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# Challenges and Opportunities of the China-Gulf Cooperation Council Free Trade Agreement

BY GONZALO VILLALTA PUIG\* AND ALICE TUNG HO YEE

## Abstract

The free trade agreement between China and the Gulf Cooperation Council (GCC) currently under negotiation is due to become China's first comprehensive trade and investment agreement with a supranational customs union. The article explores the challenges and opportunities of the proposed China-GCC Free Trade Agreement. It proposes tailor-made recommendations according to the specific interests of both parties.

## I. Introduction

The Gulf Cooperation Council (GCC) comprises Saudi Arabia, Kuwait, Oman, Bahrain, Qatar and the United Arab Emirates (UAE). China and the GCC countries are WTO Members and thus are parties to WTO agreements such as the General Agreement on Trade in Services (GATS) and the General Agreement on Tariffs and Trade (GATT). Moreover, China has embraced the significance of bilateral Free Trade Agreements (FTAs) to continuous growth.<sup>1</sup> China's past FTAs are mainly signed with

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1. John Whalley et al., *China's Regional and Bilateral Trade Agreements*, (Institute of World Economics and Politics, Working Paper No. 201408, 2014), <http://eniwep.cssn.cn/webpic/web/eniwep/upload/2014/04/d20140410153552466.pdf>.

small economies, showing “big country morality”<sup>2</sup> by entering into FTAs to help smaller nations but not to reap the benefits of large trade volumes. On the other hand, the GCC has signed FTAs with Singapore in 2008 and with the European Free Trade Association (Iceland, Liechtenstein, Norway, Switzerland) (EFTA) in 2009.

This article makes recommendations for a proposed free trade agreement (the proposed FTA) between China and the GCC (Parties) under negotiation, a process formally launched in 2004.<sup>3</sup> It aims to address critical issues during Sino-GCC negotiations, thereby analyzing the prospects and challenges of the proposed FTA, especially in services and investment. It can serve as prelude to a wider GCC-ASEAN FTA.<sup>4</sup> It has three parts. Part One analyzes the political economy and security considerations that help to understand the needs of the Parties. Part Two examines the trade interdependence between the Parties and the negotiation progress. Part Three analyzes the key issues of the proposed FTA and makes recommendations. The article concludes that capacity building should be the predominant objective of the proposed FTA.

## II. Political Economy and Security Considerations

China’s political system is dominated by the Communist Party of China (CPC) without judicial checks. For the CPC, law is only a means of governance. Thus, rule of law is weak in China. It values collective prosperity rather than human rights.<sup>5</sup>

On the other hand, the GCC was formed in 1981 for external security purposes. Its members are energy-rich monarchies that share mutual political and security interests. The society is highly hierarchical.<sup>6</sup> Human rights have been disregarded by the various GCC governments.<sup>7</sup>

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2. Zha Daojiang, *China’s Economic Diplomacy Focusing on the Asia-Pacific Region*, 1(1) CHINA QUARTERLY OF INTERNATIONAL STRATEGIC STUDIES 85, 85-104 (2015).

3. JORGE MONGAY, BUSINESS AND INVESTMENTS IN ASIA: NEW CHALLENGES, NEW OPPORTUNITIES, 193 (ESIC Editorial, 1st ed. 2012).

4. Nasser H Saidi, *The Gulf Should Pivot East and Build the ‘New Silk Road’*, THE HUFFINGTON POST Apr. 15, 2014 (last updated June 15, 2014), [http://www.huffingtonpost.com/dr-nasser-h-saidi/the-gulf-should-pivot-eas\\_b\\_5010038.html](http://www.huffingtonpost.com/dr-nasser-h-saidi/the-gulf-should-pivot-eas_b_5010038.html).

5. Olivia Enos, *Why China’s Human Rights Violation Do Matter*, daily signal, Sept. 23, 2015, <http://dailysignal.com/2015/09/23/why-chinas-human-rights-violations-do-matter/>

6. TAREQ Y. ISMAEL, MIDDLE EAST POLITICS TODAY: GOVERNMENT AND CIVIL SOCIETY 339 (2001).

7. Jennifer Fenton, “Significant Ramping” of Political Repression in the Gulf, *Activists Warn*, ALJAZEERA AM., Apr. 15, 2015, <http://america.aljazeera.com/articles/2015/4/15/bahrain-human-rights-gcc-monarchies.html>.

The rapid growth in oil production enables the rulers of the GCC countries to entrench their authority. Citizens rely on oil revenue to achieve a higher rank in social hierarchy.<sup>8</sup> Thus, the GCC governments depend on oil production to prevent dissent apart from external security.

Concerning foreign policy, China has adopted a non-interventionist policy and did not compete with the United States to protect the Gulf's stability before the 9/11 terrorist attack. Besides, the 1991 Gulf War made China's approach to insulate itself from the Gulf impossible.<sup>9</sup> The crisis in Libya and Sudan in 2011 and the Iran nuclear deal in 2015 prompted China towards a more balanced approach towards the GCC countries.<sup>10</sup> Since 2008, China has been discovering key national interests in the GCC.<sup>11</sup> It seeks to safeguard its assets and citizens in the Gulf. China has changed its diplomatic strategy towards the GCC from non-intervention to active pragmatism.<sup>12</sup>

Meanwhile, the GCC has placed vital importance on security. Notably, political challenges caused by the Iran-Iraq War highlight the significance of political commitment for enhancing integration of the GCC.<sup>13</sup> Political events like the Arab Spring and the 9/11 attack have stimulated the GCC countries to handle their affairs free from US and European Union interference.<sup>14</sup> Regarding China as a constructive force to enhance its stability,<sup>15</sup> the GCC has pursued the "looking east policy" to seek opportunities for strategic partnership with China.<sup>16</sup>

Notably, the Parties share a strong interest in safeguarding domestic stability.<sup>17</sup> As China highly depends on oil imports from the GCC, it seeks to

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8. Ismael, *supra* note 7 at 341.

9. See John Calabrese, *China and the Persian Gulf: Energy and Security*, 52 MIDDLE EAST J. 351, 366 (1998).

10. Lars Erslev Andersen & Yang Jiang, *Oil, Security, and Politics: Is China Challenging the US in the Persian Gulf?*, 29 DANISH INST. FOR INT'L STUD. 1, 6 (2014).

11. Wu Bingbing et al., *China and the Persian Gulf: Implications for the United States*, WOODROW WILSON INT'L CTR. FOR SCHOLARS 1, 10 (2011), [https://www.wilsoncenter.org/sites/default/files/ASIA%20Program\\_China%20and%20the%20PG.pdf](https://www.wilsoncenter.org/sites/default/files/ASIA%20Program_China%20and%20the%20PG.pdf).

12. Andersen & Jiang, *supra* note 11 at 6.

13. Gonzalo Villalta Puig & Amer Al-Khodiry, *The Economic and Monetary Union of the Gulf Cooperation Council*, 46 J. OF WORLD TRADE 121, 140-41 (2012).

14. Andersen & Jiang, *supra* note 11 at 5.

15. Chen Mo, *Exploring Economic Relations Between China and the GCC States*, 5(4) J. OF MIDDLE EASTERN & ISLAMIC STUDIES. 88, 102 (2011).

16. Andersen & Jiang, *supra* note 11 at 41.

17. Jon B. Alterman, *China's Balancing Act in the Gulf*, CTR. FOR STRATEGIC & INT'L STUDIES, 3 (2013).

ensure the stability of energy relations.<sup>18</sup> Meanwhile, the GCC hopes to safeguard its energy reserves. Thus, it shields Chinese interests in the Middle East from threats<sup>19</sup> to the security of shipping links. Moreover, the Parties have to work together to safeguard the sea lanes emerging from China's One Belt One Road (OBOR) initiative.

Sino-GCC disagreement over global responses to the Syrian conflict hampered their negotiations in 2009.<sup>20</sup> Nonetheless, both sides agreed to facilitate political settlement on the Syrian disagreement in 2014 and even expressed the urgency of peaceful political settlement of Syria in 2016.<sup>21</sup> Both sides oppose terrorism. This common approach favors their cooperation toward security in the context of a wider strategic partnership.

As for economic policy, China pursues "going-out" strategies and regards service as the priority.<sup>22</sup> China promotes "supply-side structural reform",<sup>23</sup> which includes technological innovation and infrastructure. Notably, Xi launched the OBOR initiative in 2015.<sup>24</sup> It aims to link China to Europe and the Middle East.<sup>25</sup>

The GCC members have committed to integrate their economies since the establishment of the GCC. The GCC became a Custom Union in 2003.<sup>26</sup> Its common market status was declared in 2008 and has long aspired for the establishment of single GCC currency.<sup>27</sup> Yet, its economic integration remains difficult because of its structural weaknesses, persistent obstacles to cross-border

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18. Mike Burnham, *Georgetown Security Studies Review: China in the Middle East*, GEO. U. CTR. FOR SECURITY STUD. (2015), <http://georgetownsecuritystudiesreview.org/wp-content/uploads/2015/07/GSSR-Asia-Conference.pdf>.

19. *Id.*

20. Adel Al Toraifi, *Chinese Foreign Minister: Our position on Syria is objective and fair*, ASHARQ AL AWSAT (2014), <http://english.aawsat.com/2014/03/article55330119/chinese-foreign-minister-our-position-on-syria-is-objective-and-fair>.

21. *Saudi Arabia, China issue joint communiqué on establishing comprehensive strategic partnership between the two countries*, ALYAMAMH, (Mar. 19, 2016), <http://www.alriyadh.com/en/article/1121322/Saudi-Arabia-China-issue-joint-communiqu-on-establishing-comprehensive-strategic-partnership-between-the-two-countries>.

22. *China – Minutes of the Meeting*, ¶ 1.7., WTO Doc. WT/TPR/M/300 (Aug. 26, 2014) [Hereinafter China Meeting Minutes].

23. *China's 'supply-side structural reform' to boost new economy*, CHINA DAILY, Dec. 31, 2015, [http://europe.chinadaily.com.cn/business/2015-12/31/content\\_22885281.htm](http://europe.chinadaily.com.cn/business/2015-12/31/content_22885281.htm).

24. Wu Sike, *Constructing "One Belt and One Road" and Enhancing the China-GCC Cooperation*, 9(2) J. OF MIDDLE EASTERN & ISLAMIC STUD., 1, 1-15 (2015).

25. *Id.*

26. Theodore Karasik, *The GCC's New Affair with China*, MIDDLE EAST INST. (2016), <http://www.mei.edu/content/map/gcc%E2%80%99s-new-affair-china>.

27. Ali Al-Abdulrazzaq & Kevin Carey, *Economic Integration in the GCC*, THE WORLD BANK (2010), [http://siteresources.worldbank.org/INTMENA/Resources/GCC\\_Studyweb.pdf](http://siteresources.worldbank.org/INTMENA/Resources/GCC_Studyweb.pdf).

mobility within the GCC and different regulatory frameworks.<sup>28</sup>

While the GCC heavily relies on oil revenue, oil is exhaustible.<sup>29</sup> To cope with uncertainties in the international oil market, the GCC countries promote privatization and utilize oil revenue for economic diversification. They are also invest more in manufacturing and services.<sup>30</sup> As the technological and managerial intelligence of Chinese financial firms have become increasingly competitive, their penetration into GCC markets would stimulate the diversification of the GCC economies' from energy production to services.<sup>31</sup> Yet, most private sector jobs are still filled by foreign workers.<sup>32</sup> Thus, diversification in the GCC still faces obstacles such as the failure to generate significant job opportunities for nationals.

### III. Origins and Development

To bolster economic growth, China is interested in deepening trade and investment ties with the GCC.<sup>33</sup> It perceives the GCC as a paramount partner, especially in energy.<sup>34</sup> China is predicted to become the largest exporter to the GCC by 2020.<sup>35</sup>

In regards to the OBOR initiative, Saudi Arabia has expressed its willingness to participate in establishing interconnectivity in the GCC as it stands at a crucial junction along OBOR routes.<sup>36</sup> The GCC views the OBOR as a natural partner that promotes mutual benefits by its deeper investment in China including renewable energy, infrastructure, aviation, finance and telecommunications.<sup>37</sup> These opportunities would be enticements for both sides to support OBOR and favor the conclusion of the proposed FTA.

