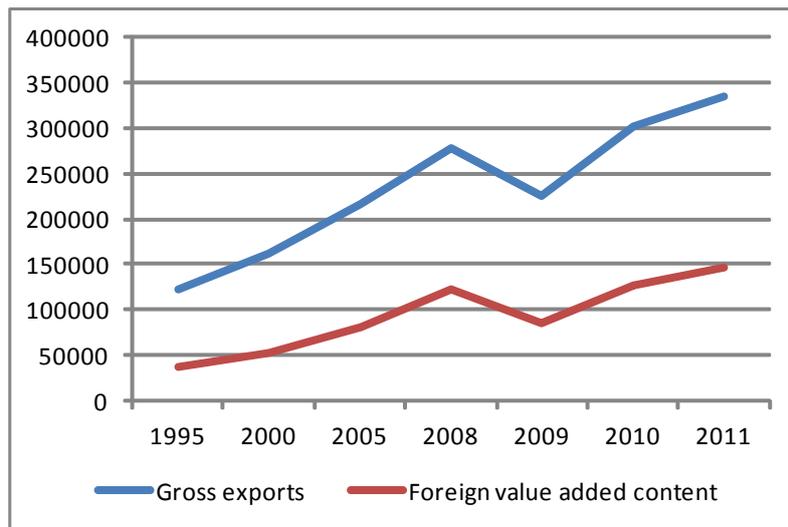
Table 1: Value added components of Taiwan's gross exports (million USD)⁴⁸

| Year | Gross exports | Direct domestic value added | Indirect domestic value added | Re-imported domestic value added | Foreign value added |
|------|---------------|-----------------------------|-------------------------------|----------------------------------|---------------------|
| 1995 | 123212 | 46644 | 38289 | 178 | 37764 |
| 2000 | 161966 | 64345 | 44526 | 477 | 52164 |
| 2005 | 216647 | 83877 | 50193 | 822 | 81018 |
| 2008 | 278763 | 97639 | 55836 | 897 | 122903 |
| 2009 | 225661 | 86227 | 52503 | 716 | 85231 |
| 2010 | 302271 | 109779 | 64309 | 1082 | 125962 |
| 2011 | 335847 | 118268 | 69416 | 1110 | 146146 |

⁴⁸ OECD, 2016. *TiVA Database*. Available at: http://stats.oecd.org/Index.aspx?DataSetCode=TIVA2015_C1

Figure 1 illustrates the time pattern of this ongoing process. It faced a setback in 2008 after the Great Crisis, but it has since rapidly rebounded. The period covered is too short to reveal a possible “trend”. There is a need to get the data for 2012-2014 (expected to be released in Summer 2016). It would also be interesting to see the evolution of these two variables since the deceleration of Mainland China’s growth rate.

Figure 1. Taiwan’s gross exports and foreign value added content (million USD)⁴⁹



Breakdown by sector and partner country

In 2011, Taiwan’s top export industry in gross exports term was computer and electronics (35.4 percent of total gross exports) followed by chemical products and wholesale & retail (hereafter distribution) services (respectively 17.9 percent and 12.1 percent of total gross exports).

Table 2 presents the decomposition of these gross exports by the different sources of value added and for the major export sectors of Taiwan. First, it shows that the share of direct domestic value added in manufacturing is roughly half its share in services, a feature still valid in 2011. Second, within the manufacturing sector, there is a strong difference between the chemical industry where the share of direct domestic value almost halved and the computer and electronics (hereafter the computer sector) where the share has increased by 20 percent. These observations are reinforced by the evolution of the share of foreign value added which

⁴⁹ OECD, 2016. *TiVA Database*. Available at: http://stats.oecd.org/Index.aspx?DataSetCode=TIVA2015_C1

doubled in chemicals (at the detriment of both the direct and indirect domestic value added) and which remained stable in the computer sector, due to a combined increase of the direct domestic value added and a decline of the indirect domestic value added. Third, turning to services, the distribution and business services show a divergent evolution in terms of direct domestic value added and foreign value added shares. Distribution services witness an increase in both shares, at the detriment of the indirect domestic value added share. By contrast, business services (and to a smaller extent) total services show a slightly declining share of direct domestic value added and a doubling of the share of the foreign value added, again at the detriment of the indirect domestic value added share. All these evolutions reveal that the tendency of Taiwan's economy to deeper integration into the world economy does exist in every major export sector, although with some differences in terms of magnitude.

Table 2: Foreign value added share of gross exports, percentage and growth:⁵⁰

| | Total | Chemical industry | Computer electronic | Total Manu- factures | Wholesale Retail | Total Business Services | Total services |
|-------------------------|-------|-------------------|---------------------|-------------------------|------------------|-------------------------|----------------|
| Year 1995 | | | | | | | |
| Gross exports | 100,0 | 100,0 | 100,0 | 100,0 | 100,0 | 100,0 | 100,0 |
| Direct domestic value | 37,9 | 34,9 | 28,6 | 29,8 | 68,5 | 65,2 | 64,6 |
| Indirect domestic value | 31,1 | 31,0 | 26,9 | 32,7 | 24,4 | 25,2 | 25,8 |
| Foreign value added | 30,6 | 33,9 | 44,5 | 37,4 | 6,2 | 8,2 | 8,4 |
| Year 2011 | | | | | | | |
| Gross exports | 100,0 | 100,0 | 100,0 | 100,0 | 100,0 | 100,0 | 100,0 |
| Direct domestic value | 35,2 | 18,8 | 33,9 | 27,3 | 71,8 | 62,1 | 62,0 |
| Indirect domestic value | 20,7 | 18,8 | 20,8 | 21,2 | 16,9 | 18,6 | 18,7 |
| Foreign value added | 43,5 | 62,2 | 44,6 | 51,0 | 10,4 | 17,9 | 18,0 |
| Growth 2011/1995 | | | | | | | |
| Foreign value added | 42,0 | 83,4 | 0,0 | 36,6 | 67,7 | 117,6 | 115,6 |

Table 3 turns to Taiwan's top export markets and illustrates the share of domestic value added and of foreign value added of the total gross exports to the export partner. It does not reveal strong differences among the three top markets, except a slightly higher share of foreign value added in gross exports to China, compared to the US and Japan. It will be interesting to know the evolution from 2011 to 2014.

⁵⁰ OECD, 2016. *TiVA Database*. Available at: http://stats.oecd.org/Index.aspx?DataSetCode=TIVA2015_C1

Table 3: Taiwan's top export markets (share of domestic and foreign value added), 2011⁵¹

| | Domestic value added | Foreign value added | Total |
|---------------|----------------------------|---------------------------|-------|
| China | 56,5 | 43,5 | 100,0 |
| United States | 59,7 | 40,3 | 100,0 |
| Japan | 60,0 | 40,0 | 100,0 |

A crucial feature of Taiwan's economy is its very high participation index in global value chains (GVCs) — a common point with Korea. The GVC participation index combines two components: the exports of domestically produced inputs to trading partners (domestic value added sent to third economies, or forward participation) and the imports of foreign inputs to produce the goods and services they export (foreign value added contents of exports, or backward participation) (see the Table of Box 1). In 2011, the Taiwanese GVC participation index was 67.6, much higher than the average of developing economies (48.6) or developed economies (48), and much higher than its East Asian competitors.

Table 4: Participation (index) of selected countries in global value chains (GVC), 2011⁵²

| | GVC participation |
|----------------------|----------------------|
| Taiwan | 67,6 |
| Korea | 62,1 |
| Hong Kong | 43,6 |
| Japan | 47,4 |
| China | 47,7 |
| Britain | 47,6 |
| Germany | 49,6 |
| France | 47,0 |
| Italy | 47,5 |
| United States | 39,8 |
| Developing economies | 48,6 |
| Developed economies | 48,0 |

⁵¹ WTO, 2016. *Chinese Taipei. Trade in Value Added and Global Value Chains*. Available at: https://www.wto.org/english/res_e/statis_e/miwi_e/countryprofiles_e.htm

⁵² WTO, 2016. *Global Value Chains. Trade in value-added and global value chains: statistical profiles*. Available at: https://www.wto.org/english/res_e/statis_e/miwi_e/countryprofiles_e.htm

Increasing service intensity

This sub-section focuses on the role of services value added in Taiwanese exports. The first key measure is the services value added content of Taiwan's total exports in 2011. Domestic services accounted for 30.3 percent of the value added content of total exports, while foreign services amounted to 16.6 percent. When it comes to exports of manufactured goods, the respective shares were 16.4 and 19.3 percent.⁵³ Interestingly, the services share in exports of manufactured products is bigger than the corresponding share in export of services.

Table 5 shows that the top services sectors contributing to total exports are distribution services (23.3 percent), followed by the transport and storage sector (5.4 percent) and other business services (5.1 percent).

Table 5. Top 3 services sectors contributing to selected countries' total exports, share in gross exports of manufactures, 2011⁵⁴

| Exporting country | Industry 1 | Industry 2 | Industry 3 |
|-------------------|-----------------------------------|-----------------------------------|---------------------------------|
| Taiwan | Wholesale and retail trade (23.3) | Transport and storage (5.4) | Other business services (5.1) |
| Hong Kong, China | Wholesale and retail trade (23.1) | Transport and storage (21.8) | Financial intermediation (16.7) |
| Japan | Wholesale and retail trade (23.0) | Transport and storage (8.7) | Other business services (6.5) |
| China | Wholesale and retail trade (18.1) | Transport and storage (6.4) | Financial intermediation (4.9) |
| UK | Other business services (17.5) | Wholesale and retail trade (13.0) | Financial intermediation (11.0) |
| Germany | Other business services (12.6) | Wholesale and retail trade (12.5) | Transport and storage (6.4) |
| France | Wholesale and retail trade (17.1) | Other business services (14.0) | Transport and storage (8.9) |
| Italy | Wholesale and retail trade (15.1) | Other business services (9.9) | Transport and storage (8.0) |
| United States | Wholesale and retail trade (14.7) | Other business services (12.9) | Financial intermediation (7.2) |

Turning to the sectoral analysis, Table 6 shows that the top services sectors contributing to exports of manufactures in 2011 was the distribution services (17.2 percent of value added contribution) followed by other business services (4.7 percent) and financial intermediation (3.7 percent).

