

What's Wrong with ECFA?

Democratic Process and Free Trade Reconsidered

〈ECFA 的問題為何？重探民主程序與自由貿易〉

國立政治大學英語亞太博士學位學程

博士生 張之豪

National Chengchi University International Doctoral Program in Asia-Pacific

Studies

Phd Student

Harry Chih-hao Chang

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中文摘要

2010 年 6 月底的《兩岸經濟合作架構協議》（此後簡稱 ECFA）的簽署於前與後，皆引發社會強烈的動盪與對立，不僅反對 ECFA 的民意一度高達 6 成，民間針對 ECFA 公投的連署也有 11 萬份。本文的問題是「為甚麼社會對 ECFA 與其決策過程的反對如此龐大？」臺灣政府在跨國的自由貿易與關稅優惠談判甚至簽署皆非首次，但卻在 2009-2010 之際，接連出現民意與政府對立的案例。本文將以「羅德里克三難——民意、國家、全球化」（Rodrik Trilemma）為這股社會力的集結作初步分析。本文主張對 ECFA 的反對力量，可放置在民意、主權與全球化三者間競合的普遍性狀況中來理解。臺灣於 90 年代民主化過程中，「民意」遂躍升為國家國際經貿談判之間的變項之一。臺灣在制度安排上，正是政經決策機制中欠缺「民意」表達的管道，社會基於自我保護因而產生不同的抗爭與衝突。本文將先將解釋羅德里克三難。再來將以此架構分析 09-10 年間，臺灣與中國、美國相繼出現的兩件公衛爭議事件—三聚氰胺毒奶粉與美國牛肉狂牛症疑慮，與其各牽涉的後續自由貿易談判 ECFA 與 TIFA 爭議。最後結論為在三難中，當決策過度傾重於主權與全球化時，而民意又欠缺有效管道實踐，此類紛爭將會更劇烈。

Abstract

The tension around the signing of “Economic Cooperation Framework Agreement” (hereafter called ECFA) was enormous. The disapproval rate of ECFA was as high as 60%, while the signatures for referendum reached 110,000. My problematic is “Why is the Taiwan society’s dissent against ECFA so high?” I will apply the Rodrik Trilemma to interpret this phenomenon. Since democratization from the 90’s, mass has become a variable in the international trade talks. It is the lack of institutional arrangement for mass dissent, that the society initiated its self-protection mechanism. I will first explain the Rodrik Trilemma. Then I will apply this framework to analyze the two major public health incidents: China Malamine Milk, U.S. Beef, and the subsequent ECFA and TIFA controversies. Finally, I will argue that when the decision-making leans too much towards state and globalization, while the mass is left with ill-arranged voicing mechanism, that the tension of sort will only be greater.

Prologue

In February 22nd, 2009, the Minister of Economic Affairs, R.O.C (Taiwan) announced the plan to push for a free trade agreement “Economic Cooperation Framework Agreement”(hereafter called ECFA) with China. The early harvest clause within ECFA suggested that 539 Taiwan exports to China will be tariff free, totaling US\$13.84 billion as of 2009, while 267 Chinese import items, totaling US\$2.86 billion of tariff, will be exempted.¹ While the early harvest seemed favourable to Taiwan, some are concerned for China’s political motivation behind or it has little if not damaging economic consequences.²³ The public, on the other hand, showed little support, the disapproval rate for ECFA as of November 2009 was 59.69%, while those in favour of a referendum over ECFA was 63.41%.⁴ The public’s dissent did not stop at polls. Opposition parties, along with civil and labour groups, organized large protests, urged the government to stop the negotiation process, while proposing referendum over ECFA.⁵ The Anti-ECFA demonstration was not the first one of its kind since the current Administration took office since May, 2008. It was not uncommon for Taiwan to witness political unrest since the democratization movement of the 80’s and its initial institutionalization in the 90’s. However, the signing of Economic and trade agreement does not trigger mass scale public dissent as much as it used to, when Taiwan was first opening up its domestic agricultural market since the 1980’s. In short, Taiwan has not seen such social force that is mixed with sovereignty, trade relations, and globalization per se. Among the economically and internationally charged demonstrations since 2008, two cases stood out. One with China, the poisonous milk incident, with ECFA as the background of the public scrutiny, while the other is one with the U.S., with TIFA (the Taiwan-U.S. Trade and Investment Framework Agreement) as the back drop of the story.