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28. Ali Al-Abdulrazzaq & Kevin Carey, *supra* at note 27.

29. Tim Callen & Reda Cherif, *Economic Diversification in the GCC: Past, Present, and Future*, IMF STAFF DISCUSSION NOTE (2014), <https://www.imf.org/external/pubs/ft/sdn/2014/sdn1412.pdf>.

30. Michael Thorpe & Sumit Mitra, *Growing Economic Interdependence of China and the Gulf Cooperation Council*, SOC. SCI. RESEARCH NETWORK (2008).

31. Mo, *supra* note 15.

32. Callen & Cherif, *supra* note 29.

33. Matteo Legrezi & Fred H. Lawson, *China's Gulf Policy: Existing Theories, New Perspectives*, 22 (2) MIDDLE EAST POLICY 58, 58-71 (2015).

34. Wu, *supra* note 24.

35. Robert Bailey, *China and GCC: Growing Ties*, GULF BUSINESS, Apr. 16, 2013, <http://www.gulfbusiness.com/articles/insights/china-and-gcc-growing-ties/>.

36. *GCC and China Decide to Speed up Free Trade Talks*, SAUDI GAZETTE, Jan. 21, 2016, <http://saudigazette.com.sa/saudi-arabia/gcc-and-china-decide-to-speed-up-free-trade-talks/>.

37. *Id.*

The Parties began negotiations in 2004. Both sides started to negotiate service trades after agreeing in principle to trade in goods in 2009 but the talks halted in the same year. The Saudi Crown Prince visited Beijing in March 2014.<sup>38</sup> Sino-GCC negotiations for the FTA resumed in December 2015.<sup>39</sup> Subsequently, Xi met with Saudi Arabia's Deputy Crown, Prince Mohammed bin Salman on January 19, 2016. They have agreed to expedite progress to conclude a comprehensive FTA by the end of 2016.<sup>40</sup> Meanwhile, the two sides agreed to elevate their ties to a strategic partnership.<sup>41</sup> The sixth round of China-GCC official negotiation was held in Riyadh, Saudi Arabia from February 29 to March 3, 2016.<sup>42</sup> Subsequently, the Parties held the seventh round of negotiations in Guangzhou from May 8 to 10, 2016.<sup>43</sup> They have achieved positive progress in issues such as trade in services, investment and technological cooperation.<sup>44</sup>

Unlike China's past FTAs, the major driving force of this agreement is the significant energy trade between the Parties. Consider the Parties' FTAs. The China-Australia FTA ("ChAFTA") is China's first comprehensive FTA signed with a strong developed country in the west, making most achievements in service and investment liberalization.<sup>45</sup> The GCC-Singapore FTA ("GSFTA") is the first FTA signed by the GCC with an Asian country.<sup>46</sup> It has

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38. ZHA DAOJIONG & MICHAEL MEIDAN, CHINA AND THE MIDDLE EAST IN A NEW ENERGY LANDSCAPE, 9 (Royal Institute of International Affairs, 2015), <https://www.chathamhouse.org/sites/files/chathamhouse/publications/research/20151021ChinaMiddleEastEnergyDaojiongMeidan.pdf>.

39. *China, GCC Vow to Reach Comprehensive FTA within 2016*, MINISTRY OF COMMERCE, PRC (Jan. 28, 2016), [http://fta.mofcom.gov.cn/enarticle/engcc/engccnews/201601/30498\\_1.html](http://fta.mofcom.gov.cn/enarticle/engcc/engccnews/201601/30498_1.html).

40. Bailey, *supra* note 35.

41. *China, Saudi Arabia Elevate Bilateral Ties, Eye More Industrial Capacity Cooperation*, XINHUA, Jan. 20, 2016, [http://news.xinhuanet.com/english/2016-01/20/c\\_135025406.htm](http://news.xinhuanet.com/english/2016-01/20/c_135025406.htm).

42. *The 6th Round of China - GCC FTA Negotiations Held in Riyadh, Saudi Arabia*, MINISTRY OF COMMERCE, PRC (Mar. 10, 2016), [http://fta.mofcom.gov.cn/enarticle/engcc/engccnews/201603/30938\\_1.html](http://fta.mofcom.gov.cn/enarticle/engcc/engccnews/201603/30938_1.html).

43. *Id.*

44. *The 7th Round of China - GCC FTA Negotiation Concluded*, MINISTRY OF COMMERCE, PRC (May 12, 2016), <http://english.mofcom.gov.cn/article/newsrelease/significantnews/201605/20160501316237.shtml>.

45. *Interpretation for China - Australia Free Trade Agreement*, MINISTRY OF COMMERCE, PRC (June 19, 2015), <http://english.mofcom.gov.cn/article/policyrelease/Cocoon/201510/201510001144954.shtml>, [*hereinafter* Interpretation for China-Australia Free Trade Agreement].

46. Kevin Körner, *The GCC Going East*, DEUTSCHE BANK, Feb. 18, 2014, at 4, [https://www.dbresearch.com/PROD/DBR\\_INTERNET\\_EN-PROD/PROD000000000329687/The+GCC+going+East%253A+Economic+ties+with+developing+Asia+on+the+rise.pdf](https://www.dbresearch.com/PROD/DBR_INTERNET_EN-PROD/PROD000000000329687/The+GCC+going+East%253A+Economic+ties+with+developing+Asia+on+the+rise.pdf).

been asserted that the proposed FTA would build upon the GSFTA.<sup>47</sup>

China considered its past FTAs as learning lessons for potential FTAs with sequential trading partners.<sup>48</sup> Yet, the Chinese approach to FTAs is not to adopt a template for all, but customize a negotiating strategy according to the interests of the trading partners.<sup>49</sup> For instance, the China-ASEAN agreement emphasizes broad commitments of developmental cooperation, not precise commitments. In contrast, the China-New Zealand FTA (“NZCFTA”) favors more precise commitments than developmental cooperation.

In addition, it would be rewarding to draw insights from innovative provisions from successful FTAs worldwide,<sup>50</sup> notably the Canada-EU Comprehensive Economic and Trade Agreement (“CETA”). CETA has been praised for prescribing a ‘new gold standard’ for international FTAs.<sup>51</sup> Hence, selected WTO-plus innovations in the ChAFTA, GSFTA and CETA will be referred to in this article.

## IV. Challenges and Opportunities

### A. Experience from the Failure of EU – GCC FTA Negotiations

FTA negotiations between the EU and the GCC stalled for a number of reasons. The first hindrance to EU-GCC FTA negotiations was disagreement over human rights and democratic processes.<sup>52</sup> The European Parliament insisted on imposing a human rights clause which the GCC countries<sup>53</sup> perceived as a political condition to any final agreement.<sup>54</sup> Secondly, the GCC countries hoped to gain technical assistance for their deepening

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47. Saidi, *supra* note 4.

48. Whalley, *supra* note 1 at 9.

49. *Id.* at 10-11.

50. Christina L. Davis, *The Political Logic of Dispute Settlement: Introduction to the Special Issue*, 15(2) THE REV. OF INT’L ORG. 12 (2015), replicated at [https://www.princeton.edu/~cldavis/files/ROIO\\_DavisIntro.pdf](https://www.princeton.edu/~cldavis/files/ROIO_DavisIntro.pdf).

51. Constantine Passaris, *CETA - Greece’s Saviour?*, OPENCANADA.ORG, Dec. 2, 2014, <https://www.opencanada.org/features/ceta-greeces-saviour/>.

52. *Id.*

53. M. Anaam Hashmi, *Is There A Need for A Free Trade Agreement between the European Union and Gulf Cooperation Council?*, 13(1) INTERNATIONAL BUSINESS & ECONOMICS RESEARCH JOURNAL 113, 113-120 (2014).

54. Kristian Coates Ulrichsen, *THE GULF STATES IN INTERNATIONAL POLITICAL ECONOMY* (International Political Economy Series, 1st ed. 2015).

regional integration.<sup>55</sup> Yet the EU made limited contributions to integrate the GCC into global markets.<sup>56</sup> Institutional differences and conflicting cultural values further hindered the progress of EU-GCC negotiations.<sup>57</sup> Thirdly, the GCC was unhappy with the EU's high tariffs on petrochemical exports.<sup>58</sup> The EU claimed that the high level of tariffs was justified by the subsidies received by Gulf producers. Building the relationship upon the reasons for these various disagreements is the key to any eventual resumption of FTA talks.<sup>59</sup>

Unlike EU-GCC FTA negotiations, the Parties would not face the same deadlock as to human rights clause because they do not show much concern for these considerations. Besides, Sino-GCC negotiations are unlikely to be hindered by conflicting values. Both Parties have appreciated the significance of people-to-people exchanges to deepen cooperation.<sup>60</sup> The OBOR initiative would add substance to people-to-people cooperation by facilitating cultural exchanges. Besides, Chinese Confucianism respects diversity. While conflicting cultural values are unlikely to be a setback as in EU-GCC negotiations, China needs to recognize Islamic cultural exceptions.

Nonetheless, the major challenge to the proposed FTA concerns the Chinese's determination to restrict access of GCC petrochemical exporters to its markets. The GCC suspects China desires to shield domestic producers from international competition.<sup>61</sup> Thus, current negotiations with China seem to resemble talks with the EU regarding petrochemical issues. This difficulty may imply the need for China to make concessions so as not to protect domestic producers persistently.

## B. Trade in Goods

The Parties "substantially concluded in principle the negotiations on trade in goods" in January 2016. Both sides had actually agreed on the market access of 97 percent of goods in 2009. According to World Tariff Profile 2015, China's simple average Most Favoured Nation (MFN) tariff

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55. Rym Ayadi, *Relations between EU & Gulf Cooperation Council (GCC) Countries*, EUROPEAN PARLIAMENT at 17 & 21 (Oct. 25, 2010), [http://www.europarl.europa.eu/RegData/etudes/note/join/2010/433742/EXPO-AFET\\_NT\(2010\)433742\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2010/433742/EXPO-AFET_NT(2010)433742_EN.pdf).

56. Hashmi, *supra* note 53.

57. Valentina Kostadinova, *What is the Status of the EU - GCC Relationship?*, GULF RESEARCH CENTER, at 3-4, 10 (2013), [https://www.files.ethz.ch/isn/167338/EU-GCC\\_9227.pdf](https://www.files.ethz.ch/isn/167338/EU-GCC_9227.pdf)

58. Ayadi, *supra* note 55.

59. Kostadinova, *supra* note 57, at 3.

60. *China, GCC Agree to Accelerate FTA Negotiations*, NEWS OF THE COMMUNIST PARTY OF CHINA, Jan. 16, 2016, <http://english.cpc.people.com.cn/66102/7706041.html>.

61. Ulrichsen, *supra* note 54.

rate was 9.6% in 2014. The average tariff for agricultural products is 15.2% while the average tariff for nonagricultural products is 8.6% in 2014. On the other hand, the simple average MFN tariff rates in 2014 for the main GCC member, Saudi Arabia, is 5.1%. Its average tariff for agricultural and non-agricultural products are 5.9% and 5% respectively. In the same year, the other two main GCC members, Qatar and the UAE, have simple average MFN tariff rates of 4.7%. Qatar has an average tariff of 5.3% for agricultural products while the UAE is 5.4%. The average for non-agricultural products is commonly 4.6%. Thus, China has higher simple average tariff rates than those of GCC countries. In particular, China's higher tariff rate for agricultural products shows higher protection of its domestic production of agricultural products.