⁵³ WTO, 2016. *Chinese Taipei. Trade in Value Added and Global Value Chains*. Available at: https://www.wto.org/english/res_e/statis_e/miwi_e/countryprofiles_e.htm

⁵⁴ WTO, 2016. *Global Value Chains. Trade in value-added and global value chains: statistical profiles*. Available at: https://www.wto.org/english/res_e/statis_e/miwi_e/countryprofiles_e.htm

Table 6. Top 3 services sectors contributing to selected countries' exports of manufactures, share in gross exports of manufactures, 2011⁵⁵

| Exporting country | Industry 1 | Industry 2 | Industry 3 |
|-------------------|-----------------------------------|-----------------------------------|--------------------------------|
| Taiwan | Wholesale and retail trade (17.2) | Other business services (4.7) | Financial intermediation (3.7) |
| Hong Kong, China | Wholesale and retail trade (34.7) | Transport and storage (5.1) | Other business services (4.6) |
| Japan | Wholesale and retail trade (14.5) | Other business services (5.7) | Transport and storage (3.8) |
| China | Wholesale and retail trade (11.4) | Financial intermediation (5.0) | Transport and storage (4.6) |
| UK | Wholesale and retail trade (12.5) | Other business services (7.6) | Transport and storage (3.8) |
| Germany | Other business services (10.0) | Wholesale and retail trade (9.4) | Transport and storage (3.7) |
| France | Other business services (13.8) | Wholesale and retail trade (12.6) | Transport and storage (4.0) |
| Italy | Wholesale and retail trade (12.2) | Other business services (8.5) | Transport and storage (5.2) |
| United States | Wholesale and retail trade (11.8) | Other business services (8.1) | Transport and storage (3.0) |

Note that this value added profile of Taiwan is the result of a long process of increasing importance of services in Taiwan's exports of goods and services. The services value added content of exports has constantly increased from 1995 to 2011. This holds true for both domestic services content and foreign services content.

Table 7. Increase of Taiwan's services value added content of exports, 1995-2011 (annual % change)⁵⁶

| | Exports of manufactures | Total exports |
|-------------------|-------------------------|---------------|
| Total services | 6.4 | 6.3 |
| Domestic services | 5.3 | 5.5 |
| Foreign services | 7.6 | 7.9 |

In addition, also Taiwan's trade in commercial services intermediates has increased constantly. Intermediate commercial services exports increased by 9.3% annually between 2005 and 2014. Taiwan's exports in intermediate commercial services accounted for 27.6 billion USD in 2014. This analysis shows the increasing importance of services in Taiwan's exports of goods and services and illustrates the ongoing process of servification of Taiwanese trade.

Turning now to countries, the main providers are Japan (with a share of 3.6%), followed by the US (1.9%) and then China (1.8%).

⁵⁵ WTO, 2016. *Global Value Chains. Trade in value-added and global value chains: statistical profiles*. Available at: https://www.wto.org/english/res_e/statis_e/miwi_e/countryprofiles_e.htm

⁵⁶ WTO, 2016. *Chinese Taipei. Trade in Value Added and Global Value Chains*. Available at: https://www.wto.org/english/res_e/statis_e/miwi_e/countryprofiles_e.htm

Table 8: Top 3 foreign services providers to selected countries' total exports, share in gross exports of manufactures, 2011⁵⁷

| Exporting country | Provider 1 | Provider 2 | Provider 3 |
|-------------------|---------------|---------------|-----------------|
| Taiwan | Japan (3.6) | USA (1.9) | China (1.8) |
| Hong Kong | China (3.0) | USA (1.8) | Japan (1.1) |
| Japan | USA (0.9) | China (0.8) | Australia (0.3) |
| China | Japan (2.3) | USA (1.5) | (1.1) |
| Britain | USA (1.7) | Germany (1.3) | France (0.9) |
| Germany | USA (1.3) | France (1.1) | Britain (1.0) |
| France | Germany (1.8) | USA (1.2) | Britain (0.9) |
| Italy | Germany (1.6) | France (1.2) | USA (0.9) |
| United States | Canada (0.8) | China (0.6) | Japan (0.5) |

Focusing on exports of manufactured goods, the picture changes only slightly. Again, the top services providers to Taiwanese exports of manufacturers are now Japan (4.3% in gross exports in manufactures) followed by China and the US (both 2.2%).

Table 9: Top 3 foreign services providers to selected countries' exports of manufactures, share in gross exports of manufactures, 2011⁵⁸

| Exporting country | Provider 1 | Provider 2 | Provider 3 |
|-------------------|---------------|---------------|-----------------|
| Taiwan | Japan (4.3) | China (2.2) | USA (2.2) |
| Hong Kong | China (5.2) | USA (2.5) | Japan (2.1) |
| Japan | China (1.0) | USA (1.0) | Australia (0.4) |
| China | Japan (2.9) | USA (1.8) | Korea (1.4) |
| Britain | USA (2.1) | Germany (1.9) | France (1.3) |
| Germany | USA (1.4) | France (1.3) | Britain(1.1) |
| France | Germany (2.3) | USA (1.5) | Italy (1.2) |
| Italy | Germany (1.9) | France (1.4) | USA (1.0) |
| United States | Canada (1.1) | China (0.9) | Japan (0.8) |

⁵⁷ WTO, 2016. *Global Value Chains. Trade in value-added and global value chains: statistical profiles*. Available at: https://www.wto.org/english/res_e/statis_e/miwi_e/countryprofiles_e.htm

⁵⁸ Same source.

3.2. Taiwanese barriers to trade and investment: An overview of the ESF Survey

A recent study analyzes the barriers that Taiwanese firms encounter when investing in Europe (EIAS 2015, 9). Cultural and language problems, cumbersome labour laws, double taxation issues, lack of regulatory convergence and consistency, visa and migration laws, inefficient and burdensome bureaucracy, difficult access to credit and opening a bank account were identified as major hurdles.

What follows looks at the barriers that EU firms face in Taiwan's services sectors. It presents a summary of the main findings of a Survey undertaken by ESF. The broad conclusion that emerges from the Survey is that Taiwan's horizontal barriers (those across sectors) are primarily related to foreign equity caps, monopolistic practices, capital requirements, and restrictions on land allocation. Sector-specific barriers tend to be concentrated in the financial sector, retail and wholesale sector, transport and in telecommunications.

Horizontal barriers

The responding firms and associations have pinpointed eight horizontal barriers as the major obstacles to be addressed by EU-Taiwan negotiations.

1. Land ownership rights are reserved for investors from countries with which Taiwan has some reciprocal treatment agreements (59 countries). There is some land ownership (mostly related to agriculture and minerals) that cannot be transferred or used as collateral by non-Taiwanese citizens.
2. Foreign ownership of more than one third of the shares of a company reinvestment in Taiwan requires the approval of the MOEA. Inbound direct investment is prohibited for usual reasons invoked by any country (good practices, health, environment, security, etc.), but also in a few sectors (certain land transportation, postal services, postal saving and remittance services, some audiovisual services).
3. Limits on foreign exchange transactions consist of prior approval from the Central Bank in case that transactions exceed specific ceilings.
4. Taiwan's regulations on data protection are close to the ones enforced in the EU Member States. However, cross-border flows of data within a company have to respect complex procedures.

5. On intellectual property rights, the main concerns are about the efficiency of the court system, copyrights and patents. It should be noted that, on copyrights, complaints rely on the assumption that the legal regimes in the US and EU should be the world standards (an assumption increasingly debatable and debated from an economic point of view). On this basis, complaints focus on the duration of the copyrights and on the way the Copyright Collective Management Organization (CCMO) system works⁵⁹. On patents, despite some positive amendments to the Enforcement Rules of Trademark Act (amended and promulgated in June 2012)⁶⁰ by the Ministry of Economic Affairs in July 2015, the focus (particularly in chemicals and semi-conductors) remains on the complexity of the legal disputes.
6. On government procurement, the participants to the Survey express the desire to open the government procurement markets of six “mega-cities” in addition to the two cities currently covered. However, it should be noted that the import penetration of the Taiwanese public procurement is much higher than the EU globally, or of the EU Member States of the same size than Taiwan.
7. On labour mobility, obtaining visas for short-term stays (2-3 days) for business activities can take several months. There are also limits on the proportion of foreign employees in free-trade zones which cannot exceed 40 percent of the total number of employees.
8. Treatment of investments from China is very cumbersome, despite the official opening of 201 activities in manufacturing, 160 in services, and 43 in public construction.

Sector specific barriers

The responding firms and associations point out ten sectors as the main topics of negotiations from the EU perspective.

1. Professional services. In legal services, access for EU firms to Taiwanese markets is comparatively easy. However, progress could be made in Mode 4 permits, on the coverage of the matters on which foreign lawyers could advise on, and in Mode 3 by making more flexible the ways foreign attorneys can operate. In accounting and taxation-related services, in accordance with Taiwan’s Certified Public Accountant

⁵⁹ http://siulaw.typepad.com/international_ip_policy/2011/10/taiwans-copyright-laws-evolution-and-enforcement-shuo-che-chou-to-be-presented.html

⁶⁰ [http://www.tiplo.com.tw/files/Enforcement%20Rules%20of%20the%20Trademark%20Act\(2015.07.13%20amended\).pdf](http://www.tiplo.com.tw/files/Enforcement%20Rules%20of%20the%20Trademark%20Act(2015.07.13%20amended).pdf)

Act, foreigners can, according to ROC law, sit the CPA examination. Foreigners who pass the examination and receive a CPA license can practice as a CPA in Taiwan after approval by the competent authority. Thus, there are no restrictions on foreigners obtaining CPA licenses or practicing as a CPA after qualifying. In architectural services, there are no restriction based on nationality, but license requirements. Lastly, in health services, doctors need to pass an exam (in Chinese only), opening the question of doctors serving the international community.

2. Communication services. Postal services are run by a monopoly. Courier services are unrestricted, but only for the delivery of goods, parcels and business documents, excluding letters, postcards, aerogrammes and letter sheets. In telecommunications, Taiwan's commitments on mode 1 and 2 for basic telecoms are good, with the exceptions in audiovisuals (see below). Mode 3 access for basic telecoms is subjected to foreign caps on holdings (20, 49 and 60 percent depending the type of capital and firms) and nationality requirement for the members of the board of directors. That said, as in most countries, most of the other problems are related to the monopolistic practices of the local fixed-line incumbent.
3. Audiovisual services. There are many barriers—from limits on ownership (cable radio and TV) to the requirements to establish a branch office in Taiwan to the need of approval by the regulatory agencies.
4. Distribution services. There are no barriers on cross-border supply and establishment of wholesale and retail services, except the already mentioned restrictions on land allocation and retail development in both industrial and residential zones (which are in many ways similar to regulations prevailing in many EU Member States).
5. Transportation services. These services are pretty open, except foreign equity caps of 49 percent (high-speed trains, airport ground handling, air catering, air cargo services), 49.99 percent (airlines) and 50 percent (shipping companies). Private investors are subjected to tighter caps (25 percent). Taiwan has an “Open Sky” agreement with the US, but not with the EU as a whole—only with Britain. The 2008 agreement on maritime transport between Taiwan and Mainland China seems to leave many unsolved issues.
6. Energy and environment. Taiwan's power sector is operated by an incumbent which keeps a strong dominant position since the independent power producers are required to sign power purchase agreements with it. Water distribution and management are also operated by monopolies.