¹ Mainland Affairs Council, Executive Yuan, ROC (Taiwan). *Explanation Concerning the Signing of the Cross-Strait Economic Cooperation Framework Agreement*.

<http://www.mac.gov.tw//ct.asp?xItem=85851&ctNode=5921&mp=3>

² Taiwan Think Tank Press Release. 林向愷：沒有經貿主權就沒有國家主權 (Lin No Economic Sovereignty Means no State Sovereignty).

<http://www.taiwanthinktank.org/chinese/page/5/61/1533/0>.

³ NTU Economist Kenneth S. Lin argued that ECFA will accelerate Taiwanese investment in China, causing further unemployment for Taiwan’s working class and SME. Kenneth S. Lin, 中國讓利是要誘使台灣接受一中市場. Taiwan Advocates, Issue 13. 2010/10/15. See

<https://sites.google.com/site/kslin1024/home/-bao-zhang-mei-ti/%E4%B8%AD%E5%9C%8B%E8%AE%93%E5%88%A9%E6%98%AF%E8%A6%81%E8%AA%98%E4%BD%BF%E5%8F%B0%E7%81%A3%E6%8E%A5%E5%8F%97%E4%B8%80%E4%B8%AD%E5%B8%82%E5%A0%B4.doc?attredirects=0&d=1>

⁴ Jin-Tan Liu and Bor-Shiuan Cheng. Research on Economic Globalization. Program for Globalization Studies. See http://psyglob.com/Survey1_freq.pdf, http://psyglob.com/Survey3_freq.pdf

⁵ Two days prior to the signing of ECFA, the largest Opposition Party Democratic Progressive Party (DPP) organized a march demanding referendum. The march saw 0.15 demonstrators took the street of Taipei City. See 林修卉. 15 萬人反 ECFA 遊行 蔡英文：用選票把政策主導權拿回來！Nownews. 2011/6/27. <http://www.nownews.com/2010/06/27/301-2619512.htm>

Democracy and Globalization

In order to be a member of the global economic community, states adjust to international rules, and they ultimately give up partial sovereign jurisdictions. One question often raised is “Does globalization undermines democracy?” When globalization challenges economic sovereignty, the receiving region or country makes institutional⁶ arrangements to adjust. As domestic institutions change due to the impact of globalization, the social and political foundations for democracy change, too. This could undermine young democracies, provided that they are relatively weak in structural power⁷. While some suggest the pooling of sovereignty at the international level, I do not find it feasible. Since democracy is not a universally preferred/accepted form of governance, no international framework can moderate such a task. Dani Rodrik mentioned of the contradiction between globalization and democracy only. He asked: “What if, by reducing the civic engagement of internationally mobile groups, globalization loosens the civic glue that holds societies together and exacerbates social fragmentation?”⁸ In the footnote, Rodrik cited Putnam on the decline of civic participation, Levine and others to made the case that social trust, equality, are in positive correlation with economic growth, if not causal. Albert Hirschman spoke of social conflicts as pillars of democratic market society, “The community spirit that is normally needed in a democratic market society tends to be spontaneously generated through the experience of tending the conflicts that are typical of that society.”⁹ The incentive to “tend” these social forces, is the “loyalty” to a democratic community. In Taiwan’s disputes over trade with China and the U.S., the state has failed to respond to society’s need for social moderation.