To be WTO-compatible, GATT Article XXIV:8 provides for the elimination of 'duties and other restrictive regulations' with respect to 'substantially all the trade' between the parties. Quantitatively, the standard requires 90% of tariffs to be removed.<sup>62</sup> Considering the tariff elimination schedules of past FTAs, over 85% of Australia's exports entered China duty free when ChAFTA came into force and an additional 8% upon full implementation. GSFTA eliminated tariffs on 93.3% of goods of Singaporean origin when it came into force while an additional 2.7% will phase out after a five-year transitional period. Hence, the Parties' past FTAs generally meet the benchmark of 90% and support the approach of eliminating most of the tariffs immediately at date of entry into force, leaving a small percentage to gradually phase out after a specified transitional period.

Generally, the Parties impose low tariff rates for non-agricultural products. While the GCC countries rely on Chinese imports for industrial products,<sup>63</sup> China imports metals from the GCC.<sup>64</sup> Notably, the UAE has exported a significant amount of aluminum to China, thus it has called for the elimination of tariffs on aluminum.<sup>65</sup> Meanwhile, China's chemical market has experienced double-digit growth since 2013.<sup>66</sup> This growth

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62. *Proposal for a COUNCIL DECISION on the conclusion of an Association Agreement between the European Community and its Member States of the one part, and the Republic of Chile, of the other part*, EUR-LEX Document 52002PC0536(02) ¶ 6 (2002).

63. *Mo, supra note 15*.

64. *Assessing Investment Policies of Member Countries of the Gulf Cooperation Council, MENA - OECD Investment Programme*, at 12, *presented on* Apr. 5, 2011, <http://www.oecd.org/mena/competitiveness/Preliminary%20assessment%20GCC%20inv%20policies.pdf>.

65. *Trade Policy Review United Arab Emirates Record of the Meeting*, WTO Doc WT/TPR/M/262, ¶ 156, (May 9, 2012) [hereinafter *United Arab Emirates Trade Policy Review*].

66. Tahir Ikram, *GPCA'14: GCC Eyes More PE, PP Exports to China on Capacity Growth*, ICIS (Nov. 24, 2014), <http://www.icis.com/resources/news/2014/11/24/9841128/gpca-14-gcc-eyes-more-pe-pp-exports-to-china-on-capacity-growth/>.

boosts Chinese demand for plastic, a demand that can be largely satisfied by the GCC. These mutual benefits present opportunities for proactive market access commitments in relation to manufactured products, especially chemicals. Nonetheless, other considerations, such as maturity of industry, would justify the inclusion of short transitional periods for ultimate tariff elimination.

The GCC has unilaterally stalled negotiations with China, as the GCC wanted China to eliminate import tariffs on all its products whereas China insisted on keeping the preset protective tariffs of GCC's petrochemical exports to China.<sup>67</sup> Despite detriment to domestic producers, it would be WTO-compatible for both sides to agree on a partial tariff elimination in order to stimulate final agreement. China's high dependence on the GCC's oil resources for energy security<sup>68</sup> would justify the need for China to make a compromise during negotiations. Yet, the transitional period for tariffs on petrochemicals to phase out should be longer on two grounds. First, the GCC's strong competitiveness in the area of petrochemical products calls for partial competitive pressures on China's petrochemical industry. The second reason concerns the political aspect. As both sides have expressed a willingness to establish a strategic partnership and conclude the FTA by the end of 2016,<sup>69</sup> this implies that the proposed FTA neither serves to achieve domestic policy reform nor achieve development goals. Its objective is to deepen the bilateral relationship in various sectors. Therefore, the scope and the speed of liberalization is less ambitious.

Petrochemicals aside, the highly sensitive agricultural sector also calls for a moderate elimination model comprising a longer transitional period for tariffs to phase out. It would be overly ambitious to agree on full liberalization of agricultural exports. This is consistent with ChAFTA, where the transitional period for different agricultural products ranges from seven to nine years.

### C. Rules of Origin

There are four methods to assess whether a product is substantially transformed to confer origin. They are the change in tariff classification rule (CTCR), the value-added rule (VAR), hybrid rule and specified process rule (SPR).

Considering China's past FTAs, ChAFTA applies product specific

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67. Stasa Salacanian, *GCC - China Rising Trade Value*, BQ MAGAZINE, Mar. 23, 2014, <http://www.bq-magazine.com/economy/2014/03/gcc-china-rising-trade-value>.

68. Mo, *supra* note 15.

69. Bailey, *supra* note 35.

rules (PSR) to products produced in China that contains non-originating materials. The PSR adopts three main methods to confer origin to non-originating materials such as the CTCR, VAR and SPR. The CTCR is also adopted as the main rule in NZCFTA, which was signed in 2008.<sup>70</sup> The China-Korea FTA (ChKFTA) signed in 2004 shares the same approach as ChAFTA with some exceptions that permit a VAR of 40%.<sup>71</sup> As for the China-Singapore FTA (CSFTA), signed in 2008, the VAR is also the major means to confer origin and the minimum percentage is 40%.<sup>72</sup> It seems that the approach in Chinese FTAs is basically straightforward. They either rely on the CTCR or VAR to confer origin. However, the recent trend of Chinese FTAs seems to favour the CTCR as the main rule with the VAR as a supplement for some products. The dominance of the CTCR in Chinese FTAs also shows China's preference for simplicity. The CTCR is satisfied by the determination of a classification code. The CTCR has been hailed for its predictability and clarity in application.<sup>73</sup>

On the GCC's side, GSFTA requires at least 35% VAR of the ex-works price to qualify for preferential treatment. It also adopts the PSR for 10 products, where the origin is assessed by a CTCR. The GCC's FTA with EFTA is mainly based on the European model but with less restrictive rules to chemical products.<sup>74</sup> Therefore, it seems that the Rules of Origin (ROOs) of the GCC's past FTAs are more complicated and they vary with the choice of partners to the FTA. For instance, both CSFTA and GSFTA adopt VAR as the major criteria. This supports the proposition that Singapore prefers VAR as the main criteria to confer origin. Hence, Singapore's preference had a heavy influence on the decision to use VAR as the dominant rule in GSFTA.

In the light of recent FTA trends, the proposed FTA should adopt CTCR as the main criterion with the exception of VAR for some products,

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70. *New Zealand–China Free Trade Agreement: Information about Rules of Origin - Import*, NEW ZEALAND CUSTOMS SERVICE, at 1 (Nov., 2008), <http://www.customs.govt.nz/news/resources/factsheets/documents/fact%20sheet%2037.pdf>.

71. Jeffrey J. Schott, *An Assessment of the Korea-China Free Trade Agreement*, PETERSON INSTITUTE FOR INTERNATIONAL ECONOMICS (2015), (Noting that RVC is analogous to the value-added-rule), <https://www.piie.com/publications/pb/pb15-24.pdf>.

72. *Benefits of FTA between Singapore and China*, BRYAN CAVE INTERNATIONAL CONSULTING (2013), <http://www.iesingapore.gov.sg/~media/IE%20Singapore/Files/Events/iAdvisory%20Series/China%202013/420Benefits20of20FTA20between20Singapore20and20ChinaBryan20Cave.pdf>.

73. Erlinda M. & Jenny Balboa, *ASEAN Rules of Origin: Lessons and Recommendations for Best Practice*, ERIA DISCUSSION PAPER, at 6 (2009), <https://core.ac.uk/download/files/153/9306182.pdf>.

74. EFTA and GCC, EFTA-GCC Free Trade Agreement, June 22, 2009.

as the GCC is likely to draw reference from its past FTAs and embrace the approach favored by China. Adopting co-equal rules where the CTCR and VAR are used together would offer flexibility and reduce costs, thereby boosting liberalization.<sup>75</sup>

Furthermore, ROOs may serve as a tool to enhance the foreign policy interests of a country.<sup>76</sup> Increasing ROOs' restrictiveness motivates domestic producers to adopt factors of production originating in the territories of the FTA partner. The international trade literature has recorded many cases of devising ROOs as a means of domestic protectionism.<sup>77</sup> Besides, ROOs have been recognized as protectionist barriers.<sup>78</sup> Therefore, it would be necessary to pay attention to the sensitive products that are protected by the protectionist measures of either party.

The restrictiveness of ROOs tends to increase disproportionately to prevent trade deflection.<sup>79</sup> Two types of goods merit deserves consideration in the light of their ROOs' restrictiveness because of increased worldwide competition. First, in order to protect Chinese agricultural exports against foreign competition, particularly from India,<sup>80</sup> more restrictive ROOs would be necessary for agricultural products. However, some agricultural products can be ingredients for the processed food of the GCC countries. The ROOs for processed food from the GCC should not be set too high because processing often requires inputs such as capital intensive infrastructures, involving much mechanization. If their ROOs are set very high, the GCC exporters would face high compliance cost due to their use of capital intensive inputs that cannot be produced competitively in China. As their processed goods usually require processing in third countries before they are ready for export, they tend to become ineligible for preferential access. Hence, technical content – especially the proportion of capital intensive inputs in a good – would be a crucial consideration for the restrictiveness of ROOs. It is necessary to

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75. Erlinda & Balboa, *supra* note 73.

76. Moshel Hirsch, *The Politics of Rules of Origin*, HEBREW UNIVERSITY OF JERUSALEM (June 2013), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2275322](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2275322).

77. Kerry A. Chasl, *Protecting Free Trade – Political Economy of Rules of Origin*, 62 INT'L ORG. 507 at 507-530 (2008).

78. Dokki Abdallah El-Kateb St., *Free Trade Agreements and Rules of Origin*, INTL'S CTR FOR ECON. GROWTH at 2 (2015), [http://www.atdforum.org/IMG/pdf/Policy\\_Brief\\_RoO.pdf](http://www.atdforum.org/IMG/pdf/Policy_Brief_RoO.pdf).

79. Paul Brenton, *Enhancing Trade Preferences for LDCs: Reducing the Restrictiveness of Rules of Origin*, THE WORLD BANK, at 281 (2005), <http://siteresources.worldbank.org/INTRANE/TTRADE/Resources/239054-1126812419270/23.RulesOfOrigin.pdf>.

80. Levin Flake, *India's Agricultural Exports Climb to Record High*, UNITED STATES DEPARTMENT OF AGRICULTURE FOREIGN AGRICULTURAL SERVICE (Aug., 2014), <http://www.fas.usda.gov/data/india-s-agricultural-exports-climb-record-high>.

obtain information regarding the various production processes in order to analyze the technical content of different goods. This would call for a specific cooperative framework for consultations and modifications. GSFTA Article 3.15 would serve as a good reference for this point.

Secondly, clothing and textile generally come under protectionism because they can be produced with low-skilled labor.<sup>81</sup> China is labor rich. Because of low labor cost, Chinese garments are major exports to GCC countries.<sup>82</sup> However, stringent ROOs might restrain the GCC nations from reaping the full benefit of preferential measures, thereby counteracting trade liberation. Notably, research shows that applying restrictive ROOs to garments is not an effective means to protect domestic industry.<sup>83</sup> It should be noted that Chinese producers have recently increased their use of imported fabric, especially from Japan and Taiwan.<sup>84</sup> Meanwhile, Korean apparel has become increasingly popular. It would be worthwhile to consider the ROOs adopted by ChKFTA for textile and apparel which qualify exporters who satisfy either a CTCR or a 40% VAR threshold for preferential treatment. This would be preferred to a yarn forward rule where these exports would qualify for preference only if they are made of yarn or fabric from either party.

More importantly, inclusion of cumulation and *de minimis* rules are indispensable, as they help lessen the negative trade effects of restrictive ROOs. Also, as certification procedure has a direct implication on compliance cost,<sup>85</sup> it would be worthwhile for the Parties to adopt a self-certification process that can reduce administrative costs to exporters by passing the burden of proof of origin to importers.

#### D. Safety Standards

As China and the GCC countries are WTO members, they need to comply with the Agreement on the Application of Sanitary and Phytosanitary Measures (“SPS Agreement”)<sup>86</sup> and the Agreement on

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Gary Banks, *Rules of Origin under Australia - New Zealand Closer Economic Relations Trade Agreement*, 37, AUSTRALIA GOV'T PRODUCTIVITY COMM'N RESEARCH REPORT (2004), <http://www.pc.gov.au/inquiries/completed/trans-tasman-trade-agreement/report/roo.pdf>.