7. Banking services. During the recent years, establishment of banking services in Taiwan has been made much easier: no more limit on equity ownership, low corporate tax. In this positive context, it should be stressed that Taiwanese banks have opened branches and acquisitions in Mainland China and South East Asia. Among the remaining substantial obstacles felt by foreign companies, although not all discriminatory, one can cite the conditions imposed on small and medium banks, the ban of cross-border financial services and an asset maintenance regime that requires foreign banks branches to maintain a minimum level of eligible assets in Taiwan.
8. Insurance services. Taiwan's insurance market is a relatively very large one with many foreign insurance companies. The main barriers are as follows: capital requirements diverging from international norms and costly; cross border provisions of insurance only in maritime shipping, commercial aviation and goods in international transit; mode 2 allowed only for life insurance; complicated rules for leaving the country; communication of information about important policy changes limited or provided at the last minute, with a too short period available for public comments and sufficient discussion. Finally, Taiwan's Financial Supervisory Commission (FSC) has loosened rules in January 2016 for local real estate investment trusts' (REITs) overseas investment in an effort to reinvigorate the niche market, but it seems that the Insurance Bureau still restricts foreign insurance companies from using Special Purpose Companies to apply for mortgage loans from financial institutions.
9. Tourism services. There is no market access restriction, except that tour guide services must be provided only by travel agencies or tour operators, not such a strong constraint. As a result, the relatively limited number of EU tourists to Taiwan may be mostly caused by the limited provisions of direct flights from Europe to Taiwan.
10. Educational services. Since 2008, foreign establishment is permitted for education services. Therefore, foreigners or foreign legal persons who meet approval may set up private senior high schools or above.

3.3. Taiwan's "regulatory quality"

This last sub-section focuses on Taiwan's regulatory quality. The size of the Taiwanese economy including its operations in Mainland China, its impressive growth rate, its large trade

and investment relations with China and the ASEAN countries are important sources of benefits from a Taiwan-EU Agreement.

However, none of these elements gives a good idea of Taiwan's "regulatory quality." This is an important limit since it is now well recognized that most of the gains to be expected from a "21st century" trade and investment agreement are coming from its "regulatory cooperation" chapters — those dealing with issues like norms and standards for goods, market regulations for services ensuring a high level of competition in these markets, and, last but not least, efficient administrative and legal procedures. Indeed, these issues are evoked in the survey. Moreover, as for any preferential agreement, the dynamic effects of a Taiwan-EU Agreement will be generated in the long run by the domestic reforms that would be required by the pressure of more open markets. These dynamic effects are much more important than the static ones offered by the additional market access *per se* in the short run. In order to come to fruition, they require a pre-existing "regulatory quality" in Taiwan facilitating the emergence of a smooth flow of domestic reforms.

All the existing studies which are based on broad or economy-wide factors provide a very positive picture of Taiwan's broad regulatory quality.

- The World Competitiveness Report 2013-2014 of the World Economic Forum ranks Taiwan 12th out of 144 countries globally and 4th in Asia in terms of global competitiveness. Taiwan's competitiveness profile is consistently strong and stable over the past five years. Major strengths cited include its highly efficient markets for goods, its capacity to innovate, its world-class primary and higher education.
- The Global Competitiveness Yearbook published by IMD (International Institute for Management and Development) in 2014 ranked Taiwan as the 11th place out of 60 countries and as the 4th in Asia. Taking a long-term view, Taiwan is considered by IMD as a "winner" in the sense that it is among the countries that have risen the most since 1997 (other winners include: China, Germany, Israel, Korea, Mexico, Poland, Sweden and Switzerland).
- The Business Environment Risk Intelligence (BERI) rating agency ranked Taiwan 3rd in the world in terms of investment environment, taking into account operational, political and foreign exchange risks in 2013.

However, the fact that these studies rely on global (and sometimes auto-correlated) indicators suggests the need to complement them by studies that are much more focused on the kinds of concrete problems that foreign firms face when arriving and operating in a foreign country. They also do not make a systematic difference between domestic and foreign firms, nor between firms already operating in the foreign country in question and those entering the country. Finally, the question of regulatory quality cannot be answered in a satisfactory way by standardized broad indicators which, in addition, are too often defined on the basis of a “Western” approach to regulation. Modern economies are based on too different pasts (in terms of legal structure, political tradition) and are too diverse and sophisticated in terms of goods and services produced that one should not assume that one universal norm would be the best in the world for a given good or service.

As a result, assessing Taiwan’s regulatory quality in the context of a market opening operation driven by an EU-Taiwan Agreement would greatly benefit from relying on a much more concrete set of indicators focusing on the main operations that foreign firms should do when entering Taiwan. Such indicators can be found in the well-established Doing Business Database run by the International Finance Corporation of the World Bank Group. This database provides carefully designed quantitative estimates of the time, money and key elements (such as the number of documents to collect or administrative steps to be done) that are required from any firm at the different stages of its entry and operation in a given country.

The Doing Business Database defines ten procedures which have been aggregated in three successive phases listed in Table 9. Phase 1 brings together the five procedures to be fulfilled when establishing a business in a country. Phase 2 covers the three procedures that are likely to be used during the operations of the firm in the country in question. Phase 3 focuses on the two procedures involving crucially the fiscal authorities (Treasury and Customs) of the host country.

That said, the regulatory quality of a country should be assessed in relative terms — not in absolute terms since countries compete to attract foreign firms (and to keep their domestic firms). In short, how does Taiwan compare in these ten procedures:

1. to its rich Asian competitors (Japan, Korea, Singapore)? In other words, would it be better for an EU firm to use one of these three countries rather than Taiwan as the hub of its operations in the one of these rich Asian competitors?
2. to key EU economies (UK, France, Germany and Italy)? In other words, is Taiwan well-regulated enough to make it a better hub to East Asia than a EU Member State — definitively an important question for firms based in the EU?
3. to the East Asian less developed economies (China, Indonesia, Malaysia, Philippines, Thailand and Vietnam)? In other words, has Taiwan enough substantial advantages in terms of regulatory quality to consider that starting from Taiwan as a hub is a better option than entering directly to these less developed markets?

In order to answer these three questions, Table 10 compares Taiwan’s regulatory quality to the one of the Asian rich competitors of Taiwan, China, the four largest ASEAN emerging economies and the four largest EU Member States (the precise list is provided above). In addition, the column “Best” gives the regulatory quality of the best economy among the 14 economies taken into consideration.

Finally, figures provided in Table 10 are based on the indicator called “distance to frontier” (DTF) which measures how close (or far) the country examined is from the best country in the world (the “frontier”) for the indicator in question. The DTF indicator is more meaningful than the “rank” of the country because it gives a better sense of the gap (the distance) between the best country and the country examined. For instance, a large difference in DTF may separate countries ranked 1st and 2nd, whereas a small difference in DTF may separate countries 2nd and 3rd.

In order to get the most concise overview of the results, Table 10 adopts two simplifying assumptions:

- It compares only the years 2010 and 2015. This is an acceptable simplification because the evolution between 2010 and 2015 has been generally progressive and smooth.
- It does not provide the DTF values *per se*, but DTF “ratios.” A DTF ratio is the difference between Taiwan’s DTF, and the DTF of each of the various partner groups of Taiwan examined, divided by Taiwan’s DTF. For instance, in the case of the starting business indicator, the DTF ratio amounts to -11.2, which means that Taiwan DTF

(86.96) is 11.2 percent inferior to the best DTF (96.62, Singapore's DTF in this case), since $((86.96-96.62)/86.96) = -11.2$. As a result, negative DTF ratios spot the cases where Taiwan has an estimated regulatory quality inferior to the one of the partner group considered. Conversely, positive DTF ratios spot situations where Taiwan is estimated to be better regulated than the partner group considered.

Table 10. Taiwan's ranking in Doing Business Indicators, 2010, 2015

| | Year 2010 | | | | | Year 2015 | | | | |
|-------------------------------|--------------|--------------|-------------|-------------|-------------|--------------|-------------|-------------|-------------|-------------|
| | Best | Asian rich | China | ASEAN | EU | Best | Asian rich | China | ASEAN | EU |
| Phase 1 | | | | | | | | | | |
| Starting business | -11.2 | -1.7 | 27.8 | 19.9 | -1.2 | -2.2 | 3.7 | 17.8 | 21.8 | 5.6 |
| Registering property | -3.0 | 5.9 | 1.2 | 21.6 | 16.1 | -2.1 | 7.7 | 10.4 | 26.2 | 13.5 |
| Dealing with constr. permits | -40.7 | -28.4 | 63.0 | 3.5 | -20.1 | -7.8 | 9.0 | 45.8 | 15.9 | 11.7 |
| Getting credit | -60.0 | -23.3 | 10.0 | -7.5 | -15.0 | -25.0 | 0.0 | 16.7 | 8.3 | 0.0 |
| Getting electricity | -6.9 | 0.2 | 28.2 | 23.0 | 12.3 | -0.7 | 5.6 | 30.1 | 20.4 | 11.8 |
| Average | -24.4 | -9.5 | 26.0 | 12.1 | -1.6 | -7.6 | 5.2 | 24.2 | 18.5 | 8.5 |
| Phase 2 | | | | | | | | | | |
| Enforcing contracts | -55.0 | -38.0 | -21.0 | 3.0 | -14.2 | -15.5 | -2.1 | -7.3 | 32.6 | 7.5 |
| Resolving Restrictions | -14.4 | -8.3 | 56.4 | 72.0 | 17.9 | -19.6 | -12.3 | 29.5 | 37.0 | -3.9 |
| Protecting minority investors | -75.0 | -39.6 | 6.2 | -3.1 | -15.6 | -25.0 | -6.2 | 35.0 | 19.5 | 0.0 |
| Average | -48.1 | -28.6 | 13.9 | 23.9 | -4.0 | -20.0 | -6.9 | 19.1 | 29.7 | 1.2 |
| Phase 3 | | | | | | | | | | |
| Paying taxes | -32.1 | -8.7 | 39.6 | 16.3 | -1.5 | -18.8 | 4.7 | 22.7 | 27.3 | 9.0 |
| Trading across borders | -16.5 | -11.0 | 12.0 | 6.1 | -4.3 | -15.4 | -10.4 | 12.8 | 11.7 | -14.3 |
| Average | -24.3 | -9.9 | 25.8 | 11.2 | -2.9 | -17.1 | -2.9 | 17.8 | 19.5 | -2.7 |

Source: Doing Business database. Authors' calculations.

