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INSIGHT

Taipei's best option

Michael Tai says Taiwan needs to return to the '1992 consensus' for the sake of prosperity

In 2016, President Tsai Ing-wen announced a plan to improve Taiwan's trade and investment ties with 18 countries in Southeast Asia, South Asia and the Pacific. The New Southbound Policy was billed as a programme to promote cooperation in tourism, health care, technology, agriculture and small and medium-sized enterprises with partner countries, including Asean members, Australia and New Zealand. There are push and pull factors in the policy: cross-strait tensions on the one hand, and regional economic integration on the other.

The Association of Southeast Asian Nations has a combined market of some 639 million people, making it one of the largest trade blocs, and Taiwan wants a piece of that market.

Taiwan's relations with the mainland are more important, however. The island's fortunes are closely linked to the mainland. Taiwanese businesses started investing on the mainland from the 1990s, drawn by a common language, low labour costs and a vast market.

Some 70 per cent of Taiwan's outbound direct investment goes to the mainland, and up to two million Taiwanese businessmen and their families live there. The mainland (and Hong Kong) is the Taipei's most important market, accounting for more than 40 per cent of Taiwanese exports. The Tsai administration seeks to reduce dependence on the mainland by redirecting trade and investment to the 18 countries, but the policy faces several hurdles.

Firstly, the policy is hampered by internal division. The two main political parties, the Kuomintang (KMT) and the Democratic Progressive Party (DPP), hold competing views on policy and especially on

relations with Beijing. The former favours friendly engagement with Beijing and the latter, independence. The intense rivalry between the two parties could result in mutual attrition and, for Taiwan, a waste of talent, resources and opportunities.

Frequent changes of government undermine long-term planning, and civil servants are unsure of the future of the New Southbound Policy, especially after Tsai resigned as chairwoman of the ruling DPP following the KMT's landslide victory in last November's local elections.

Secondly, the policy enjoys little support at home and abroad. To avoid the perception that it is competing with Beijing's "Belt and Road Initiative", Taipei

Despite a sizeable budget (NT\$3.2 billion or HK\$812 million in 2018), the policy offers few workable options, and a spate of conferences have generated little popular enthusiasm. The Taiwanese media's focus on domestic news leaves the public poorly informed about the policy, even though there are significant numbers of Southeast Asian contract workers in Taiwan.

Thirdly, the policy lacks focus. It casts too wide a net – these are 18 countries with vast differences in size, population, religion, language and economic development. Taiwan would be wise to tailor the policy to each market's needs.

To do this, there needs to be insightful analysis. However, think tanks supporting the policy lack regional expertise – their researchers typically pay perfunctory visits to the 18 countries – and Taiwanese universities, traditionally oriented towards the West and Japan, fare no better. Of more than 150 universities, only one offers a degree in Southeast Asian studies, and even elite schools show little understanding of their southern neighbours.

Finally, the New Southbound Policy is predicated on an uncertain political calculus. The DPP is on a quest to shift Taiwan's economy away from the mainland, but Taiwanese concerned about the business climate have chosen a different path – by voting for the Beijing-friendly KMT last November. Wary of getting sucked into a risky war in the Taiwan Strait, the United States is opposed to Taiwan independence.

And without Washington's blessing and absolute commitment to defend Taiwan in case of war, independence has no chance. Yet, Tsai rejects the "1992 consensus", an agreement between the two sides to affirm there is "one China" but to be free to interpret what that means.

Although critics of the consensus say its meaning is unclear, the ambiguity is intentional; it is a diplomatic device to allow both sides to maintain the "no unification, no independence, no use of force" status quo. In rejecting the consensus, Tsai has removed the ambiguity and is putting a needless strain upon Beijing. Although Taiwanese enjoy a broad range of civil liberties and are understandably not keen on unification, the economic and geopolitical landscape has shifted in Beijing's favour; as an export-driven economy, Taiwan needs the mainland far more than vice versa.

Electronics is Taiwan's star industry but the domestic market is too small and Taipei needs the mainland market and production bases to build successful brands. The New Southbound Policy aims to redirect Taiwanese investment to Southeast Asia, which simply cannot match the mainland's manufacturing prowess.

The mainland boasts a comprehensive supply chain able to turn blueprints into prototypes often in a matter of days, and 90 per cent of the world's electronics are made at least in part in Shenzhen. Despite rising wages, it is still more efficient to manufacture on the mainland.