82. *FTA Talks Reach across the Gulf*, CHINA DAILY (Dec. 30, 2014), [http://www.china.org.cn/business/2014-12/30/content\\_34440629.htm](http://www.china.org.cn/business/2014-12/30/content_34440629.htm).

83. Erlinda & Balboa, *supra* note 73.

84. *Textile and Apparel Market in China*, EU SME CENTRE, 12-13 (2011), [http://www.ccilc.pt/sites/default/files/eu\\_sme\\_centre\\_report\\_-\\_textile\\_and\\_apparel\\_market\\_in\\_china\\_sep\\_2011.pdf](http://www.ccilc.pt/sites/default/files/eu_sme_centre_report_-_textile_and_apparel_market_in_china_sep_2011.pdf).

85. Erlinda & Balboa, *supra* note 73.

86. Agreement on the Application of Sanitary and Phytosanitary Measures, Apr. 15,

Technical Barriers to Trade (“TBT Agreement”).<sup>87</sup> The SPS Agreement entails pertinent laws, regulations and requirements for safeguarding health within the territory of a WTO member from predefined specific risks of health. The TBT Agreement requires technical regulations and conformity assessment procedures that protect health to avoid discrimination and unnecessary barriers to trade, while adhering to the international standards. They can be used to meet broader objectives than the SPS Agreement. Therefore, the issues concerning these two agreements would be considered together in turn. It is important to balance the need of improved market access by streamlining import control procedures with the legitimate objectives that justify the restriction of trade.<sup>88</sup>

The first priority issue arises from the food crisis in China and the reliance of GCC countries on food imports. The Chinese authorities have adopted a food security strategy to strive for dominance in the worldwide supply chain for imported food despite its diminished exports recently.<sup>89</sup> Meanwhile, the GCC countries depend mainly on food imports and at least one fifth of the population in the GCC countries are expected to face food insecurity by 2020.<sup>90</sup> Their food producers would experience stronger growth through processed foods made by imported ingredients.<sup>91</sup> In particular, Saudi Arabia has recently reiterated the vital importance of food security as it is a net wheat importer.<sup>92</sup> These favour an opportunity of mutual trade where China exports grains to the GCC in return for processed food.

Nonetheless, China’s recent food safety scandals such as contaminated meat products in 2014 and pork from diseased pigs in 2015<sup>93</sup> would merit specific consideration during negotiations of the SPS and TBT chapter.

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1994 (entered into force Jan 1, 1995), [hereinafter “SPS Agreement.”]

87. Agreement on Technical Barriers to Trade, Apr. 15, 1994 (entered into force January 1, 1995), [hereinafter TBT Agreement].

88. TBT Agreement, *supra* note 87 at art. 2.2.

89. Fred Gale, *China’s Growing Demand for Agricultural Imports*, 19 U.S.D.A. (Feb. 2015), available at <http://www.ers.usda.gov/media/1784488/eib136.pdf>.

90. Houcine Boughanmi, *Food and Agricultural Trade in the GCC: An Opportunity for South Asia?*, 4, UN ESCAP (2014), [http://www.unescap.org/sites/default/files/Food%20and%20Agricultural%20Trade%20in%20the%20GCC\\_Jeevika\\_Sept2014.pdf](http://www.unescap.org/sites/default/files/Food%20and%20Agricultural%20Trade%20in%20the%20GCC_Jeevika_Sept2014.pdf).

91. Food International, *GCC Food Retail Will be Worth \$155 Billion by 2018*, GULFOOD (2015), <http://www.gulfood.com/Content/GCC-food-retail-will-be-worth-155-billion-by-2018>.

92. *Trade Policy Review Report by the Kingdom of Saudi Arabia*, WTO Doc WT/TPR/G/333 (adopted Feb. 29, 2016), [hereinafter Saudi Arabia Trade Policy Review].

93. Chinese Police Arrest More Than 100 People for Selling Contaminated Pork, FOOD SAFETY NEWS (Jan. 12, 2015), <http://www.foodsafetynews.com/2015/01/chinese-police-arrest-over-100-for-selling-contaminated-pork-products/#.VtO66px96U1>.

The Parties should strike a balance between the importance of market access and food safety.

Both sides face huge regulatory obstacles concerning the risk assessment and import checks for imported food. China has intensified its commitments to boost its existing food safety law, notably China's Food Safety Law, which became effective in October 2015.<sup>94</sup> The State Food and Drug Administration regularly formulates laws and regulations to monitor food safety in general.<sup>95</sup> Therefore, processed food imports from the GCC countries need to satisfy these standards before entering into China. On the other hand, Chinese grain exports have to satisfy the food control procedures of the GCC based on GCC Guide for Control on Imported Foods (GCC Guide)<sup>96</sup> and the standards issued by the GCC Standards Organization (GCCSO).<sup>97</sup>

Regarding the SPS chapter, Chinese FTAs are mainly modeled on the SPS Agreement. ChAFTA basically restates WTO principles while proposing requirements about transparency and the objective of mutual understanding. The only exception seems to be NZCFTA, which encompasses aspects regarding the implementation arrangements of SPS including risk analysis,<sup>98</sup> criteria for determination of equivalence<sup>99</sup> and verification<sup>100</sup> as well as cooperation in respect of technical assistance.<sup>101</sup> It also prescribes the obligation of timely notification regarding significant health issues and scientific findings of diseases.<sup>102</sup> Likewise, the SPS chapter of the GCC's past FTAs is based on the SPS Agreement. Notably, GSFTA explicitly expresses the objective to "facilitate technical

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94. Jennifer Clever, *Food and Agricultural Import Regulations and Standards – Narrative FAIRS Country Report*, 4, USDA Foreign Agricultural Service (Dec. 30, 2015), [http://agriexchange.apeda.gov.in/IR\\_Standards/Import\\_Regulation/Food%20and%20Agricultural%20Import%20Regulations%20and%20Standards%20NarrativeBeijingChina%20%20Peoples%20Republic%20of%2012302015.pdf](http://agriexchange.apeda.gov.in/IR_Standards/Import_Regulation/Food%20and%20Agricultural%20Import%20Regulations%20and%20Standards%20NarrativeBeijingChina%20%20Peoples%20Republic%20of%2012302015.pdf).

95. World Trade Organization, Trade Policy Review Report by the Secretariat China, WTO Doc WT/TPR/S/300 ¶ 3.78 (2014).

96. GCC Guide for Control on Imported Foods, THE GCC AGRICULTURE & FISHERIES RESOURCES DIRECTORATE (2015), <http://sites.gcc-sg.org/DLibrary/index-eng.php?action=ShowOne&BID=696>.

97. World Trade Organization, Trade Policy Review Report by the Secretariat Bahrain, WTO Doc WT/TPR/S/294 ¶ 3.61 (Mar. 18, 2014).

98. New Zealand-China Free Trade Agreement, N.Z.-China, art. 79, Oct. 1, 2008 [hereinafter NZCFTA].

99. *Id.* at art. 81.

100. *Id.* at art. 83.

101. *Id.* at art. 85.

102. *Id.* at art. 86.

consultations.”<sup>103</sup> These show that the FTAs of both sides generally affirm the SPS Agreement without extensive WTO-plus provisions, except NZCFTA.

In contrast, the SPS and TBT chapters in CETA have widely been recognized as extraordinarily extensive, comprising specific WTO-plus provisions.<sup>104</sup> They contain WTO-plus provisions that would serve as good reference for the proposed China-GCC FTA. There are two specific concerns for the Parties to consider. First, the GCC members, especially Bahrain<sup>105</sup> expressly doubt the scientific justification of import checks to China.<sup>106</sup> Recent food scandals undermine the confidence of GCC members regarding the quality of Chinese food exports and, more importantly, the risk assessment and export certification. Thus, the Parties should place emphasis on a well-supported verification of control procedures and import checks for maintain the confidence of GCC importers. While the “control, inspection and approval procedures” in ChAFTA are mainly based on the SPS Agreement,<sup>107</sup> the SPS chapter of CETA contains provisions that prescribe a pathway for trade partners to agree on principles and guidelines concerning the audit and verification of control procedures.<sup>108</sup> It also consists of specific import requirements for priority commodities. Therefore, it would be rewarding for the Parties to learn from CETA and negotiate provisions for quality guidelines for scientific justification. In particular, both sides should negotiate a specific procedure for import requirements of those Chinese foods that have been reported as contaminated, treating them as priority commodities.

Secondly, the GCC members have urged China to improve the transparency and predictability of its scientific justification.<sup>109</sup> GCC exporters of processed food would hardly know the internal operations and scientific basis of risk analysis adopted by Chinese authorities. This question draws attention to the transparency of import control mechanisms. Meanwhile, China has encouraged Saudi Arabia to enhance transparency by allowing interested parties to comment on SPS measures.<sup>110</sup> In Saudi

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103. GCC-Singapore Free Trade Agreement, GCC-Sing., art. 2.11, Sept. 1, 2013 [hereinafter GSFTA].

104. Gonzalo Villalta Puig & Eric D. Dalke, *Nature and Enforceability of WTO-plus SPS and TBT Provisions in Canada's PTAs: From NAFTA to CETA*, 15 *WORLD TRADE REV.* 51, 54-57 (2015).

105. Saudi Arabia Trade Policy Review, *supra* note 92 at ¶ 235.

106. China Meeting Minutes, *supra* note 22 at ¶ 6.3.

107. China-Australia Free Trade Agreement, China-Austl., art. 5.8, Dec. 20, 2015 [hereinafter ChAFTA].

108. Villalta Puig & Dalke, *supra* note 104, at 67.

109. China Meeting Minutes, *supra* note 22, at ¶ 6.3.

110. Saudi Arabia Trade Policy Review, *supra* note 92 at ¶ 89.

Arabia's latest WTO trade policy review meeting, it specifically called for increased transparency of the approval process for Halal certifications.<sup>111</sup> It also raised concerns as to how SPS measures are applied and developed.<sup>112</sup> In view of these, it would be important for the Parties to learn from CETA's promotion of transparency of scientific basis. First, it provides specific transparent provisions that would help understand food safety requirements in China.<sup>113</sup> It would be effective to include a preliminary briefing of SPS measures, especially Halal certifications. Secondly, it also includes other transparency requirements regarding changes in the structure of authorities and scientific opinions in addition to notification procedures for updates regarding significant food safety issues and changes in disease status. Thirdly, in response to the Chinese suggestion of a platform for opinions from interested parties, the Parties should incorporate the requirement of a comment period from the private sector. Better still, it can provide for a framework specifically for stimulating constructive inputs as to mechanisms of the application of SPS measures.

To boost predictability, the Parties would need to consider a different approach from SPS Agreement Article 5(b). Specifically, instead of publishing any SPS measure or TBT regulation "at an early stage, when amendments can still be introduced," they should consider a requirement not to implement the concerned SPS or TBT standard at all until it has been published. This would enable businesses to take precautions to minimize any food risk that would restrict mutual trade.

Considering the Parties' past FTAs, they generally affirm the TBT Agreement. Also, the GCC Guide has taken into account the GCC members' various international commitments, including the WTO. Besides, the GCCSO works to harmonize GCC standards within the guidelines of the International Organization for Standardization. Notably, GCC members have expressed their concern about Chinese divergence from international standards.<sup>114</sup> Hence, the Parties recognize international standards as a prominent consideration for regulatory cooperation.

Regarding conformity assessment procedures, the past FTAs of both parties generally comprise provisions on equivalence and mutual recognition. This would suggest that the conformity assessment procedure in the proposed FTA should adhere to the equivalence principle and the non-

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111. *The Kingdom of Saudi Arabia – Minutes of the Meeting*, WTO Doc. WT/TPR/M/333 ¶ 4.67, (May 31, 2016) [hereinafter Saudi Arabia Meeting Minutes].

112. *Id.* at ¶ 6.4.