Table 10 offers four important observations.

1. Looking at all the three phases together, Taiwan's regulatory quality has substantially increased in 2015, compared to 2010. The negative DTF ratios are much less frequent in 2015 than in 2010. If one takes into account Taiwan's DTF ratios with respect to the best country (always negative since Taiwan is never the best country), the number of negative DTF amount to 27 in 2010 (that is, 54 percent of all the cases) compared to only 16 (32 percent of all the cases) in 2015. If one excludes the best country, the

number of negative DTF amount to 17 (42 percent of all the cases) in 2010 compared to only 6 (15 percent of all the cases) in 2015.

2. Focusing on Phase 1, Taiwan's DTF ratios have improved for all the procedures and all the potential competitors, with lower negative DTF ratios and higher positive DTF ratios (except in five cases, most at the margin).
3. Focusing on Phase 2, an important improvement is also observed for two procedures (enforcing contracts and protecting minority investors), even though Taiwan seems still a little bit behind the Asian rich in both cases. However, the outlier is the procedure of "resolving insolvency".
4. Focusing on Phase 3, Taiwan has also greatly improved its situation for the procedure "paying tax". By contrast, its DTF ratio for the procedure "trading across borders" is stable with respect to all the other countries group, except the EU.⁶¹

All these results converge to present Taiwan as an attractive candidate for being a hub in 2015, and increasingly so compared to 2010.

⁶¹ *The DTF indicators for two EU Member States look strange. They are set at 100 (perfect regulation) for France and Italy whereas they amount to 91.4 and 91.8 for Britain and Germany, respectively. Since all the four countries are EU Members in May 2015, it is both hard to understand such divergences and to be convinced by such a result. As a result, Table 33.1 relies on a conservative estimate based only on the British and German DTFs. Request for information has been sent to the Doing Business unit at the World Bank Group.*

Part II. THE COMPONENTS OF AN EU-TAIWAN BILATERAL INVESTMENT AGREEMENT (BIA)

The results of the economic and legal analysis show clearly that both economies would benefit from a better legal environment that could be enhanced by the negotiations of a trade and investment agreement.

Ideally, the proponents of strengthening the EU-Taiwan relationship, either from the public or the private sectors from both the EU and Taiwan, would prefer to launch an ambitious and balanced deep and comprehensive free trade agreement (DCFTA). The analysis of the economic data collected in this survey and of previous studies clearly demonstrates such a need which would be beneficial for both partners. The trade negotiating authorities from both parties would also like such a broad scope of negotiations.

Such a DCFTA should include provisions on all the key subjects that are now included in the new generation of “deep and comprehensive” FTA that most developed countries negotiate: trade in goods, services, investment, intellectual property rights (IPR), public procurement, competition and dispute settlement, sustainable development components and a living regulatory cooperation process. Concerning the goods related issues, the agreement would aim at removing tariffs in more than 95% of all tariff lines and to address non-tariff barriers and rules of origin issues. It should also look at possibilities to set up regulatory cooperation processes aiming at standards and certification convergence.

A. The “Mainland China” Factor

It is not possible however to ignore the political reality of the situation of Taiwan, very closely linked to its giant neighbour Mainland China, and the history of their peculiar relationship. The fact that in the last decade they have significantly improved their relations and even concluded some trade and investment agreements does not mean that the situation is fully appeased. It remains to be seen whether new President Tsai Ing-wen of the Democratic Progressive Party (DPP) who was elected President with 56% of the vote in January 2016, and took power in May 2016, will continue the policy of rapprochement run by his predecessor, President Ma

Ying-jeou. In any case, it seems to be clear that Taiwan trade policy is dependent of a certain political or “diplomatical” approval or tacit acceptance by Mainland China government.

One also needs to take into consideration the relationship between the EU and China, which has a direct impact on the EU-Taiwan’s one. Indeed, one must remember that China has requested at many occasions to open full-fledged free trade agreement negotiations with the EU; but the EU considers that it is not ready for such a deal. Therefore, after many years of discussion, the two biggest trading blocks of the world have decided in November 2013 to launch negotiations of a Bilateral Investment Agreement (BIA)⁶². It would therefore be delicate to start FTA negotiations with Taiwan. The current tense situation between the EU and Mainland China over the steel crisis, where the overcapacity on the Chinese production has inundated the market, and the exacerbated debate on the Market Economy Status (MES) are also important elements in the equation of EU-Taiwan relations.

It seems therefore that the launch of a full FTA between the EU and Taiwan might be seen as a political provocation vis-à-vis Mainland China. That is the reason why the two parties seem to accept the idea that, at this point in time and at least in a first step, the best would be to launch a bilateral investment agreement (BIA). As a result, the European Commission, in its new trade and investment strategy “Trade for All” published in October 2015 states that “the EU will explore launching negotiations on investment with Hong-Kong and Taiwan” (EC 2015, 31) to broaden its network of investment agreements in the region. The simple fact that this “exploration” is mentioned in the new European trade strategy is already a great progress. This is however only the beginning of the journey.

It needs first of all to be highlighted that, during the presentation of the new strategy to the International Trade Committee (INTA) on the day after the release of the Communication (15 October 2015), Trade Commissioner Malmström said that such negotiations with Taiwan would be launched “only once the talks of the BIA with China would be done”⁶³. This sentence triggered strong reaction among MEPs who argued that the negotiations should be run in parallel. So, it is not clear yet whether such BIA negotiations with Taiwan will ever take place, and if it does, how long they would last. The EU-China BIA negotiations could take a very

⁶² http://europa.eu/rapid/press-release_IP-14-33_en.htm

⁶³ <http://www.europarl.europa.eu/ep-live/en/committees/video?event=20151015-0900-COMMITTEE-INTA>

long time to reach a conclusion. Up to April 2016, 10 rounds of negotiations have taken place and the parties have only recently agreed on the scope of the agreement, in particular to include pre-market access commitments in addition of the post-market access investment protection. There was also consensus to address key challenges of the regulatory environment, including those related to transparency, licensing and authorisation procedures, as well as to provide for a high and balanced level of protection for investors and their investments. Moreover, the agreement will include rules on environmental and labour-related dimensions of foreign investment. This large scope is a good news, since it goes much beyond a traditional investment protection agreement, ... and could be used also in a BIA with Taiwan. But it is clear that it will take more time and will require more compromises. Another element of thoughts is the on-going similar US-China bilateral agreement negotiations which have had a hectic road, started in 2008, run more than 25 rounds of talks, interrupted for many years, started again in 2013 and, closed to conclusion, missed a deadline in April 2016, despite the political push by Presidents Obama and Xi in September 2015...

That is the reason why there is still a need to make a case for the launch of an EU-Taiwan BIA before the conclusion of the EU-China BIA. In this regards, one can remember that the opening of the negotiations with Taiwan, and the running of these negotiations in parallel of those with China, already took place during the time of the WTO accessions of both China and Taiwan. There will be time enough to look at the political situation again - which might have completely changed since – once the time will be considered as ripe for the conclusion of an EU-Taiwan BIA.

B. The table of content of an EU-Taiwan BIA

The question that this Section will address is what should be the content of an EU-Taiwan BIA, with a focus on the interest of the services sectors. The fact that the Chinese negotiators finally agreed to expand the scope of the agreement to the pre-market access elements, and beyond, allows also this possibility with Taiwan. We will look at the market access pillar, including all modes of supply and the access to the public procurement market, and then at the regulatory cooperation and other rules that the BIA should include to be a real “deep and comprehensive” BIA.

1. What the BIA will not include

The political reality imposing a BIA instead of a full-fledge FTA, contrary to the evidence delivered by the survey, but allowing a large scope in the negotiating mandate, we recommend that the BIA includes the largest possible number of issues. This would mean that it will only not tackle the tariffs on goods related issues. This means that the BIA will not include reduction of tariffs on manufactured goods, on agriculture products and raw materials; will not have a chapter on rules of origin, on Technical Barriers to Trade (TBT), on Sanitary and Phytosanitary measures (SPS), on Trade remedies, on Subsidies, and probably not on custom and trade facilitation and on IPR.

2. What the BIA will include

There is still a question mark on whether or not, the BIA should include rules related to cross-border services, since they are not directly linked to foreign direct investment. However, this is an issue that we would like to challenge in this paper. All other issues that are usually dealt with in modern trade and investment agreements should be part of the EU-Taiwan BIA, including a sustainable and development chapter that will contain rules on environmental and labour-related dimensions of foreign investment.

It will be important for the two negotiating parties to ensure that the BIA delivers the best of their market openings and of rules making. Therefore, Taiwan will most likely look at getting what the EU negotiated with Canada, which is currently the benchmark for the EU FTA/BIA. The EU will have to look at what Taiwan would have committed in its recent FTA/BIA activities, with obviously i) the content of the Mainland China and Taiwan “Economic Cooperation Framework Agreement (ECFA) of 2010 - and of the related Cross-Strait Agreement on Trade in Services (CSATS), which was concluded in June 2013 but not implemented yet - being an important factor, but also ii) the Taiwan-New Zealand FTA signed in July 2013, and iii) the Taiwan-Singapore FTA signed in November 2013.

But to begin with, we believe that to have real added value, the EU-Taiwan should go beyond all aspects of what might be negotiated under the “Trade in Services Agreement” (TiSA), still under negotiation but hopefully concluded before the bilateral BIA. So we will have a quick

look at what is the TiSA in all its components, before analysing in deeper details the relevant elements of the bilateral deal for the services companies.

C. The scope of the BIA should expand beyond TiSA

With the impasse in WTO services negotiations in the Doha Round, the idea of moving the trade agenda forward through a stand-alone agreement on trade in services was proposed in 2012. The process was an initiative of Australia and the United States. It was proposed to a group of countries meeting in Geneva and known as the "Really Good Friends of Services", amongst which the EU and Taiwan.

The TiSA is currently being negotiated by 23 members of the WTO (50 countries, with EU as one member including its 28 Member states), including Australia, Canada, Chile, Colombia, Costa Rica, the European Union, Hong Kong China, Iceland, Israel, Japan, Korea, Liechtenstein, Mauritius, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, Switzerland, Taiwan, Turkey and the United States. Together, these countries account for approximately 70% of the world trade in services.

Since 27 April 2013, TiSA participants have had many negotiating rounds in Geneva, which encompassed a wide range of discussions on the core text of the agreement. Relevant topics include horizontal provisions such as domestic regulation, transparency, entry of business persons and sector-specific provisions focusing on the new and enhanced trade rules for, inter alia, e-commerce and telecommunications, financial services, professional services, air and maritime transportation, ICT services and energy services. Regarding the market access pillar of the talks, participating countries have confirmed that they will use a "hybrid approach", where TiSA market access schedule commitments will use a 'positive list' approach, meaning that only the services listed on the schedule are liberalised. But, the National Treatment commitments will be scheduled on a 'negative list' basis, which means that for any area where a party does not commit to apply full National Treatment, a reservation must be listed.