Rodrik Trilemma

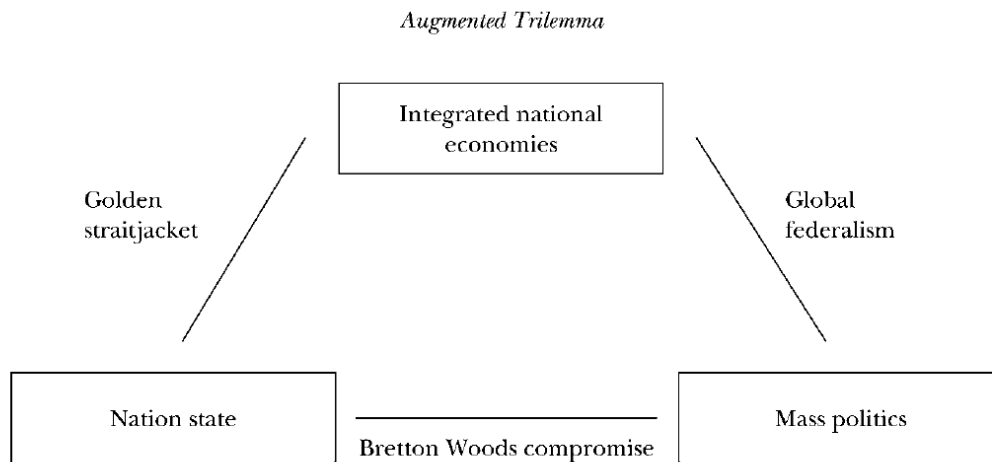
I will try to apply the Rodrik Trilemma on Taiwan’s struggle with free trade agreements (deeper globalization/integration), sovereignty, and mass politics. Harvard Economics Professor Dani Rodrik, after examining the globalization process in the late 90’s, augmented a framework analogical to The ‘open-economy trilemma’ (Obstfeld and Taylor 1998) he called The ‘political trilemma of world economy.

⁶ As defined by Douglas North, “Rules of the game”.

⁷ Susan Strange, ‘Finance, Information and Power’ *Review of International Studies* 16, 3 (July, 1990): 259-74.

⁸ Rodrik, Dani. *Has Globalization Gone Too Far?*. Washington DC: Institute for International Economics. 1997.

⁹ Hirschman, Albert. ‘Social conflicts as pillars of Democratic Market Society,’ *Political Theory*, 22, (2), May 1994. p25



Source: adaptation from Rodrik (2000:181)

The Rodrik's Trilemma, mostly seen as a framework that attempted to set the terms of debate within the IPE community, was well received and triggered considerable amount of debate and elaboration, as well as applications.¹⁰¹¹¹²¹³ Rodrik argued that within the trilemma, one must choose only two, while sacrificing the 3rd variable. When sovereign states retain its sovereignty in economic policymaking, while attending to more enhanced global rules, masses that concern with social safety net, state subsidies of the weaker sectors will have to go. If globalization, aka, the global neoliberal standard is to be upheld, but mass democracy is also to be kept, a kind of global federalism has to be imposed. That is, a global economic globalization has to evolve into one with policy and social program coherence among participants. This is actually the one Rodrik himself prefers and proposed to be the most desirable option.¹⁴ The last option would be for the state sovereignty to be retained, with its policy capacity intact, while democratic masses get to monitor and decide on the economic policy orientation. This option, Rodrik argued, would require a revisit to the Bretton-Wood compromise, where regulations and varieties in economic

¹⁰ Loone, Robert. *The Cancun Conundrum: What Future for the World Trade Organization (WTO)?* Strategic Insight . 2003/10/1. See

<http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA524603&Location=U2&doc=GetTRDoc.pdf>

¹¹ O'Rourke, Kevin H.. *A Tale of Two Trilemmas*. Institute for International Integration Studies Discussion Paper. No.364, March 2011. See

<http://www.tcd.ie/iiis/documents/discussion/pdfs/iiisd364.pdf>

¹² Schoemaker, Dirk. The financial trilemma. *Economics Letters*. Volume 111, Issue 1, April 2011, Pages 57-59.

¹³ Damonte, Alessia. EU integration as Rodrik's trilemma. Dipartimento di Studi Sociali e Politici Università degli Studi di Milano. 2008/07/8. Working Paper. See

http://www.socpol.unimi.it/papers/2008-07-08_Alessia%20Damonte.pdf

¹⁴ Rodrik, Dani. 2011. *The Globalization Paradox: Democracy and the Future of the World Economy*. 2011/02. New York: W. W. Norton & Company.

policymaking is tolerated. This option is also desirable, but less likely to succeed without a consensus among major economic players.