113. Villalta Puig & Dalke, *supra* note 104.

114. China Meeting Minutes, *supra* note 22 at ¶ 6.3.

discriminatory principle for consistency.<sup>115</sup> In other words, China should allow exported products that fulfil the GCC standards to access the market under equally favourable conditions and vice versa. Specifically, China should recognize the standards adopted by the GCCSO and the GCC Guide despite distinct technical specifications.

On the other hand, GCC members might face an additional obstacle arising from the multiple levels of standards set up by the different regulatory bodies in China.<sup>116</sup> As Chinese food safety laws have often been amended and some standards even conflict with each other,<sup>117</sup> the GCC authorities might not know which is the most updated Chinese food standard to follow when assessing imports. They might incur additional costs in certifying their compliance with technical regulations that are not based on the Chinese authorities for conformity assessment. Meanwhile, China has expressed its doubt about the notification of technical regulations in the UAE.<sup>118</sup>

Hence, it would be helpful to consider the WTO-plus provisions on equivalence and transparency in CETA for reference. Concerning equivalence, the TBT chapter in CETA contains more specific provisions regarding recognition of equivalence.<sup>119</sup> For instance, information exchange on the development of similar technical regulations. This would give GCC members more updated information about technical regulations. A mutual recognition agreement should be considered when multiple tests are applied for the same good. Regarding transparency, a provision that entitles a party to request from the other party its rationale behind conformity assessment procedures would be worthwhile.<sup>120</sup> Better still, the Parties should consider a provision that imposes an obligation on the importing party to offer reasons immediately to the exporter in case of access denial to the exported good as in CETA.<sup>121</sup> This would be especially helpful to GCC processed food exporters by reducing uncertainties and unnecessary compliance costs. It also caters to small and medium-sized enterprises (SMEs) that cannot afford expensive mandatory tests.

The second priority issue concerns the food safety and environmental threats posed by nuclear power development. This area has been identified

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115. TBT Agreement, *supra* note 87 at art. 5.1 & 5.1.1.

116. CHRISTINE E. BOISROBERT ET AL., *ENSURING GLOBAL FOOD SAFETY: EXPLORING GLOBAL HARMONIZATION* 60 (Academic Press, 1st ed. 2010).

117. *Id.*

118. United Arab Emirates Trade Policy Review, *supra* note 65 at ¶ 247.

119. Villalta Puig & Dalke, *supra* note 104.

120. ChAFTA, *supra* note 107 at art. 6.8(4).

121. Villalta Puig & Dalke, *supra* note 104.

in the Sino-GCC meeting of 2016.<sup>122</sup> China released its first software package for exports of nuclear power in December 2015.<sup>123</sup> Saudi Arabia has signed a nuclear cooperation agreement to buy technology from China.<sup>124</sup>

Radioactive waste disposal constitutes an important threat to public health.<sup>125</sup> Also, the improper operation of nuclear reactors can pose nuclear power accidents that generate radioactive substances that contaminate food, threatening the health of humans, animals and plants.<sup>126</sup> The food safety threat arisen from nuclear power merits specific consideration in the SPS chapter. Notably, the UAE and Saudi Arabia both have expressly identified their need for technical assistance under TBT measures.<sup>127</sup> The proposed FTA would need a specific provision regarding technical assistance like the one in ChAFTA.<sup>128</sup> Reference can be also be made from ChAFTA provisions regarding risk analysis and joint research on control strategies as well as other scientific issues.<sup>129</sup> As for the proper installation of nuclear reactors, CETA provisions that deal with the approval of establishments and facilities would be helpful.<sup>130</sup> More importantly, emergency measures are vital in case of nuclear accidents. The proposed FTA needs enforceable obligations to notify SPS measures in case of an emergency within 24 hours. Alternatively, reference can be found in NZCFTA which includes an obligation to notify orally “with urgency to contact points” followed by written confirmation within 24 hours where cases of serious and immediate health concern occur. This requirement would be vital to prevent nuclear accidents from causing harm to public health.

Nuclear power specifically requires the safe design of nuclear reactors to avoid environmental threats. Trade in the software of nuclear power

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122. ‘Shannon Tiezi, *The Elephant in the Room During Xi’s Trip to Saudi Arabia: Iran*, THE DIPLOMAT (Jan. 21, 2016), <http://thediplomat.com/2016/01/the-elephant-in-the-room-during-xis-trip-to-saudi-arabia-iran/>.

123. *China Releases First Software Package for Nuclear Exports*, THE ECONOMIC TIMES (Dec. 18, 2015), <http://economictimes.indiatimes.com/news/international/business/china-releases-first-software-package-for-nuclear-power-exports/articleshow/50235122.cms>.

124. Sujata Ashwarya, *Saudi Arabia’s Nuclear Energy Plans: Problems, Prospects and Politics*, GULF RESEARCH MEETING (2016), <http://gulfresearchmeeting.net/index.php?pgid=MTg2&pid=MTA3OQ>.

125. Rinkesh, *Nuclear Waste Disposal*, CONSERVE ENERGY FUTURE (2016), <http://www.conserve-energy-future.com/dangers-and-effects-of-nuclear-waste-disposal.php>.

126. John P. Christodouleas, M.D., M.P.H. et al., *Short-Term and Long-Term Health Risks of Nuclear-Power-Plant Accidents*, NEW ENG. J. OF MED. 2334, 2334-36 (2011).

127. United Arab Emirates Trade Policy Review, *supra* note 66 at ¶ 39.

128. ChAFTA, *supra* note 107 at art. 5.9.

129. ChAFTA, *supra* note 107 at art. 5.6.

130. Villalta Puig & Dalke, *supra* note 104.

technologies should merit specific consideration in the TBT chapter. Regarding technical regulations, both the Parties are members of the International Atomic Energy Agency (“IAEA”). As nuclear technology involves advanced techniques, some hard rules regarding the adoption of conformity assessment and safety measures of nuclear power should be specifically provided in the proposed FTA. Reference can be taken from CETA’s sector-specific TBT measures such as the annex on cooperation concerning motor vehicle regulations. The regulation of nuclear reactors might merit coverage in a specific annex in the light of Sino-GCC nuclear cooperation agreement. As the GCC countries are generally less developed than China in the nuclear power field,<sup>131</sup> this would call for strong capacity-building measures to assist GCC exporters. It would be wise to incorporate mutual working group arrangements to cope with difficulties in cooperative regulations. The Parties can follow ChAFTA to specifically establish committees on SPS and TBT measures for the better implementation of the chapters.<sup>132</sup>

Notably, enforceable FTA dispute settlement provisions specifically for SPS and TBT issues are necessary. ChAFTA uses the wording “shall endeavor to resolve” in the provisions regarding dispute settlement in SPS and TBT chapters.<sup>133</sup> It is ambiguous as to the “cooperative mechanisms” referred to in these provisions, thus these provisions are unlikely to be enforceable. GSFTA contains parallel provisions regarding specific Dispute Settlement Mechanisms by consultations held “within the framework of the Joint Committee in order to find an appropriate solution.”<sup>134</sup> Such consultations held by the bilateral committee would be helpful to joint cooperation of dispute resolution. Besides inclusion of a “Joint Committee,” the proposed FTA needs to consider enforceable provisions in CETA that allow a party to show how the other party fails to comply within a comment period.<sup>135</sup> While enforceability is important, the political commitment is the most decisive factor to accomplish true regulatory convergence.<sup>136</sup> This factor is satisfied because the Parties have expressed their readiness to cooperate concerning food security in the Sino-GCC strategic dialogue held in 2011.<sup>137</sup>

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131. Mike Orcutt, *China Will Soon Leapfrog Traditional Leaders in Nuclear Power*, MIT TECH. REV., July 27, 2015, <https://www.technologyreview.com/s/539691/china-will-soon-leapfrog-traditional-leaders-in-nuclear-power>.

132. ChAFTA, *supra* note 107 at art. 5.11, 6.12.

133. ChAFTA, *supra* note 107 at art. 5.10, 6.12.

134. GSFTA, *supra* note 103 at art. 2.10(3), 2.11(3).

135. Villalta Puig & Dalke, *supra* note 104.

136. *Id.*

137. *The Second China-GCC Strategic Dialogue Held in Abu Dhabi*, MINISTRY OF FOREIGN AFFAIRS OF THE PEOPLE’S REPUBLIC OF CHINA, May 5, 2011, [http://www.fmprc.gov.cn/mfa\\_eng/topics\\_665678/yangjiechichufang\\_665758/t819923.shtml](http://www.fmprc.gov.cn/mfa_eng/topics_665678/yangjiechichufang_665758/t819923.shtml).

## E. Trade in Services

The General Agreement on Trade Services (GATS) provides for the MFN obligation, which emphasizes the equal treatment of service suppliers worldwide.<sup>138</sup> Two other key obligations are national treatment obligation and market access obligation.<sup>139</sup> There are four modes of supply provided in GATS Article I. Notably, the third offers opportunities for foreign direct investment and the fourth allows foreign individuals to enter other customs territory themselves to provide services.

The first issue concerns whether the proposed FTA should adopt a positive list or a negative list approach to trade in services. A negative list approach presumes the liberalization of all sectors except those sensitive sectors that are explicitly excluded by the trading partners. In contrast, a positive list approach considers what items to include, one by one. A negative list leads to deeper liberalization than the positive list. A negative list approach would be preferred in the proposed FTA based on four main considerations.

First, the Sino-GCC relationship is strategic, implying that mutual trade liberalization is unlikely to be politically contentious. The Parties would be comfortable with deep integration. Secondly, both sides are open to work together to promote the smooth implementation of the OBOR initiative, which encompasses numerous sectors. Thus, even if the Parties manage to attain a positive list without missing prominent sectors, the list would be very long. Thirdly, it would be challenging to decide what to prioritize because the political and economic environment is constantly changing. For example, China's chemical industry has become much more competitive than in 2009 when Sino-GCC negotiations stalled.<sup>140</sup> As China would consider present opportunities and forecasted trends to decide what to prioritize, it might overlook emerging service sectors as diversification becomes more intense and the trade profile of the Parties changes. The fourth consideration concerns the implicit compromise of the positive approach, where sectors that are not included in the list would be subject to the usual trade policy regime.

Chinese service commitments in ChAFTA, have been praised as the best among its FTAs, excluding its Closer Economic Partnership Arrangement with Hong Kong (CEPA).<sup>141</sup> The incorporation of a MFN

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138. General Agreement on Trade in Services art. II, Apr. 15, 1994 [hereinafter GATS].

139. *Id.* at art. XVII, XVI.

140. Wu, *supra* note 24.

141. Kate Axup et al., *Focus: The China-Australia Free Trade Agreement*, ALLENS

provision for services and investment in favour of Australia was hailed as the most prominent innovation in ChAFTA.<sup>142</sup> Meanwhile, Chinese MFN commitments are the deepest among its FTAs.<sup>143</sup> Hence, ChAFTA would serve as good reference for the proposed FTA.

The second major issue concerns the area of cooperation in services identified in China's visit to Saudi Arabia this year.<sup>144</sup> Notably, China has viewed the growth in the aviation and tourism sector of the UAE as remarkable.<sup>145</sup> Also, the OBOR initiative would be conducive to such cooperation, as its main objective is to enhance the connectivity of infrastructure.<sup>146</sup> Apart from these opportunities, four major areas regarding market access merit specific consideration.

First, cooperation in renewable energy is of the highest priority. The GCC has ample renewable resources such as abundant sunshine while China has invested in renewable energy heavily. China was recognized as the world's leader in the installation solar plants.<sup>147</sup> Hence, Chinese technology firms can potentially partner with GCC developers on clean energy projects. To ensure renewable energy can be utilized cost-effectively for energy security, the Parties should consider provisions that set obligatory targets of energy saving to be achieved by the Parties. Meanwhile, they should negotiate a mechanism for support schemes to help each other achieve these targets. Reference can be drawn from current EU PTAs that have been recognized to achieve higher energy independence.<sup>148</sup>

As for market access provisions in the proposed FTA, they can exclusively protect the investments of the GCC members in China's renewable energy technologies and services derived from such technologies. Meanwhile, it would be worthwhile to include a provision that specifically safeguards the investment of Chinese wholly owned technology firms and regulates risks concerning the construction of renewable energy-related facilities in the GCC. In this way, China can gain from the

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(Nov. 21 2014), <http://www.allens.com.au/pubs/asia/foasia21nov14.htm>.