The participating countries decided to start the market access discussion by agreeing to table the highest level of commitment expressed by each party under its best (implemented) free trade agreement at the date of the start of the negotiations. However, the aim of TiSA should not be simply to repackage existing commitments in completed free trade agreements, but to

create genuine new opportunities through new market access commitments that go beyond current openness.

Businesses aim to provide the best customized service to their clients. An essential aspect of this commitment is the ability to move highly skilled services personnel rapidly to the locations required by their business. The TiSA is looking at addressing the important issue of talent mobility to allow market access to services providers in a predictable and expedited way across all participating countries. Some might argue that the bilateral EU-Taiwan BIA should not deal with the movement of natural persons (mode 4 of the GATS – General Agreement on Trade in Services), since it is not directly linked to the foreign direct investment. This is however not completely true, and we would certainly recommend to include the mode 4 negotiations in the BIA (see below).

The very large majority of the services sectors are subject to strict rules and regulations that govern their daily functioning, like license and authorisation requirements, competition rules, quality requirements, consumers' protection, etc. TiSA is a great opportunity in drafting horizontal disciplines for the new so-called “21st century” issues such as cross border data flows, forced localization, and state-owned and state-sponsored enterprises (SOEs) that compete in commercial markets⁶⁴. The BIA should also include similar disciplines, and eventually go beyond TiSA, depending on the final result.

D. An in-depth analysis of the future content of the EU-Taiwan BIA

Taking all the above elements into consideration and accepting that the EU-Taiwan BIA would have to go beyond the TiSA, what should be added?

In summary, we believe the agreement should aim at facilitating cross-border trade in services and movement of people by removing the maximum possible of remaining market access barriers of all kind.

⁶⁴ *Declassified EU Directives for the negotiation of a plurilateral agreement on trade in services (also called the TiSA Mandate for the EU negotiators – Paragraph 7 page 4. See: <http://data.consilium.europa.eu/doc/document/ST-6891-2013-ADD-1-DCL-1/en/pdf>*

If, however, both sides would agree that the deal should cover only issues strictly related to foreign direct investment, we would recommend to negotiate commitments in cross-border trade in services and in movement of people, but that would be limited to the activities directly related to investments, i.e. for instance the intra-company trade implying cross-border data flows; and the intra-corporate transferees. On commercial presence through investment, the BIA should improve pre-establishment market access in all economic sectors, including in all services sectors and post-establishment protection that should set clear protection of the investments. There should possibly also be an Intellectual Property Rights section in the BIA to address the questions related to copyrights of software, patents of hardware used by manufacturing and services companies like ICT (Information & Communication Technology), energy, water and waste management, etc., as well as related to the transfer of data, etc. The agreement should ensure better mutual access to public procurement, including for services sectors in all public entities. Finally, the BIA should include chapters on rules, like establishing a regulatory cooperation mechanism, provisions on Competition and sustainable development, and a state-to-state dispute settlement body.

1) Market access pillar

It needs to be recalled that the current state of EU's binding obligations towards Taiwan is the multilateral market access commitments undertaken at the end of the Uruguay Round and the creation of the WTO in 1995. The current state of Taiwan's binding obligations with the EU are the commitments taken upon Taiwan WTO accession in 2002. An EU-Taiwan BIA would be an historical opportunity to substantially improve market access commitments by both parties.

The market access pillar in a BIA between the EU and Taiwan should be ambitious: it should correspond to a GATS plus, and possibly TiSA plus. To achieve this, the BIA should for instance remove all possible remaining equity caps (with negotiated exceptions). It should bind the current practises that go beyond existing commitments (i.e.: higher market access than in existing BIAs), and seriously consider removing existing barriers, so as to effectively create new market opportunities for the business providers from both sides. It should include standstill and ratchet clauses for the restrictions on existing measures, that would ensure spreading of trade liberalisation on a non-discriminatory basis, once a party has unilaterally decided to open up its market. It should be particularly ambitious in the sectors of professional services,

business services, telecommunication and ICT services, postal and express services and financial services that are often left behind in trade negotiations.

a) The Method: negative list of non-conforming measures

The scheduling of Market access and National treatment commitments should follow the negative list approach: a schedule of commitments undertaken under the negative list approach provides better visibility for a company that will know exactly what it cannot do, and hence which sectors are opened for investment and trade. It is therefore clearly the EU industry preferred choice. The position of the EU institutions is not clear on this issue. So far the EU has accepted to follow the negative listing only with Canada and Japan. It will likely do so also in the near future with Australia and New-Zealand, as well as with Mexico. But it has continued to negotiate through a positive list (the one used in the WTO GATS negotiations) with developing or middle income countries, like Colombia, Peru, Vietnam, but also with Singapore and Korea, in the recent past, and currently with Philippines, Morocco, Tunisia. On the other hand, Taiwan has signed recent FTAs with New-Zealand and Singapore using the negative list approach. Both parties are therefore able to negotiate and deliver following this negative approach.

In this approach, each country makes a list of restrictions. These listed measures are called “non-conforming measures”, since the norm by default when using such a negative list is that everything that is not listed is open (i.e. foreign companies can operate in similar conditions than domestic companies). Hence, regulatory measures that are not listed are consistent with that norm. Those which are listed are “non-conform” to that norm; they are restrictions or exceptions to the norm of openness.

Usually, there are two lists of restrictions: the first one will include the restrictions of the existing measures (also called Annex I) and another will include the restrictions of future and sensitive existing measures (called Annex II). Furthermore, many of the recent deals using this method list the restrictions in financial services in a separate annex (Annex III), with the restrictions on existing measures in financial services in Section A, and the restrictions on future measures on Section B. However, neither the EU nor Taiwan have used this third separate annex for financial services. The EU considers that even if this is an important

economic sector, it does not justify a separate treatment. The result should in any case be the same.

Everything that is not listed is considered open and unrestricted. The standstill and ratchet clauses - that prevent the signatories from implementing protectionist measures and that bind any new liberalising measures implemented by the signatories that goes beyond what was agreed on in the agreement - are tools that ensure spreading of trade liberalisation on a non-discriminatory basis, once a party has unilaterally decided to open up the market. It is important though to underline that the standstill and ratchet clauses are applicable only to the restrictions listed in the Annex I of the schedule of commitments. They fully respect the democratic control, and allow avoiding the necessity to renegotiate outdated agreements. In a rapidly changing environment due to the spreading out of the digital economy, such method is welcome and recommended in the EU-Taiwan BIA.

b) The Modes of services supply

The BIA should ensure that the parties will take substantial commitments in all of the four modes of services supply. But we will see that in fact the commitments taken by the negotiating parties under these modes are not restricted to services, but benefit to all businesses from all economic sectors (agriculture, mining, manufacturing and services sectors).

1. Cross-border trade in services

The EU and Taiwan will have to make particular significant efforts in taking new commitments in cross-border trade of services, where neither the supplier, nor the client is moving (so-called Mode 1 under the GATS). They both stay in their respective countries. The typical transactions cover the shipping and other transport services. But it also covers the growing services that are traded through electronic transmission, i.e. not only the e-commerce of goods, but also financial services, professional e.g. architectural services that are supplied across the borders and business services, etc. There is a huge undiscovered potential of increase of cross border trade in services through the new ICT technologies. Indeed, these kinds of commitments will not be limited to services companies. All manufacturing companies will also benefit from such commitments, allowing secured cross-border data flows. In the new and ever changing environment of the digital economy, the proper functioning of the global value chain

necessitates legal certainties such as these Mode 1 commitments. This will allow full confidence in the development of trade implying machine-to-machine communications, and the whole potential of the incoming “internet of things” and of the 3D-printing.

As mentioned earlier, should the scope of the BIA be restricted to activities around the foreign investments, we would however strongly recommend the parties to take mode 1 commitments that are related to intra-company activities.

Furthermore, the commitments under that category are also including the transactions where it is the consumer who is moving to the country of the supplier (so-called mode 2 under the GATS). These cover typically, tourism services, travel services, education and increasingly health services. One must admit that there are very few remaining barriers in this mode of supply, and the BIA will be an opportunity to remove all of them.

2. Establishment of commercial presence abroad (FDI)

This is typically the way to take pre-market access commitments in a Bilateral Investment Agreement, that will help the decision of a company to invest in the market of the other country. We hope however that the negotiators of the BIA will not limit the scope of the market access pillar to this mode.

The preferred route for the services companies to undertake international activities is to establish a commercial presence abroad; this is the so-called “Mode 3” of the GATS. Companies want to establish themselves in the countries where they want to do business with their clients, either by starting a “green-field” operation, or by buying or merging with an existing local company. Contrary to the production of goods, the production of services is made at the same time as the delivery of the services to the consumer. It is crucial therefore for the services companies to have a direct contact with their customers. To do that, a company would want to establish a subsidiary (preferably wholly-owned); or a joint venture; or even when possible, a branch that is regulated at the headquarters level. The BIA will have to ensure that the companies which would wish to do that could establish in any legal form that they see fit for them, and could own and control their new establishment, and therefore remove, as far as possible, all kind of control of foreign ownership, like possible remaining equity caps.

Even if the EU got competence for foreign direct investment protection only in 2009 (see below), pre-establishment issues in the investments of services companies were already part of the EU competence through its common trade policy since the EEC inception in 1958. And even before the entry into force of the Lisbon Treaty, the EU had also negotiated pre-establishment commitments in *other sectors than in services*. Indeed, the EU-Cariforum EPA includes for the first time commitments on establishment of investors in the EU in the sector of agriculture, aquaculture and fishery, of mining and quarrying, in the various numerous manufacturing sectors. And that was also the case for the following FTAs that the EU negotiated with a mandate before Lisbon, such as the FTA with South Korea; Columbia, Peru and Ecuador; and with the six Central America Nations. And that is now systematically the case for all the on-going and future trade and investment agreements that the EU is negotiating. And therefore it will also be the case for the EU-Taiwan BIA. It is important to emphasise and repeat that the negotiations of “mode 3” commitments do cover all sectors, and not only the services sectors.

The particularity of this mode is that once the access to the market is granted, the activity of that company will in the vast majority of the case be accounted into the local GDP of the host country. It is therefore not included in the international trade figures, but the guarantee of the market access is provided by an international trade and investment agreement. The only figures that are accounted in international trade under mode 3 are the eventual profits that are repatriated to the home country. These activities of establishment are in fact accounted in foreign direct investment figures. This explains for instance the importance of the EU stocks in Taiwan (€10.4 billion in 2014).