Two Free Trade Agreements, Two Incidents

The U.S. and Taiwan had a dialogue platform on trade issues, especially regarding tariff and trade barriers, called TIFA. It was initiated in Sep 1994, and suspended (on the side of the US) in 1998 for pharmaceutical pricing and IPR protection. After it was resolved and resumed, it was suspended again in 2007, during DPP gov't, for beef import conflicts. Taiwan refused the import due to health concerns, which angered the US and suspended TIFA.

The TIFA negotiation sessions and the WTO in the 90s did not gather much public scrutiny, partly due to the fact that the democratization has just taken place, also because the affected sectors of society are marginal. However, since 2008, the two controversies, one with China's dairy imports, one with American Bovine imports, have triggered political scrutiny and public outcry, because the affected portion of society is universal: consumers in general. These consumers, who are also 2 decade long democratically mobilized voters/citizens, have become familiar with the concept of referendum and democratic pressure; eventually voice their disapproval through forms of protests, marches, constituent pressure, and electoral power.

On April 21st 2011, the U.S. trade representative Ronald Kirk stated that the TIFA (Trade and Investment Framework Agreement) negotiation with Taiwan did not have to be delayed, so long as the ban on U.S. Beef import can be lifted. Taiwan has restricted the import since late 2009, over the health concerns over the Paylean found in U.S. Beef. The negotiation would remain a stalemate for the time being. Taiwan had a similar trade agreement with China, ECFA (Economic Cooperation Framework Agreement), which was kicked off in November, 2008. Just one month earlier, a similar health concern broke out on Chinese milk powder import. Malamine, a chemical not to be consumed by human body, was found in milk powder imports from China.

China's Poisonous Milk

Starting in December 2007, reports of Melamine found in milk powder by major producer, Sanlu Co., started to show up. But due to bureaucratic delays, it was not revealed in the Chinese mainstream media until September, 2008.¹⁵ 700 tons of poisonous milk have hit the shelf by then, and 12,892 babies are treated with kidney stone in hospital.¹⁶ At the same time, importers in Taiwan admitted having imported 100 tons of Sanlu milk powder, while most have already been made into various dairy products on shelves.¹⁷ KMT Administration reacted by recalling the products while conducting exams on all dairy products. Taiwan's health authority lowered its tolerance amount of Melamine in dairy products from zero tolerance to 2.5PPM in a matter of days. This initiated a public outcry. Opposition Party and civil groups conducted a massive protest in October, 0.6 million people hit the streets. The poisonous milk incident happened 4 months after Ma Ying-jeou took office, who got elected by promising a cooperative position with China. The KMT administration was having the 2nd round of preliminary talks of free trade agreement with China at the time. The legislature, with KMT as majority, made no attempt to tend the public outcry. The public opinion polls showed that the population's dissatisfaction was on the unparallel health standards between the two countries is a crucial concern, the lack of transparency and check of executive power, instead of opposing an open trade network with China.¹⁸ The KMT administration interpreted the public's concern as partisan opposition, and made no attempt to "tend" the conflict. Therefore, in January 2010, the first official ECFA negotiation came in effect.

U.S. Beef

In October 2009, one year after the poisonous milk incident, the Department of Health announced the lift of import restrictions on US bone-in beef, ground beef, bovine intestines, brains, spinal cords and processed beef from cattle younger than 30 months that have not been contaminated with "specific risk materials." This again angers the consumer groups and demanded the Taiwan authority to undo the lift. The criticism on the authority was on the lack of transparency of the talk between Taiwan and U.S.. This time, the KMT legislature passed amendment in health codes, and a

¹⁵ "Melamine use "rampant" in China feed business". Reuters. 25 September 2008. <http://www.reuters.com/article/idUSPEK166968>. Retrieved 26 September 2008.

¹⁶ Jane Macartney (22 September 2008). "China baby milk scandal spreads as sick toll rises to 13,000". The Times (London). <http://www.timesonline.co.uk/tol/news/world/asia/article4800458.ece>.