142. Interpretation for China-Australia Free Trade Agreement, *supra* note 46.

143. Axup, *supra* note 141.

144. *Supra* note 42.

145. United Arab Emirates Trade Policy Review, *supra* note 66, at para. 166, 170.

146. *What We Can Expect from Xi's Visit*, CCTV (Jan. 19, 2016), <http://english.cntv.cn/2016/01/19/VIDE54wN2CkNkQ4TmTgSyYBg160119.shtml>.

147. Richard Martin, *China Is on an Epic Solar Power Binge*, MIT TECHNOLOGY REVIEW BLOG, (March 2016), <https://www.technologyreview.com/s/601093/china-is-on-an-epic-solar-power-binge/>.

148. Rafael Leal-Arcas et al., *Renewables, Preferential Trade Agreements and EU Energy Security*, QUEEN MARY SCH. OF L. & LEGAL STUD., Research Paper No. 208 (2015).

GCC's rich resources while the GCC can benefit from Chinese technology.

Secondly, China has highlighted the promotion of cross-border electronic commerce.<sup>149</sup> Moreover, it views the UAE's telecommunications market as experiencing rapid growth.<sup>150</sup> Thus, it is committed to stimulate investment in the telecommunications market.<sup>151</sup> Meanwhile, Qatar and Bahrain have liberalized their telecommunications market.<sup>152</sup> The telecommunications market in Saudi Arabia and Oman have been recognized as prosperous.<sup>153</sup> These common preferences favour proactive liberalization in telecommunications. Chinese commitments to Australia regarding market access for telecommunications under ChAFTA have been recognized as the most extensive to date.<sup>155</sup> Thus, ChAFTA liberalization measures for telecommunications would serve as a good reference for the proposed FTA.

The third area concerns the financial sector, especially banking services. The Industrial and Commercial Bank of China, Bank of China, and China Construction Bank have established branches in Dubai.<sup>156</sup> The China Development Bank and other banks have plans to establish branches in the UAE. By establishing a commercial presence China has shown support for the facilitation of cross-border services to the GCC. Notably, China has expressed two concerns in the restrictions on the number of foreign banks allowed and a relaxation of licensing requirements in UAE.<sup>157</sup> Addressing Chinese concerns would boost competition in the GCC. Yet, keener competition would call for prudential regulation because of increased risks. Notably, the survival of Islamic banks have been challenged by the expanded product base in the overbanked market of the GCC.<sup>158</sup> Hence, the proposed FTA should specifically prevent domestic regulations that safeguard the integrity of the GCC's financial system. A similar provision has been adopted in ChAFTA Annex 8-B, Article 3.

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149. China Meeting Minutes, *supra* note 22 at ¶ 3.17.

150. United Arab Emirates Trade Policy Review, *supra* note 65 at ¶ 262.

151. China Meeting Minutes, *supra* note 22 at ¶ 2.9.

152. *Qatar, Bahrain and Oman – Minutes of the Meeting*, WTO Doc. WT/TPR/M/296 ¶ 12.26 (June 19, 2014).

153. *Assessing investment policies of member countries of the Gulf Cooperation Council*, *supra* note 64, at 13.

155. *Factsheet: Trade in Services*, AUSTL. GOV'T (July 1, 2016), <http://dfat.gov.au/trade/agreements/chafta/fact-sheets/Documents/fact-sheet-trade-in-services.pdf>.

156. Muhammad Zulfikar Rakhmat, *Monthly Monitor Report*, GULF STATE ANALYTICS (June 2015), <http://gulfstateanalytics.com/archives/work/the-uae-and-chinas-thriving-partnership>.

157. United Arab Emirates Trade Policy Review, *supra* note 65 at ¶263.

158. Ahmad Mohammad Abu Qalbein, *Challenges of Islamic Banking in Gulf Corporation Council*, 8 EUR. J. OF BUS. & MGMT. 177, 184 (2016).

The fourth area concerns ChAFTA's market access commitment in education. Bahrain is committed to pursue broad education reform,<sup>159</sup> while Qatar regards human resource development as paramount.<sup>160</sup> Meanwhile, Saudi Arabia is committed to improve its education system.<sup>161</sup> Importantly, education has been highlighted as a top government priority in the UAE's third WTO Trade Policy Review, thereby calling for considerable investment.<sup>162</sup> Education is also one of the key sectors that China is focused on.<sup>163</sup> As the Parties value education services, progressive liberalization measures in education would merit comprehensive coverage in the proposed FTA.

Under ChAFTA, a side letter on education services encompasses joint efforts for future work programs to facilitate student and teacher mobility between both countries. Likewise, it would be favorable to negotiate a side letter for future joint efforts to strengthen cooperation in education services as in ChAFTA. Notably, concrete measures like exchange programs and the promotion of partner's educational institutions would enhance access to the education market. These can build upon the already deep educational partnership between China and the UAE.<sup>164</sup> More importantly, these exchange programs would potentially enable GCC nationals to have access to quality education from China. They also help the GCC to address the educational mismatch between the qualifications of nationals and the needs of the private sector.<sup>165</sup>

Nonetheless, unlike Australia, it would be much more challenging for the Parties to achieve equivalence on four grounds. First, the poor quality of teachers in the GCC would be the main setback for educational equivalence with China. Research has shown that GCC countries have mismanaged the number of teachers.<sup>166</sup> They are facing a shortage of

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159. Qatar, Bahrain and Oman Meeting Minutes, *supra* note 152 at ¶ 11.17.

160. *Id.* at ¶ 3.17.

161. Saudi Arabia Trade Policy Review, *supra* note 92 at ¶ 260.

162. *Trade Policy Review Report by United Arab Emirates*, WTO Doc WT/TPR/G/338, ¶ 8.1, 9.4 (Apr. 27, 2016).

163. China Meeting Minutes *supra* note 22 at ¶ 2.18.

164. Muhammad Zulfikar Rakhmat, *China and the UAE: New Cultural Horizons*, MIDDLE EAST INST. (2015), <http://www.mei.edu/content/map/china-and-uae-new-cultural-horizons>.

165. MICHAEL STURM ET AL., *The Gulf Cooperation Council Countries: Economic Structures, Recent Developments and Role in the Global Economy*, 6-37 (Occasional Paper Series No. 92, European Central Bank 2008).

166. Michael Barber et al., *Improving Education in the Gulf*, THE MCKINSEY Q. 39, 40 (2007), <https://abujoori.files.wordpress.com/2007/04/improve-gulf-education.pdf>.

skilled teachers.<sup>167</sup> Thus, it would be vital for GCC educational institutions to contract with Chinese institutions for joint training programs and performance management systems specifically for teacher quality. Secondly, it would be difficult to achieve recognition of GCC curriculum design in Chinese universities and colleges due to the differences in educational quality. The education system in the Gulf is weak,<sup>168</sup> whereas Chinese higher education has become internationalized.<sup>169</sup> The courses offered and the level of certifications granted may not be comparable. Thus much harmonization work including educational reforms in the GCC would be necessary when the Parties organize joint exchange programs. Thirdly, both sides have to face different marketing restrictions for attracting students to join these exchange programs. While spending on education in the GCC has been low,<sup>170</sup> much spending would be necessary for marketing and recruitment activities. Fourth, all harmonization work requires a consistently high level of trust and understanding in the quality of professional standards and working plans of each other.

Besides education, mutual recognition of licensing requirements is a common challenge for service sectors, as most licensing and qualification requirements are different. It would even be more difficult for sectors that have more than one regulatory authority such as education and financial services in the GCC. The Parties should negotiate a framework in the proposed FTA that establishes a working group specifically for negotiating mutual recognition agreements for licensing, monitoring the information exchange of different regulatory authorities and assessments of practical implementations so that capacity building and harmonization can be achieved simultaneously.

The movement of service suppliers under GATS concerns cross-border service supply. China has a strong capacity of innovation and technology. Improved access of Chinese skilled workers can help the GCC countries better manage projects through cooperation. Also, China has abundant strong contracting experience, which would provide good support to human resources management.

Nonetheless, there are three challenges faced by the Parties in this aspect. The first challenge concerns demographic imbalance. Expatriates

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167. *Those Who Can Do Must Teach: A New Paradigm for Teacher Training in the GCC*, THE IDEATION CENTER (2016), <http://www.ideationcenter.com/blog/post/52413053>.

168. Barber, et al., *supra* note 166, at 39.

169. Rahul Choudaha, *How China Plans to Become a Global Force in Higher Education*, THE GUARDIAN (Oct. 12, 2015), <http://www.theguardian.com/higher-education-network/2015/oct/12/how-china-plans-to-become-a-global-force-in-higher-education>.

170. Callen & Cheirf, *supra* note 29.

account for the dominant proportion of the workforce in the GCC's private sector, leaving many nationals unemployed.<sup>171</sup> Unskilled workers make up the majority of expatriates while skilled workers remain hard to attract and retain.<sup>172</sup> GCC countries lack flexible immigration policies to attract them.<sup>173</sup> The mobility of foreign workers in the GCC is restricted by visa permits and a sponsorship program, which restricts the freedom of migrant domestic workers from returning to their home country.<sup>174</sup> These concerns are common to all GCC countries, in particular Qatar.<sup>175</sup> They call for provisions that help to enhance the mobility of Chinese workers especially skilled persons.

Generally, the past FTAs of the Parties contain provisions that offer improved access for business visitors, contractual service suppliers and intra-corporate transferees. They require expeditious application procedures and transparency provisions. Aside from these general provisions, the proposed FTA needs to enhance market access for Chinese skilled workers as is the case under ChAFTA. Also, an Investigation Facilitation Agreement as in ChAFTA should be adopted in the proposed FTA allowing firms that are substantially owned by Chinese companies to operate large infrastructure projects in the GCC on three grounds. First, it should place no limit on workforce size. Secondly, it should encompass numerous sectors, including telecommunications and energy supply. Thirdly, it should lower the threshold for expected capital expenditure. Moreover, China could provide the GCC with an expatriate labour force to support its growing demand for infrastructure projects especially those in the OBOR initiative.

Yet, the above provisions would not be as significant if other countries so not also improve their immigration laws to attract Chinese workers. Moreover, the GCC countries would face an increased need for Chinese technological skills as their economies diversify. Notably, Saudi Arabia has at least decided boldly on paper to grant citizenship to 1,000 skilled workers annually, while other GCC countries have not considered this path at all.<sup>176</sup> A possible reason why the GCC countries generally do not

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171. Callen & Cheirf, *supra* note 29.

172. Ingo Forstenlechner & Emilie J. Rutledge, *The GCC's "Demographic Imbalance": Perceptions, Realities and Policy Options*, MIDDLE EAST POL'Y COUN. (2011), <http://www.mepc.org/journal/middle-east-policy-archives/gccs-demographic-imbalance-perceptions-realities-and-policy-options?print>.

173. Qatar, Bahrain and Oman Meeting Minutes, *supra* note 152 at ¶ 12.30.

174. Caroline Kelly, *Facilitating Exploitation: A review of Labour Laws for Domestic Workers in the Gulf Cooperation Council Countries*, INT'L TRADE UNION CONFED. (2014), [http://www.ituc-csi.org/IMG/pdf/gcc\\_legal\\_and\\_policy\\_brief\\_domestic\\_workers\\_final\\_text\\_clean\\_282\\_29.pdf](http://www.ituc-csi.org/IMG/pdf/gcc_legal_and_policy_brief_domestic_workers_final_text_clean_282_29.pdf).