3. *Temporary Movement of natural persons*

The last mode for supplying a service is the temporary movement of natural persons (Mode 4 of the GATS)⁶⁵. The question of mobility of the service suppliers is a key priority for businesses in the EU-Taiwan BIA. Mobility of high skilled business personnel is a key component of businesses’ daily activities. Commitments to facilitate mobility and expedite business visas and work permits are a matter of high importance for enterprises that are active internationally. The

⁶⁵ See Article I of GATS, listing in its paragraphs 1a), 1b), 1c), and 1d) the various modes of supplying an international service: https://www.wto.org/english/docs_e/legal_e/26-gats.pdf

BIA should cover temporary movement only and not permanent migration. It should allow faster Business Visa and Work permits delivery procedures for all categories of natural persons covered under Mode 4.

Migration policy is not an EU full competence, and hence the decisions for granting visas and work permits are taken at member states level. However, some progress has been made in the EU among some countries with the setting-up of the so-called “Schengen Area”, where circulation of European citizens within that area is free. However, this freedom does not apply to third countries’ nationals. Therefore, negotiations of mode 4 commitments are a first step to get legal access for business travellers.

The commitments taken under mode 4 by the EU are divided into the following 4 sub-sections: i) movement of business visitors; ii) movement of intra-corporate transferees (ICT)/employees, iii) movement of a service supplier to a client in the host country under the terms of a contract between two companies (Contract Service Supplier – CSS), iv) movement of an independent service supplier in contract with a company in the host country.

a) Intra-Corporate Transferees (ICT)

The negotiations of movement of intra-corporate transferees (ICT)/employees are directly relevant to daily functioning of the company of the foreign investor. The EU has recently entered into force a new directive on Intra-Corporate Transferees (ICT) that should be of great interest to Taiwan. Coupled with the so-called “Simplification procedure Directive” and the so-called “Blue-Card Directive”, although still imperfect, these texts should offer new opportunities to Taiwan companies to come to the EU and to be able to move through different countries of the EU before going back home.

The conditions allowing for an ICT should be that the natural person or individual must have worked in the juridical person or company concerned for at least one year, and that he or she is only transferred temporarily in the context of the provision of a service through a commercial presence in the territory (i.e. Taiwanese subsidiary or joint-venture in the EU). Entry and stay in the EU would be limited to a maximum of three years for managers and specialists (with some longer periods in some EU Countries) and of one year for trainees. ICTs would not be submitted to any economic needs tests, limits or quotas.

On the other side, EU companies will be very much interested in an improvement of mobility of ICT in Taiwan, and if possible in a simplification procedure in the delivery of business visas, including for the short-term business trips.

b) Other categories

We would like to argue that at least two other categories of movement of natural persons are also relevant to the activity of the foreign investor, and should therefore be covered by the EU-Taiwan BIA. The possibility to obtain business visas for the “business visitors” will be of great interest. This is typically a visa that is similar to a tourist visa and granted quickly for a maximum period of three months. It allows the interested persons to go to the subsidiary for a short period of time, or to attend a seminar, a conference or a trade fair, or even visit a client or prospect for new business. But the beneficiary of such a “business visitor” visa cannot make financial or commercial transactions. This type of visa would be well appreciated by companies who would wish to use Taiwan as a hub and make regular visit to sister companies or suppliers in Taiwan and in the region. The so-called “fly-in/fly-out” activities of professional services suppliers are also potential great users of such kind of visas.

We would also consider that the movement of a service supplier to a client in the host country under the terms of a contract between two companies (Contract Service Supplier – CSS) would also be relevant for the activities of foreign direct investors in the EU or in Taiwan. Indeed, one of the regular barriers that potential foreign investors quote is the impossibility for them to continue using the same lawyer, or auditor, etc. that the company uses in its global activities.

2. Investment protection

As far as the EU is concerned, the Lisbon Treaty on the functioning of the European Union that entered into force in December 2009 has granted a new competence to the EU on foreign direct investment⁶⁶. Before the entry into force of the Lisbon Treaty, the EU had also negotiated pre-establishment commitments in other sectors than in services in its recent FTAs (South Korea; Columbia, Peru and Ecuador; and with the six Central America Nations, Ukraine, Georgia &

⁶⁶ Article 207 of the Treaty of the Functioning of the European Union

Moldova - see above), but they do not cover the protection of investment on a post establishment basis. This means that, should a problem of investment protection occur in these countries, the only ways for a European company to get a redress in case of an alleged expropriation is 1) to check whether there is a bilateral agreement signed between the government of the country of origin of the company and see if there is an investor-to-state dispute settlement mechanism that it could eventually activate, or 2) to hope that the European Union will be inclined to trigger the general state-to-state dispute settlement provision enshrined in the FTA, a provision which any EU-Taiwan BIA will also contain.

On the other hand, the EU member states have now granted through new or revised mandates, negotiating power to the Commission on investment protection for the concluded agreements with Canada⁶⁷, Singapore⁶⁸ and Vietnam⁶⁹, and for the on-going negotiations with the ASEAN countries (Malaysia, Philippines, Thailand), with India, and with the USA⁷⁰ and Japan. It will also be the case for the forthcoming FTAs with Australia, New-Zealand and for the revision of existing treaties like the FTA with Mexico and Chile, or the custom union with Turkey. So, there is no doubt that the EU-Taiwan BIA will include an investment protection chapter, covering pre-establishment commitments as well as post-establishment protection.

Before the Lisbon Treaty, FDI protection was of the competence of the member states of the European Union. Hence, these EU Member States have concluded more than 1400 BITs (Bilateral Investment Treaties) of high level protection since the end of the fifties. Taiwan has also signed some 21 BITs, including five with EU member states (Czech Republic, Hungary, Lithuania, Poland, and Romania). Investment is about trust. Investment protection, including the right to defend it through a neutral dispute settlement, provides that trust. Hence, nearly all these existing 1400 BITs include investor-state dispute settlement (ISDS). There is a clear relation between the investment volume and the ISDS system, since investors take a decision knowing that, should there be a problem with their investment, there is a mean to seek redress. ISDS is therefore an integral part of the trust that is indispensable for the investors when they

⁶⁷ See consolidated Text of CETA – from page 146 to 186 - See: http://trade.ec.europa.eu/doclib/docs/2014/september/tradoc_152806.pdf

⁶⁸ EU-Singapore draft FTA – Chapter 9 – See http://trade.ec.europa.eu/doclib/docs/2014/october/tradoc_152844.pdf

⁶⁹ Provisional Text of EU-Vietnam FTA – Chapter 8 - Section 2 – See <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1437>

⁷⁰ See EU-US TTIP Negotiating mandate – Paragraph 22 & 23 – page 8 to 10 – See <http://data.consilium.europa.eu/doc/document/ST-11103-2013-DCL-1/en/pdf>

take investment decisions. ISDS is like an insurance policy that a holder is taking, hoping that he/she will never need to use it. There will therefore be a strong interest from the EU industry in favour of having a state of the art ISDS mechanism in an EU-Taiwan BIA.

It is vital that the relationship between Taiwan and the EU include high-level investment protection with a neutral, binding, and efficient investor-state dispute settlement mechanism. The ISDS mechanism that the EU is likely to seek in a BIA with-Taiwan will likely include some reforms, notably new transparency obligations.

The question of ISDS is of great sensitivity within the EU and the European Commission has proposed a new system for resolving disputes between investors and states – the Investment Court System (ICS). The Commission has clearly stated that this new system would replace the existing investor-to-state dispute settlement (ISDS) mechanism in all ongoing and future EU investment negotiations, which hence includes the future EU-Taiwan BIA.

One can briefly describe the new system as follows: A public Investment Court System composed of a first instance Tribunal and an Appeal Tribunal would be set up. The judgments would be made by publicly appointed judges with high qualifications, comparable to those required for the members of permanent international courts such as the International Court of Justice and the WTO Appellate Body. The new Appeal Tribunal would be operating on similar principles to the WTO Appellate Body. The ability of investors to take a case before the Tribunal would be precisely defined and limited. The proceedings of the Court will be transparent, hearings open and comments available on-line, and a right to intervene for parties with an interest in the dispute will be provided. The forum-shopping is not possible; the frivolous claims will be dismissed quickly; multiple and parallel proceedings will be avoided.

3) Public Procurement, the BIA must go beyond GPA

The BIA should also provide comprehensive market access to public procurement for goods, services and infrastructure works, with low thresholds and substantive coverage of all public institutions and entities, committing the partners to remove any discrimination in the bidding by any EU or Taiwan businesses. It is of crucial importance to increase access for services companies to all public entities that are using public procurement in their functioning. This is obviously true for the construction services and construction related services, such as

architecture and engineering services, urban planning, etc. All public administrations and entities also need for their daily activities to procure telecom and IT services, insurance and banking services, transport and logistic services, cleaning and catering services, legal and accounting services, etc.

Taiwan is a member of the Government Procurement Agreement (GPA) since 15th July, 2009. It took seven years to accede to the GPA, after Taiwan's commitment to look for GPA accession upon its WTO accession in 2002. Although this accession is relatively recent, and despite the fact that Taiwan took further commitments during the GPA revision in 2014, it must be absolutely clear that the BIA with the EU should lead to "GPA Plus" commitments from both sides.

The EU Public Procurement directives have along the years opened up the public procurement markets between the member states of the European Union, and has set up transparency and process rules that makes the EU very open. The EU is the GPA party that has taken the most significant package of commitments, but it has also kept some domains exclusively reserved to EU Member states or to partners of recent DCFTAs who agreed to open further their market. This is clear the case of Canada, and it could therefore be the case for Taiwan.

The EU is not dealing with "government" procurement anymore, but with "public" procurement. It means that all public entities that, for their daily functioning, are using procurement processes are included in the EU negotiations' offer, including the local entities like the counties or municipalities, as well as the public schools, universities and hospitals. This is a clear requirement that will be sought in the EU-Taiwan talks. In particular, the "New Taipei" should be open to EU bidders for all the various calls of tender. The added value for the BIA could also be the reduction of the thresholds at which the companies from the two partners should have the right to participate to the calls of tender.

As a minimum commitment, the EU will likely require from Taiwan to allow up-front that all European companies already established in Taiwan and hence incorporated as a Taiwan enterprise should be treated as a domestic company and granted the right to participate to the Taiwan calls of tender. This approach will also be coherent with the link between the coverage of investments and procurement.