¹⁷ Shelley Huang. Chinese protein powder contains melamine: DOH <http://www.taipeitimes.com/News/front/archives/2008/10/29/2003427214>

¹⁸ Taipei Times, Civic groups urge greater transparency about talks. 2009/Dec/18. <http://www.taipeitimes.com/News/taiwan/archives/2009/12/18/2003461242>

senior secretary to the president stepped down as a result. The U.S. reacted by ending the TIFA free trade talk permanently.

A consumer group called Consumer's Foundation led the movement and began a petition on referendum to ban US Beef. It claimed that it has received 130,000 some signatures. However, some criticized Consumer's Foundation of playing the good guy, diverting the public anger, so to let KMT dodge this political turmoil.¹⁹ Because it takes 1 million signatures for a referendum to be legitimate. The signature identification rules by the referendum law was so strict that the first time it was applied, many signatures were technically unacceptable. It was then much more difficult to collect signatures the second time around for its tedious and complex application and identification process. Eventually the referendum application was stopped due to lack of legitimate signatures.

Clash of Sovereign regulatory powers over public health

In neither case, Taiwanese population reacted in protectionist sentiments. Instead, both times, the public demand more transparency of decision-making, reflecting those of the previous DPP administration.²⁰ KMT, with its close connection to elite technocrats, tend to disregard public opinions in decision-making and implementing processes. In a time of fading Washington Consensus, and the rise of Beijing Consensus, much of the literatures focus on debates in the fiscal policies and interest rates. However, the fundamental spirit of the Washington Consensus is to promote liberal market democracy, that liberalization in economy lead to politics.²¹ In case of dealing with China, where moral motifs are subsided by pragmatic economic diplomacy, a state weak in structural power, with a young democracy, like Taiwan, can be easily manipulated. The Taiwan population's utmost fear is not trade, although signs of social fragmentation is gradually showing. When South Africa president Jacob Zuma visited China and impressed with its growth and stability, he asked if "political discipline" was crucial to its economic success.²² This spillover of political influence on erosion of democracy, civic demand for transparency, and

¹⁹ 立報。社論：美牛公投失敗。2010/08/15. See

<http://www.lhpao.com/?action-viewnews-itemid-98831>

²⁰ Taiwan Review. *Opposition calls for greater ECFA transparency*. 2009/06/19. See

<http://taiwanreview.nat.gov.tw/ct.asp?xitem=53117&ctnode=205&mp=1>

²¹ Halper, Stefan. *The Beijing Consensus: how China's authoritarian model will dominate the twenty-first century*. New York : Basic Books, c2010.

²² The Globe and Mail. South African president heaps lavish praise on authoritarian China.

<http://www.theglobeandmail.com/news/world/africa-mideast/south-african-president-heaps-lavish-praise-on-authoritarian-china/article1685556/>

political responsibility, is what caused the two public outcries in Taiwan. This may also pave way for further economic dependence.²³

Self-Protection of Society

The fear for dependency on China is not the whole picture for our proposed question. The mass's absence in decision-making is more crucial. In *The Great Transformation*, Karl Polanyi pointed out that: *The countermove against economic liberalism and laissez-faire possessed all the unmistakable characteristics of a spontaneous reaction.* (Polanyi, 1944:149) Polanyi argued that economic liberalism, thus, economic change to a society, will affect not only economic life but the social life of that society. As the society is dragged into the transformation caused by liberal forces, the society will protect itself. The groups or parties that came as the forefront bearers of the causes for interest groups or classes, are irrelevantly spontaneous. What really is at the core of the dissent, is the self-protection of that society.²⁴

Conclusion

When we look to the Rodrik Trilemma at play in Taiwan, health and sanitary regulatory power is at test when faced with U.S. Beef and China Milk incidents. In both cases, pressure from outside the country made it difficult for state to maintain its juristic autonomy in setting the bar for food safety. When the sovereign state no longer seem sovereign, the mass fills that gap and demand stricter rules and regulations, as well as referendum. However, the Referendum Act has made referendum itself extremely difficult with its high passage threshold.²⁵ As for the legislative review and revision of the agreements or treaties signed outside of borders, the executive technocrats seem to monopolize the decision-making power. The Taiwan-US trade talk over TIFA took place prior to the 1996 universal presidential election. It was not until 1996, and the subsequent decade, that the popular opinion and mass politics gradually take hold of legislative process and its impact on the Executive branch. Since 2008, several agreements and arrangements Between Taiwan and China were signed prior to ECFA, none were examined through the

²³ Wong, Joseph. *Living with Giant: Integration and Autonomy in Taiwan*. Living with Giant: A Canada-East Asia Dialogue on Regional and Global Issues. Conference Paper. May 5-6, 2011. Taipei: National Chengchi University.