175. Qatar, Bahrain and Oman Meeting Minutes, *supra* note 152 at ¶ 13.4.

176. Mohammed Al Asoomi, *Attracting Skilled Expatriates to GCC: In Theory*, GULF NEWS,

consider the granting of citizenship may be concerns that their culture may be diluted by an increased number of Chinese skilled workers in their workplace. Yet, these worries seem to be unnecessary because Chinese culture promotes “when in Rome do as the Romans do,” meaning Chinese workers generally follow the traditions of the GCC countries rather than introducing their own culture. Also, Chinese Confucianism promotes harmony. More importantly, it should be noted that the GCC countries are geographically far away from China. As Chinese people generally place high value on having a permanent home and stable living, granting of citizenship is highly likely to be an attractive option for Chinese skilled workers. Thus, the Parties should adopt Saudi Arabia’s bold decision as a pilot program and negotiate an implementation plan to extend this program gradually to all GCC countries. It would then be vital to include a framework that guides and lays down the pilot program for granting of citizenship.

Enhancing access of Chinese workers does not mean automatic equivalence between qualifications without the need for re-qualification. The second challenge for the Parties would be the mutual recognition of professional qualifications. It remains uncertain what should be the criteria for assessing equivalence. Also, it would take much time and effort for both sides to reach a conclusion on harmonized requirements regarding diverse standards and procedures. The past FTAs of the Parties seem not to have an extensive framework for mutual recognition. It would be helpful for the Parties to refer to CETA, which has been recognized as an ideal platform for labour mobility.<sup>177</sup> It contains a specific chapter that serves as a guide to the negotiation of agreements on the mutual recognition of professional qualifications.<sup>178</sup> It should be noted that doctors<sup>179</sup> and pilots<sup>180</sup> should be given higher priority in the proposed FTA. In addition, a Committee on Movement of Natural persons, as in ChAFTA, should be established to smooth the implementation. Professional organizations

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Jan. 12, 2012, <http://gulfnews.com/business/analysis/attracting-skilled-expatriates-to-gcc-in-the-ory-1.964594>.

177. Dan Ilika, *Better Labour Mobility Canada’s Biggest CETA Win, Report Says*, CANADIAN MANUFACTURING, July 31, 2014, <http://www.canadianmanufacturing.com/in-depth/improved-labour-mobility-canadas-biggest-ceta-win-report-says>.

178. Comprehensive Economic and Trade Agreement, art. 11, Can.-E.U., [hereinafter CETA].

179. Cleofe Maceda, *Health Care Sector in GCC Faces Talent Shortage*, GULF NEWS, Jan. 10, 2014, <http://gulfnews.com/business/sectors/careers/health-care-sector-in-gcc-faces-talent-shortage-1.1275896>.

180. *GCC Aviation – Spreading Wings to the World*, AL MASAH CAPITAL MGMT. LTD. (Apr. 2015), [http://almasahcapital.com/uploads/report/pdf/report\\_134.pdf](http://almasahcapital.com/uploads/report/pdf/report_134.pdf).

should be required to lead the committee on mutual recognition, as they have better knowledge of the concrete criteria for assessments and qualifications. The Parties should assign a specific mandate to the committee for devising measures for ongoing equivalence as well.

The third challenge would be the transparency of qualifications. General transparency provisions require the prompt publication of materials, mechanisms to respond to inquiries and notification of amendment of immigration measures to interested persons. Due to the weak administrative capacities of GCC governments,<sup>181</sup> the handling of publications and inquiries are inefficient. Hence, exhortative provisions encouraging the Parties to 'consult relevant bodies' to negotiate 'mutually acceptable' criteria for licensing and qualifications would be helpful. Model provisions can be found in Annex 1210.5 of the North American Free Trade Agreement.

## F. Investment

The major investment issue concerns the internationalization of the Renminbi ("RMB"). All GCC countries, except Bahrain, are members of Asian Investment Infrastructure Bank (AIIB).<sup>182</sup> This provides an avenue to Chinese worthy investments. The AIIB would promote the internationalization of RMB.<sup>183</sup> According to the RMB International Report 2015 by Renmin University, RMB internationalization strengthens economic integration. Thus, the RMB should be adopted to settle trade.<sup>184</sup> The Parties should consider adding express provisions to promote cooperation among the central banks and to establish RMB exchange arrangements in order to enhance the availability of the RMB and the issuing of RMB denominated bonds by GCC investors.

Besides the redback issue, strong mutual investment interests between the Parties present an opportunity for the liberalization of investment flows. Apart from investments in infrastructure and engineering projects required by the OBOR initiative, China invests in oil exploration and production in the GCC while the GCC countries invest in Chinese oil refining and petrochemical sectors.<sup>185</sup> On the other hand, most GCC countries have

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181. Abdulrazzaq & Carey, *supra* note 27.

182. Adam Bouyamoun, *UAE signs up as founding member of Asian Infrastructure Investment Bank*, *The national business* (2015) <<http://www.thenational.ae/business/banking/uae-signs-up-as-founding-member-of-asian-infrastructure-investment-bank>>.

183. Daojiong, *supra* note 2, at 101.

184. Saidi, *supra* note 4.

185. China Meeting Minutes, *supra* note 22 at ¶ 4.294.

sovereign wealth funds. Since the financial crisis, GCC investments have turned from Europe to China.<sup>186</sup> Notably, wealthy investors from Saudi Arabia and the UAE are interested in investment opportunities in China.<sup>187</sup>

First, the Saudization program imposed a huge barrier to foreign investments by mandating prior approvals.<sup>188</sup> China challenged the mandatory stake of local holding and minimum capital requirement in Saudi Arabia.<sup>189</sup> Restrictions of foreign ownership in some sectors have been reiterated as the main concern at the latest policy review meeting of Saudi Arabia.<sup>190</sup> Notably, China also criticized the 49% cap of foreign ownership in Qatar and the UAE as overly restrictive.<sup>191</sup> On the other hand, the GCC countries complain about the tedious procedure of verification and approval for investments in China.<sup>192</sup> Hence, the Parties need to impose specific obligations on each other to relax investment restrictions particularly those on foreign ownership in some sectors. A model provision can be found in Article 173(b) under NZCFTA.

The second challenge would be the limited investment capacity and market intelligence of SMEs. They may not have full access to investment policies. China has made commitments to stimulate the growth of SMEs.<sup>193</sup> GCC members like Saudi Arabia have emphasized the importance of consistency in the implementation of regulations that govern the business environment of SMEs.<sup>194</sup> About 90% of all businesses in Saudi Arabia are SMEs.<sup>195</sup> They are also important in Bahrain.<sup>196</sup> Meanwhile, the UAE is committed to strengthen SMEs through innovative technologies.<sup>197</sup> These reveal the mutual interests of the Parties to boost SMEs' capacity and foster a good business environment for their growth. Thus, it would be mutually beneficial for the proposed FTA to include a specific article that enables cooperation for the promotion of SME investments. A model provision can be found in NZCFTA, which specifically promotes a

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186. Mo, *supra* note 4.

187. *Id.*

188. Saudi Arabia Trade Policy Review, *supra* note 92 at ¶ 36.

189. *Id.* at ¶ 233.

190. The Kingdom of Saudi Arabia Meeting Minutes, *supra* note 111 at ¶ 1.6.

191. Qatar, Bahrain and Oman Meeting Minutes, *supra* note 152 at ¶3.12, 167.

192. China Meeting Minutes, *supra* note 22 at ¶ 3.16.

193. *Id.* at ¶ 2.9.

194. *Id.* at ¶ 6.3.

195. Saudi Arabia Meeting Minutes, *supra* note 112, at ¶ 2.17.

196. Qatar, Bahrain and Oman Meeting Minutes *supra* note 152 at ¶6.14.

197. United Arab Emirates Trade Policy Review, *supra* note 66 at ¶38.

“favourable trading environment” for SMEs.<sup>198</sup>

The third challenge arises from the utmost importance of transparency perceived by both sides. China has requested Saudi Arabia to offer more transparency in formulating investment policies.<sup>199</sup> Also, China has called on Bahrain to make investment regulations more transparent and predictable.<sup>200</sup> Meanwhile, GCC members have requested China to publish measures concerning investment.<sup>201</sup> Bahrain has reiterated the importance of private sector opinions when devising new regulations on behalf of the GCC.<sup>202</sup> Hence, transparency provisions requiring the prompt publication of investment measures would be essential. Requirements to notify private investors for comments regarding any enactment or amendment of regulations should also be included in the proposed FTA in response to Bahrain’s view.

Nonetheless, securing an FTA with provisions protecting Chinese investments may prove difficult where trading partners have strong investment interests in China.<sup>203</sup> As numerous resource sectors in the GCC are state-owned, it would be burdensome for China to negotiate with the GCC on investment rights because state-owned enterprises in the GCC have strong interests, especially China’s petrochemical sector. Hence, the proposed FTA should include a framework that facilitates cooperation between Chinese state owned enterprises with those in the GCC for the better negotiation of investment rights.

An investor-state dispute settlement mechanism (ISDSM) would be vital for the proposed FTA because of the expected flow of investments between the Parties. Article 9 of ChAFTA provides for ISDSM, while GSFTA includes no such protection. The ChAFTA ISDSM offers narrow protection to foreign investors.<sup>204</sup> It only enables foreign investors from either country to claim compensation for breach of the national treatment obligation by the other Party, subject to certain restrictions.<sup>205</sup> Notably, it does not contain a ‘fair and equitable treatment’ provisions. The ISDSM in

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198. NZCFTA, *supra* note 98 at art. 176.

199. Saudi Arabia Trade Policy Review, *supra* note 92 at ¶ 89.

200. Qatar, Bahrain and Oman Meeting Minutes, *supra* note 152 at ¶9.26.

201. Saudi Arabia, China Issue Joint Communiqué on Establishing Comprehensive Strategic Partnership Between the Two Countries, *supra* note 22 at ¶ 4.95.

202. Saudi Arabia Trade Policy Review, *supra* note 106 at ¶ 220.

203. Christopher M. Dent, *China’s Investment Provisions in its Free Trade Agreements*, ECRAN, 10 (Short Term Policy Brief 43, Feb. 2012).

204. Daisy Mallet & James McKenzie, *ISDS in ChAFTA – Where’s the beef?*, KING & WOOD MALLISONS (2015), <http://www.kwm.com/en/uk/knowledge/insights/isds-in-chafta-wheres-the-beef-20151015>.

205. ChAFTA, *supra* note 107 at art. 9.3.

ChAFTA might not serve as a good reference for the proposed FTA.

The ISDSM in CETA would serve as a model provision, since it has been recognized as the most innovative arrangement for the protection of investments.<sup>206</sup> Two main aspects would be particularly helpful for the proposed FTA. First, CETA's ISDSM lays out precisely the clear standard of 'fair and equitable treatment' in Article 9 without room for the discretion of arbitrators. It provides higher predictability by laying down the factors that constitute a breach of the obligation. Secondly, in anticipation of increasing investment flows between the Parties, it would be necessary to incorporate the fast track objection procedure in Articles 20 and 30 of CETA in order to screen out frivolous claims and prevent abuse.

For transparency and predictability purposes, it would be helpful to highlight two CETA provisions. First, the proposed FTA should include specific provisions that enable an appellate tribunal to review legal or factual errors of arbitral awards in order to enhance predictability in the interpretation of investment protection provisions.<sup>207</sup> Also, it should allow *amicus curiae* submissions from interested third parties if they can help determine the issues,<sup>208</sup> thereby increasing procedural transparency.

## G. Dispute Settlement Mechanisms

Most Dispute Settlement Mechanisms ("DSMs") in Chinese FTAs, except CEPA, are mainly modeled on the WTO DSM.<sup>209</sup> ChAFTA and GSFTA are no exception. Modelling closely on WTO system would incorporate a comprehensive enforcement mechanism that is deemed to be ruled-based and credible.<sup>210</sup>

In the WTO DSM, the early stages are based on a diplomatic approach where good offices, conciliation or mediation may be "requested at any time" and "undertaken voluntarily" if the disputants agree.<sup>211</sup> If consultations have not been entered or fail within 60 days, a legalistic mechanism is adopted where disputants agree on convening an *ad hoc*

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206. *Investment Provisions in the EU-Canada Free Trade Agreement (CETA)*, EUR.COMM'N (2016), [http://trade.ec.europa.eu/doclib/docs/2013/november/tradoc\\_151918.pdf](http://trade.ec.europa.eu/doclib/docs/2013/november/tradoc_151918.pdf).