4) Regulatory disciplines and cooperation pillar & Other rules

To be effectively a deep and comprehensive Bilateral Investment Agreement embracing all the new elements of the 21st Century deals, the EU-Taiwan BIA would have to go beyond traditional market access commitments, as significant as they may be. It would also need to go beyond the commitments on public procurement, despite the fact that they would cover all levels of public entities. To become a real new benchmark, the EU-Taiwan BIA will also have to deal with beyond the borders issues. We will look here essentially at the obligations that the parties will take on domestic regulation, as well as on other horizontal rules like cross border data flows, etc. Possible provision on labour and environmental rules will be dealt with in the next section.

a. Domestic Regulation

The BIA should include a strong Horizontal Chapter on Disciplines for Domestic Regulation. This chapter should establish obligations that go beyond the rules that could be adopted in the TiSA agreement, which will essentially establish basic rules of better transparency in regulation in general, and licensing and qualification procedures in particular. Such a chapter of the BIA should be divided into two sections, one on regulatory coherence and one on regulatory cooperation. A concrete example might be envisaged in the area of mutual recognition of qualifications of some professional services.

1. Regulatory Coherence

Principles such as regulatory transparency, prior consultation with stakeholders before adoption of new or revised rules, impartiality and due process with regard to licensing and qualification requirements and procedures, right of appeal, etc. are already normal practices in the EU jurisdictions and in most of its recent bilateral trade agreements. They are also in many ways in the functioning of the Taiwanese authorities, but it will be good to enshrine them in the BIA with Taiwan. These regulatory principles and practices should be applied systematically at all levels of the BIA market regulation, to help in limiting future degrees of regulatory divergence.

The chapter should therefore include an impact assessment mechanism. Before adopting a new regulation or revising an existing legislation, the concerned regulatory body must conduct an impact assessment study of the new proposed rules to evaluate its potential impact on the targeted market, on the economy in general, on labour and the environment, as well as on the budget. The idea would be to negotiate in the BIA talks the adoption of such a mechanism between the EU and Taiwan for the regulatory activities that would have a potential impact on the trade between the two parties. The purpose would be to set up a mechanism of exchange of information among the regulators of all sectors, wherever they are, to increase transparency and to lead towards better regulatory coherence.

It should for instance provide full transparency about the licensing requirements and procedures (objective of the regulator, obligation proportionate to the goal, least burdensome administrative costs as possible, short and predefined delays, right of appeal).

2. Regulatory cooperation

A closer regulatory co-operation is very important to progressively achieve a more integrated marketplace as well as to ensure that both partners promote together the development of international regulations in all parts of the economy. Going towards better regulatory coherence is a necessary first step, but the ultimate goal is to reduce unnecessary costs associated with regulatory differences and by promoting greater compatibility through equivalence, mutual recognition, or other agreed means. The purpose is to see whether it would be possible to avoid double licensing procedures, double certification, double qualification, etc. If the sector specific regulators of both parties meet with their counterparts, exchange views on their respective objectives and methods, it might be possible in some instances to identify some procedures that could be trusted by each other sides, and hence authorise the equivalence, or mutually recognise the authorisation process of the other side.

To allow such a result, the EU-Taiwan BIA horizontal regulatory cooperation chapter could establish a mechanism, a process where the regulators would agree to meet and exchange information. The regulators will remain independent. They will not be subject to any obligations of result. The chapter should not be subject to the Dispute settlement system established by the BIA. But they will have an obligation of cooperation, when an issue of mutual interest would have been identified. These regulators should establish an annual or

pluri-annual programme, they should report on their progress, or lack of progress and provide explanatory notes. This chapter will establish a living process that would put into place a regulatory cooperation mechanism on a long-term basis, aiming at regulatory compatibility.

It could also include sector specific disciplines that could be integrated either in the sector specific chapters of the BIA, such as on Telecommunication services, on financial services, etc., or in sector specific annexes attached to the horizontal regulatory cooperation chapter. All specificities should indeed be taken into consideration and the regulators themselves are better positioned to set up specific arrangements, as they would see fit for their own sector.

3. MRAs on Professional qualification

One example where regulatory cooperation could lead to concrete result is in the domain of professional services. Even full market access and national treatment commitments in the BIA in all these sectors - including in allowing temporary movement of the professionals in regulated professions like architects, lawyers, engineers, accountants and auditors, etc. - will not result in substantial increases in trade between the two parties if the service providers are forced to re-qualify in the other party, before being able to provide their services.

The EU-Taiwan BIA, through regulatory cooperation provisions, could put into place a mechanism encouraging and enabling the regulators of these sectors to achieve, when there is a mutual demand from the professional bodies, Mutual Recognition Agreements in Professional qualifications. They could for instance follow the example set in the EU-Canada CETA.

The EU Treaty gives full competence to the EU institutions on all external aspects of the internal market, including also on Professional qualifications. A way must be found to reconcile the competent authorities in the professional services (the European Commission, and in particular the Directorate-General (DG) for Internal Market, Industry, Entrepreneurship and SMEs – called “DG Grow”), plus the Member States ministries, plus the Professional bodies, and the trade authorities (DG Trade, Trade Policy Committee – Member States trade representatives and the European Parliament (EP)).

For many years in the EU, the private sector was told to work on the details via a “profession to profession agreement”, which would then be examined by the relevant institutions of the two trading partners, so as to provide the “official stamp”, transforming it into an annex of a binding international treaty. But it was not that easy, and some MRAs finalised by private sector organisations in the areas of architecture services never came into implementation due to a lack of coordination among all the various public actors. The European Commission and the Canada Federal government have now found a way to go forward: they agreed on a Framework Agreement that is part of the CETA. It describes the modalities how MRAs on sector specific professional qualifications, once concluded by the private sector together with the “licencing bodies”, will finally be transformed into the binding International treaty (BIA). All the competent authorities in the Member States and the Provinces have been involved in this solution.

The framework agreement is an “enabling tool” (with Guidelines for the sectors) that ensure legal security to the agreement, if – and only if – the professional services sectors want to conclude a MRA. The Architects have already started to work on a MRA.

This model has proven its quality and efficiency and it could be followed in the EU-Taiwan negotiations as well.

b. Other rules

Finally, the BIA should also include other disciplines that are of cross-sectorial nature. These rules should contribute to setting up or strengthening international standards.

1) Rules on cross border data flow

Although Cross-border commercial data flow is a very sensitive subject in the EU, they are the real backbone of the digital economy that is crucial to boosting growth in all sectors of the economy, including small and medium-size enterprises. The EU-Taiwan BIA will have to include rules on cross border data flows. Commitments taken on this issue should be applied across all economic sectors, including financial services. Any exceptions to these provisions should be limited to legitimate public policy objectives and only in full compliance with the provisions of GATS covering data privacy (GATS Article XIV). With the objective of

enhancing trust of users and certainty of companies, and thus trade in goods and services, it is essential that businesses comply with data protection and security rules in force in the country of residence of the data subjects.

The text of the BIA should also look at ensuring that cross-border data flows are not limited by a requirement of establishment of a local presence; with only few mutually agreed and well justified exceptions. The parties should allow cross border data flows without a requirement to use locally based servers. The obligation to use local infrastructure or to establish a local presence should not be required as a condition of supplying data services. Preferential treatment to national suppliers should be prohibited in the use of local infrastructure, national spectrum, or orbital resources. Finally, the two partners should also ensure that local infrastructure used for conveyance of signals on electronic communications networks is made available to service suppliers under fully non-discriminatory terms and conditions.

2) Rules on State-owned enterprises

The Agreement should also look at stating specific rules to ensure that the competition legislation also applies to the state-owned and state-sponsored enterprises (SOEs) that compete in commercial markets. These rules could be part of the provisions in the competition chapter of the agreement. Consideration could be given to the EU regime on state aids, which set obligations of transparency to state-owned companies in the EU, ensuring that the companies have transparent accounting rules and forbid any cross-subsidisation transfers among different department of a state company.

5) Rules on labour and environment

We will look here at the possible provisions that might be discussed in a “sustainable development chapter” that will tackle labour and environmental rules. Any rules on labour will have a direct impact on the services companies, which are the major employers in both parties.

Since the EU-Korea FTA, the European Union has introduced a new chapter in its FTA/BIA which is entitled “Trade and Sustainable Development”⁷¹. “The Parties reaffirm their commitments to promoting the development of international trade in such a way as to contribute to the objective of sustainable development and will strive to ensure that this objective is integrated and reflected at every level of their trade relationship.” The EU considers that Trade policies and agreements can have wide-ranging effects on the economy, employment, labour standards, social cohesion, and the environment, including policy development and regulatory aspects. Thus, the EU wants to ensure that its trade actions are supportive of sustainable development within the EU, in its partner countries, and globally. Respect for fundamental workers' rights and for environmental protection requirements should be ensured in a context of trade, investment and economic expansion: the jobs created by open trade shall reflect international core labour standards, and increased trade and investment flows shall help the rapid spread of green goods, services and technologies around the world.

In such a chapter, on labour rules, the Parties, in accordance with the obligations deriving from the ILO core Conventions, commit to respecting, promoting and realising, in their laws and practices, the principles on fundamental labour rights; and on environmental rules, the Parties reaffirm their commitments to the effective implementation in their laws and practices of the multilateral environmental agreements (MEAs) to which they are parties.

Given that negotiations of the inclusion of rules on trade and sustainable development have now been agreed for the BIA between the EU and China, there is no doubt that this will also be the case for the negotiations with Taiwan.

These chapters also put into place a close involvement of the civil society. Such involvement is central to the successful implementation of the provisions, helping to identify issues and future areas of action. Civil Society advisory groups usually include environment, labour, and business organisations. There are also regular opportunities for the civil society in the EU and its partner countries to meet jointly to discuss issues.

⁷¹ See Chapter 13 of EU-Korea FTA, page 62... <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2011:127:FULL&from=EN>

It is interesting to note that so far in its trade and investment agreements, the EU fell short of submitting the lack of implementation of these obligations taken in the trade and sustainable development chapter to the dispute settlement mechanism enshrined in every deal. On the other hand, and even if the obligations might be assessed as lower, the countries which signed the Trans Pacific Partnership have submitted such a similar chapter to the dispute settlement mechanism. Given that the EU is currently or in preparation of negotiating FTAs with many TPP Partners (the US, Mexico, Chile, Japan, Australia, New-Zealand), this situation might change. This is to be taken into consideration for the future EU-Taiwan BIA.

E. Conclusions

A Bilateral Investment Agreement between Taiwan and the EU will have important benefits for both parties, notably i) the promotion of the investment of small and medium-sized enterprises in the EU and in Taiwan, bringing about more job opportunities for the EU; ii) the establishment of free, transparent, and healthy market mechanism between the EU and Taiwan, which will help investors to better understand the markets of both sides; and iii) as the EU actively engages in signing agreements on economic cooperation with other Asian countries, the BIA between the EU and Taiwan will help the EU complete its strategy in Asia.