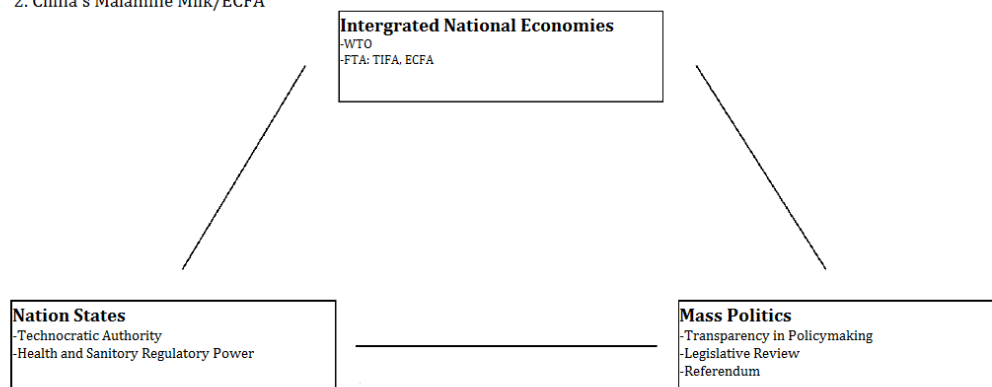
²⁴ Polanyi, Karl. *The Great Transformation*. 1944. Boston: Beacon Press. First edition 1957. P149-177.

²⁵ Lin, Jih-wen. Taiwan's Referendum Act and the Stability of the Status Quo. *Issues and Studies*. 40, no. 2 (June 2004): 119-153.

legislature.²⁶ During the ECFA dispute, one key debate in the Legislative Yuan is whether the legislature has the right to monitor the agreement article by article, or if it should be voted as a whole package. While by international norm, a package vote is more appropriate for international agreements. For it is technically impossible for state envoys to negotiate with every article of an agreement to be subject to revision by the legislature back home. However, the most crucial missing element in Taiwan's legislature is the monitor power prior to the proposed draft of specific economic and /or trade agreement.²⁷

Taiwan's Trilemma

1. U.S.'s Beef/TIFA
2. China's Malamine Milk/ECFA



With the lack of Referendum Act and Legislative Review process both greatly cornering the capacity of the mass politics to influence the executive's decision-making, it is not hard to see that within the Rodrik Trilemma, State and Globalization have won out over the mass politics. However, we also see that the state can be susceptible to change when international pressure puts demand on its own regulatory powers. This is precisely why the mass politics and civil society have only grew stronger as Taiwan continues to integrate with the region and the globe, through its attempts to sign trade agreements with China and the U.S.. The lack of institutional channels for mass politics to participate in state decision-making will only increase the young democracy's frustration over its absence in major political and economic debate and policy-making.

²⁶ 黃秀端(Huang, Shioh-Duan). 〈境外協定與國會監督〉,《臺灣民主季刊》第七卷,第一期(2010年3月): 145-55

²⁷ 林彥榕、王瑞婷。〈不可說的秘密？試說 ECFA 法理位置與適用程序探討台灣主權爭議問題〉, 2010 中國研究年會:「從轉型到轉向」中國研究的比較觀點。2010/12/18。臺北:政治大學。2010-12-18 See <http://nccur.lib.nccu.edu.tw/handle/140.119/50463>

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http://psyglob.com/Survey3_freq.pdf Last browsed: 2011/10/25.

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<http://www.reuters.com/article/idUSPEK166968>. Retrieved 26 September 2008. Last browsed: 2011/10/25.

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