207. *Id.*

208. *Id.*

209. Francis Snyder, *China, Regional Trade Agreements and WTO Law*, 43 J. OF WORLD TRADE. 1, 1-57 (2009).

210. REGIONAL TRADE AGREEMENTS AND THE WTO LEGAL SYSTEM 346 (Lorand Bartels & Frederico Ortino eds., Oxford Scholarship Online 2012).

211. Understanding on Rules and Procedures Governning the Settlement of Disputes art. 5(1), 5(3), Apr. 5, 1994, 1869 U.N.T.S. 401 [hereinafter DSU].

panel. The panel will then issue a final report.

The first issue in devising a DSM is whether it should be based on a diplomatic or legalistic mechanism.<sup>212</sup> Diplomatic dispute settlement favours only consultations without legal provisions. Disputants may refer disputes to either third-party adjudicators or a political body for consultation. A legalistic mechanism refers to *ad hoc* referral to an arbitral tribunal as in the WTO DSM. Both mechanisms have their own merits and drawbacks.

Legalistic DSM poses two main challenges to the negotiation of the proposed FTA. The first challenge stems from political economic constraints. First, academics have asserted that a legalistic DSM would undermine the power and political autonomy of national governments.<sup>213</sup> The Chinese government views law as a means of control and would be unlikely to support a legalistic mechanism that promotes rule of law. Meanwhile, the GCC governments are monarchies and do not care much for human rights. Indeed, the separation of powers is not a practice in the GCC. Secondly, the Chinese government perceives litigation with other countries as a setback to diplomatic ties.<sup>214</sup> Litigation seems to run counter to China's "going out strategy," which promotes further economic integration with the outside world. Hence, legally binding forms of DSM, including litigation and arbitration, seem to be contrary to the political will.

The second challenge arises from the Chinese Confucianism. China has a long history of mediation based partly on Confucianism, which proposes cordiality in commercial and personal deals. Since Confucian ideas have great influence on Chinese policies,<sup>215</sup> Chinese people generally think that litigation can adversely interfere with social harmony for two reasons. First, Chinese people generally believe that litigation is an indication of hostility rather than an avenue to resolve disputes. Although the rule of law is supposed to be objective, litigation becomes the profession of a desire to win when the respective advocates both believe that the law supports their arguments.<sup>216</sup> Secondly, a winning party may still be condemned even if it wins a case. Most Chinese people believe that

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212. AMELIA PORGES, PREFERENTIAL TRADE AGREEMENT POLICIES FOR DEVELOPMENT: A HANDBOOK 474 (World Bank Group 2011).

213. James McCall Smith, *The Politics of Dispute Settlement Design: Explaining Legalism in Regional Trade Pacts*, 54 INT'L ORG. 137, 145 (2000).

214. MING JIANGLI, CHINA JOINS GLOBAL GOVERNANCE: COOPERATION AND CONTENTIONS 84 (Lexington Books 2012).

215. Razeen Sappideen & Ling Ling He, *Dispute Settlement Under Free Trade Agreements: The Proposed Australia-China Free Trade Agreement*, 12 J. OF WORLD INV. & TRADE 581, 595-96 (2011).

216. Claude Barfield, *WTO Dispute Settlement System in Need of Change*, 37 INTERECONOMICS 131-135 (2002).

litigation would cause disputants to “lose face.” As Confucianism regards litigation to be a last resort, the commencement of legal proceedings would indicate a dispute to be so serious that it cannot be settled without incurring legal cost and time. Regardless of the ruling, the relations of the disputants would have deteriorated during proceedings.

On the other hand, litigation provides more predictability and certainty. It enables a disputant to gain full discovery of the arguments of the opposite case. Arbitration has been hailed as a more workable DSM in China.<sup>217</sup> Meanwhile, the GCC countries have the Unified Arbitration Law of 2009, recognizing arbitration in the GCC. Arbitration seems to address the above Confucian concerns. First, arbitration enables disputants to select an arbitrator by agreement and both sides take part in the resolution process. There might be some forms of cooperation between the disputants, giving them significant flexibility for parties to tailor their DSM according to their needs. Thus, it preserves their relationship under a cooperative framework. Second, arbitration is a private process that ensures greater confidentiality than litigation. Parties can protect their sensitive information from disclosure to the public. Therefore, disputants do not have to worry about losing their reputation.

Nonetheless, disputes arising from cultural differences may be challenging to resolve and may remain unsettled long after arbitration. Worse still, some cultural principles might have to be compromised. Arbitrators might even face a dilemma when deciding which value should prevail based on a broad notion of justice. Hence, the proposed FTA should incorporate a code of conduct for arbitrators, one that upholds their independence and impartiality. Still, the standard adopted by the arbitrator is still subject to perceptions and how they weigh in on the arguments. These disadvantages of arbitration might call for a mechanism that increases the parties’ involvement in the solution.

Diplomatic DSM comprises consultations or conciliation, involving an impartial third party who will suggest a settlement for the parties to agree on. It enables the parties to negotiate flexible solutions that are more mutually amicable. Thus, parties are more likely to voluntarily comply with the obligations arising from the solution. Also, negotiators generally perceive alternative dispute resolution to be a rewarding experience as evidenced by its wide adoption.<sup>218</sup> However, this mechanism does not enable full discovery and access to a formal judicial system, thus it may be harder to reach decisions.

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217. Sappideen, *supra* note 215.

218. ChAFTA, *supra* note 108 at art. 15.6; GSFTA, *supra* note 104 at art. 9.3.

In view of these considerations, the DSM for the proposed FTA should balance the importance of formality and the flexibility to cater to pragmatic needs. Thus, the DSM of the proposed FTA should be closely modelled on the WTO DSM, which provides for both diplomatic and legalistic approaches of dispute settlement in incremental stages.

It would be helpful to consider the nature of future disputes to tailor the mechanism and enhance the resolution of disputes arising from the proposed FTA. The Parties have agreed to commit to extensive market access in services trade, an area of potential conflict. Moreover, conflicts concerning divergent customs, procedures, and jurisdictional issues would arise from efforts to cooperate on technical standards for OBOR related infrastructure projects. In addition, the Parties have signed other FTAs with other countries before this proposed FTA. Possibly, jurisdictions may overlap for certain breaches concerning several FTAs.

In view of these potential conflicts, the DSM should also allow for diversity. Diverse disputes would call for higher flexibility and expediency in the DSM. First, it would be helpful to refer to Article 15.4(2) of ChAFTA for the right to select a suitable forum and Article 14.3(2) of CETA for the exception. The “choice of forum” and the right to use the chosen forum ‘to the exclusion of others’ provide more flexibility and avoid recurrence of disputes due to unresolved jurisdictional issues. For more comprehensiveness, the proposed FTA may incorporate the exception in Article 14.3(2) of CETA where the same breach can be brought in another forum when the chosen forum fails to make a finding for procedural and jurisdictional reasons.

In response to food safety issues, a specific provision for urgent proceedings concerning “perishable or seasonable goods” may be particularly helpful for the proposed FTA. To increase legal predictability, it would be necessary to provide a clear definition of “perishable” or, at the very least, guidance for interpretation. Reference can be drawn from Article 29.4(4) of CETA.

While the proposed FTA would be modelled on the WTO DSM and thus it would contain similar provisions regarding “role of experts,”<sup>219</sup> predictability and consistency are necessary for quality of the panel process. The Parties can consider two WTO-plus provisions that have been adopted by China’s FTAs. First, for procedural consistency, the DSM of the proposed FTA should prescribe model rules of procedure, such as written submissions and hearings for the arbitral tribunal to follow as in

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219. DSU, *supra* note 211 at art. 13.2.

ChAFTA.<sup>220</sup> Secondly, higher consensual elements may be incorporated to boost predictability. The proposed FTA needs a provision, as in NZCFTA, which enables the disputants to comment on technical advice and the arbitral tribunal to take their comments into account.<sup>221</sup>

Enforceability is essential for an effective DSM. The WTO DSM does not guarantee that the defendant will comply with the panel ruling. It only provides a final report as to which disputant is wrong.<sup>222</sup> The complainant can only self-enforce a ruling by requesting negotiations for compensation or authorization from the Dispute Settlement Body to retaliate by suspending concessions. The effectiveness of panel rulings in the WTO DSM seem to depend on the ability of the disputants to self-enforce.

While the proposed FTA would be modelled on WTO, it may consider adding three main WTO-plus features to the compliance procedure of the arbitration panel's decision with reference to GSFTA. First, it should provide an alternative route for the complaining party to enter into negotiation with the party in breach of the agreement to "develop mutually acceptable compensation."<sup>223</sup> This favors Chinese Confucianism practices, which prefer amicable negotiations before resort is made to the arbitration panel to suspend concessions. Secondly, upon the suspension of concessions, the proposed FTA should address possible disputes regarding whether the level of suspension is overly excessive by the original arbitral panel.<sup>224</sup> This provides a more comprehensive enforcement mechanism, which safeguards the interests of the defendant if it believes that the level of compliance is too excessive notwithstanding its willingness to comply. Thirdly, the proposed FTA should offer certainty and predictability by stating that the award of the arbitration panel is "final and binding."<sup>225</sup>

Better still, to boost the efficiency of the DSM, a slight variation regarding the suspension of concessions contained in CSFTA is noteworthy.<sup>226</sup> By adopting such variation, the proposed FTA can entitle the arbitral panel to rule on the level of suspension when it conducts a compliance review.

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220. ChAFTA, *supra* note 107 at annex 15-B.

221. NZCFTA, *supra* note 98 at art. 191(5).

222. Marc L. Busch & Eric Reinhardt, *Bargaining in the Shadow of the Law: Early Settlement in GATT/WTO Disputes*, 24 *FORDHAM INT'L LAW J.* 158, 159-165 (2000).

223. GSFTA, *supra* note 103 at art. 9.9(1).

224. *Id.* at art. 9.9(5).

225. GSFTA, *supra* note 103 at art. 9.8; ChAFTA, *supra* note 107 at art. 15.16(7).

226. China-Singapore Free Trade Agreement, China-Sing., art. 102(3), Jan. 1, 2009.

## V. Conclusion

Labor-abundant China and oil-rich GCC countries have been diversifying their energy relations beyond oil recently, boosting their growth prospects in manifold sectors. China's OBOR initiative potentially opens up gateways for Sino-GCC relations in numerous sectors. Moreover, the GCC countries' high dependence on expatriates creates opportunities for China's excess industrial capacities. Besides a favorable political economy and strong political commitment, the Parties do not have any dispute over human rights, which is the main setback to EU-GCC FTA negotiations. Moreover, they have pledged to work together to protect their security ties, especially the OBOR lanes and the settlement of the Syria conflict.

Nonetheless, there are still challenges that the Parties need to overcome, especially the attainment of mutual recognition in various service areas because of the low educational standards and restrictive immigration policies of the GCC countries. Moreover, the Parties emphasize the need for increased transparency in diverse areas, including conformity assessment procedures, investment regulations, licensing requirements and China's scientific justifications of SPS measures. The various laws and issues involved in OBOR related projects would call for a DSM and an ISDSM that ensure certainty and efficiency.

While the proposed FTA would be modelled on the WTO framework as in past FTAs, it can address its specific challenges with reference to WTO-plus provisions, especially in ChAFTA for services trade and GSFTA for DSM. Meanwhile, CETA innovations for Mode 4 services, investments, ISDSM, SPS and TBT issues would be helpful. The proposed FTA should include a framework requiring positive actions to create investment opportunities, a platform for inputs from the private sector for increased transparency, a prominent role for professional organizations in equivalence, and the granting of citizenship for Chinese skilled workers. On the whole, capacity building should be the ongoing key for overcoming the challenges and realizing the opportunities of the proposed FTA given the importance of technical cooperation in most high priority areas, especially nuclear development, green energy, and education.