Therefore, should the parties be willing to negotiate all the issues that are now on the table in modern trade and investment policy, the EU-Taiwan BIA will be a very deep and comprehensive bilateral investment agreement, which will cover all the aspects of an investment agreement, from in-depth commitments towards opening access to investors of any kind to state of the art investment protection. The only issues that will not be part of the BIA will be the traditional trade in goods issues, like the reduction of tariffs on agriculture and manufacturing goods, and the non-tariff barriers and the rules of origin.

The BIA should allow not only the reduction of barriers that are traditionally linked to investments, covering all economic actors and aiming as far as possible to remove all obstacles to foreign entities and providing them with national treatment across the board. But we believe that the BIA should go beyond this limited concept of “investment related issues” or “establishment related issues” and cover all matters that will allow foreign direct investors to draw the maximum potential of their investments by removing cross-border trade barriers and restrictions on temporary mobility of natural persons.

The BIA should also cover the government procurements by providing better transparency to the processes and allowing extended market access to all companies from both parties to call of tenders of all public entities. Opening public procurement will boost the interests of investors by widening up their opportunities in respective markets.

The agreement should put into place a mechanism for regulatory cooperation, where both sides' regulators will allow the counterparts and the stakeholders to comment on the evolution of the legislation and regulation, as well as will exchange on their objectives and methods, so as, when felt mutually acceptable, to work towards possible regulatory convergence and compatibility.

Finally, the agreement will likely include a chapter on "trade and sustainable development" issues, which will encompass rules on labour and environment.

Webography

Copenhagen Economics, 2008. *Taiwan: Enhancing Opportunities for European Business*.

Available from:

http://www.copenhageneconomics.com/dyn/resources/Publication/publicationPDF/1/21/0/53201_EU-Taiwan_Study.pdf

European Institute for Asian Studies, 2015. *A Survey on 10 Leading Taiwanese Enterprises Investing in the EU and its Member States*. Available from: <http://www.eias.org/wp-content/uploads/2016/02/A-Survey-on-10-Leading-Taiwanese-Enterprises-Investing-in-the-EU-and-its-Member-States.pdf>

European Parliament, 2013. *European Parliament resolution of 9 October 2013 on EU-Taiwan trade relations (2013/2675(RSP))*. Available from:

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0412+0+DOC+XML+V0//EN>

European Commission, 2015. *Trade for All. Towards a more responsible trade and investment policy*. Available from:

http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf

International Monetary Fund, 2015. *World Economic Outlook. Uneven Growth. Short- and Long-term factors*. Available from:

<http://www.imf.org/external/pubs/ft/weo/2015/01/pdf/text.pdf>

Centre of Intelligence Agency, 2016. *The World Factbook. Taiwan*. Available from:

https://www.cia.gov/library/publications/the-world-factbook/geos/print_tw.html

World Trade Organisation, 2015. *Trade Profiles. Chinese Taipei*. Available from:

<http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language=E&Country=TW>

Taipei Representative Office Brussels, 2015. *Taiwan Economic and Trade Development*.

Available from: <http://www.roc-taiwan.org/public/Attachment/491823151771.pdf>

European Commission – Directorate General for Trade, 2016. *Countries and regions. Taiwan*. Available from: <http://ec.europa.eu/trade/policy/countries-and-regions/countries/taiwan/>

Taiwan – Bureau of Foreign Trade, 2016. *FTAs signed with trading partners*. Available from: <http://www.trade.gov.tw/english/Pages/List.aspx?nodeID=672>

Taiwan – Bureau of Foreign Trade, 2010. *Bilateral Trade between the R.O.C. and Central and South America*. Available from: http://www.trade.gov.tw/english/Pages/Detail.aspx?nodeID=661&pid=321424&dl_DateRange=all&txt_SD=&txt_ED=&txt_Keyword=&Pageid=0

Wikipedia, *Cross-Strait Service Trade Agreement*. Available from: https://en.wikipedia.org/wiki/Cross-Strait_Service_Trade_Agreement

Politics and war, 2016. *National Factbook. Taiwan*. Available from: <https://politicsandwar.com/nation/id=37854&display=factbook>

European Centre for International Political Economy, 2010. *Beyond Geopolitics – The Case for a Free Trade Accord between Europe and Taiwan*. Available from: <http://www.ecipe.org/app/uploads/2014/12/beyond-geopolitics-the-case-for-a-free-trade-accord-between-europe-and-taiwan.pdf>

European Commission, 2016. *European Union, Trade in Goods with Taiwan*. Available from: http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113452.pdf

Eurostat, Database, 2016. Available from: <http://ec.europa.eu/eurostat/data/database>

European External Action Service, 2015. *EU-Taiwan Factfile 2015*. Available from: http://www.eeas.europa.eu/delegations/taiwan/documents/more_info/eufactfile2015.pdf

World Trade Organisation, 2016. *International Trade Statistics 2015*. Available from: https://www.wto.org/english/res_e/statis_e/its2015_e/its15_toc_e.htm

Organisation for Economic Co-operation and Development, 2016. *Trade in Value Added (TiVA) Database*. Available from:

http://stats.oecd.org/Index.aspx?DataSetCode=TIVA2015_C1

World Trade Organisation, 2016. *Trade in Value Added and Global Value Chains: statistical profiles. Chinese Taipei*. Available from:

https://www.wto.org/english/res_e/statis_e/miwi_e/countryprofiles_e.htm

European Commission, Press Release Database, 2014. *EU and China begin investment talks*. Available from: http://europa.eu/rapid/press-release_IP-14-33_en.htm

European Parliament, INTA Committee, 2015. Available from:

<http://www.europarl.europa.eu/ep-live/en/committees/video?event=20151015-0900-COMMITTEE-INTA>

Council of the European Union, 2015. *Declassification – Draft Directives for the negotiation of a plurilateral agreement on trade in services*. Available from:

<http://data.consilium.europa.eu/doc/document/ST-6891-2013-ADD-1-DCL-1/en/pdf>

World Trade Organisation, *Annex 1B – General Agreement on Trade in Services*. Available from: https://www.wto.org/english/docs_e/legal_e/legal_e.htm

Consolidated version of the Treaty on the Functioning of the European Union. Available from: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=NL>

European Commission, 2014. *Consolidated text of the Comprehensive Economic and Trade Agreement (CETA)*. Available from:

http://trade.ec.europa.eu/doclib/docs/2014/september/tradoc_152806.pdf

European Commission, 2014. *EU-Singapore Draft FTA, Chapter nine*. Available from:

http://trade.ec.europa.eu/doclib/docs/2014/october/tradoc_152844.pdf

European Commission, 2016. *EU-Vietnam Free Trade Agreement: Agreed text as of January 2016*. Available from: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1437>

Council of the European Union, 2014. *Declassification – Directives for the negotiation on the Transatlantic Trade and Investment Partnership between the European Union and the United States of America*. Available from: <http://data.consilium.europa.eu/doc/document/ST-11103-2013-DCL-1/en/pdf>

Official Journal of the European Union, 2011. *Free trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part*. Available from: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2011:127:FULL&from=EN>

Authors Biographies



Pascal Kerneis has been the Managing Director of the European Services Forum (ESF) since 1999, a network of representatives from the European services sector committed to promoting actively the interests of European services and the liberalisation of services markets throughout the world. P. Kerneis has also been a member of the Contact Group of the Directorate-General for Trade of the European Commission since 1999. As such, he participated at the last WTO Ministerial Conferences (Seattle, Doha, Cancun, Hong-Kong, Geneva, Bali, Nairobi). In 2014, he has been appointed member of Commission's Advisory Group for the Transatlantic Trade and Investment Partnership (TTIP) between the EU and the United States. In addition, P. Kerneis is a member of the European Domestic Advisory Group and of the Civil Society Forum of the EU-Korea FTA & EU-Colombia FTA. In 2010/2011, he was also member of the EU-Indonesia Vision Group towards a Comprehensive Economic Partnership Agreement. M. Kerneis is a regular speaker on trade in services and investment conferences and author of articles on trade in services related issues in various publications. Before that, P. Kerneis worked the European Banking Federation (Brussels, Belgium), being closely involved in the WTO negotiations on financial services in the framework of the GATS (General Agreement on Trade in Services). He holds a Ph. D. in European Law as well as a Master's degree in the Law of the European Union and the World Trade Organisation.



Philipp Lamprecht is a Research Associate at the European Centre for International Political Economy (ECIPE). He has worked as a full-time External Consultant of the London School of Economics (LSE) to the European Commission (DG Trade) on the Trade Sustainability Impact Assessment of the EU-Japan FTA negotiations, which was finalized in early 2016. He is currently working on the European Commission's Public Procurement Initiative (PPI). In addition, he currently works as an External Consultant on a EuropeAid project for the implementation of the EU-CARIFORUM Economic Partnership Agreement, as well as on an impact assessment for DG Trade on potential EU-New Zealand and EU-Australia trade negotiations. Before that, he has worked on

a number of consultancy projects in the field of trade for the International Trade Policy Unit of the LSE. He has gained work experience at the European Commission's DG Trade in 2011, working with trade negotiators on EU-Japan economic and trade relations. He holds a PhD from the LSE with a specialization on International Political Economy. He holds a double master's degree in International Relations from Sciences Po Paris and from the University of St. Gallen. He also studied Japanese Studies at the Kyoto University of Foreign Studies.



Patrick Messerlin is Professor Emeritus of economics at Sciences Po Paris, and Chairman, Steering Committee ECIPE. He was a Visiting Professor at the Graduate School of International Studies, Seoul National University (2013). His current research deals with EU-East Asia economic and trade relations, cultural industries, and regulatory reforms in the EU. He was a special advisor to Mike Moore, WTO Director General (2001-2002). He served as co-chair, with Ernesto Zedillo (former President of Mexico and Director of the Yale Center for the Study of Globalization) of the United Nations Millennium Development Goals Task Force on Trade for Development (2003-2005), and of the joint World Bank & UK Department for International Development Task Force on Global Finance and Trade Architecture (2008-2011). He was a member of the Global Agenda Trade Council of the World Economic Forum (2009-2012). P. Messerlin is the author of many reports and books, in particular *Measuring the Costs of Protection in Europe: European Commercial Policy in the 2000s* (Peterson Institute for International Economics 2001) and *Europe after the No Votes* (Institute of Economic Affairs 2006). He has written almost two hundred articles for professional journals.

We would like also to thank our colleagues' interns at the European Services Forum, who contributed to the research and analysis of the data that are transcribed into the report: Ms. Natascha Henry, Mr. Joseph Shaw and Ms. Morgane Praud.