US President Donald Trump's retreat from the post-war global order means that Taiwan's interests are ever more aligned with the mainland's, even as Japan, the US' chief Asian ally, takes steps to strengthen business ties with Beijing. The New Southbound Policy cannot effectively address Taiwan's long-term economic challenges; for the sake of prosperity, Taipei may need to return to the consensus, secure the status quo, and seek mutually beneficial cooperation with Beijing.

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Taipei needs the mainland market and production bases to build successful brands

has to keep a low profile and has felt it necessary to declare it has no hidden agenda: the New Southbound Policy does not seek to gain geopolitical stature for Taiwan, but is simply looking to enhance trade.

In the first place, Taiwan has no diplomatic ties with the 18 countries of the plan. Because of pressure from Beijing, those nations are also reluctant to be involved. During his recent visit to Kuala Lumpur, Kaohsiung mayor Han Kuo-yu failed to secure meetings with Malaysian officials.



Why Huawei's lawsuit makes perfect strategic sense

Billy Huang says the company's move seems reckless, but maybe the case is a distraction tactic

Huawei is starting to fight back by slapping lawsuits on both the US and Canadian governments. This could be a grave miscalculation, as misjudged as its decision to let its chief financial officer, Sabrina Meng Wanzhou, travel to Canada last year. The United States Department of Justice probably cheered at the news that the Chinese telecoms equipment maker is suing.

On January 28, the Justice Department had announced criminal charges against Huawei, two affiliates and Meng. The company is charged with violating US sanctions on Iran and conspiring to obstruct justice related to the case. According to the indictment filed in New York City, Huawei sought to move witnesses with knowledge of its Iran-based business back to China, where they could not be interviewed by the FBI. But the company's lawsuit now gives the Justice Department a chance to leverage the judiciary's power to ask those witnesses to return to the US and take the stand.

"It's unwise for Huawei to start the lawsuit," said Raymond H. Wong, president of Wong, Wong & Associates, in an interview. Wong has some 30 years of experience as a lawyer and has represented executives of another Chinese telecoms giant in North America. He said that rarely have there been cases in the US where Chinese company representatives do well on the witness box.

According to the Justice Department's indictment, the Federal Bureau of Investigation in July 2007 interviewed the founder of Huawei, referred to as "Individual-1", who "falsely stated, in substance and in part, that Huawei did not conduct any activity in violation of US export laws" and "had not dealt directly with any Iranian company".

"Individual-1" is widely believed to be Huawei founder Ren Zhengfei. If Ren is called as a witness, he might be less fortunate than his daughter. He could be arrested after his plane lands in New York.

Another potential witness is Huawei executive Charles Ding. The indictment said that in September 2012, he testified before US Congress that Huawei's business in Iran had not "violated any laws and regulations including sanction-related requirements". Then senior vice-president of Huawei, he also said the Chinese government had no influence on the company's daily operations.

Huawei would do well to study the price-fixing case of AU Optronics, a Taiwanese producer of liquid crystal display screens. In 2010, the US Justice Department indicted AU Optronics and its executives for setting prices of screens with other Asian firms including Samsung. Six companies which pleaded guilty in the inquiry, including Taiwan's Chi Mei, South Korea's LG and Japan's Sharp, were fined more than US\$860 million.

When AU Optronics executives showed up in the US that year to contest charges, a US District judge barred them from leaving the country and ordered them to surrender their passports. In 2012, two of the executives were sentenced to three years in jail. Former vice-chairman Chen Hsuan-bin returned to Taiwan only in 2017, after serving 2,343 days in prison.

Huawei's lawsuit could cause the company to lose ground in both China and the US

During our interview, Raymond Wong recalled he had strongly advised the Taiwanese company not to flirt with the US legal system "but they still came".

Huawei's lawsuit could cause the company to lose ground in both China and the US. Although Beijing has given Huawei consistent support following Meng's arrest last December, the new lawsuit could lead to a situation beyond Beijing's control, especially when there is widespread suspicion about Huawei's connection to

the Chinese intelligence community. Last year, the French newspaper *Le Monde Afrique* broke the story of allegations of China hacking the African Union's headquarters in Addis Ababa, Ethiopia.

Every night for five years, the organisation's confidential data was reportedly sent to servers in Shanghai. Beijing denounced the allegations as "ridiculous and preposterous". In a round-table interview with the international media in January, Ren Zhengfei simply said the hacking case "had nothing to do with Huawei". However, it is public knowledge that Huawei supplied some of the African Union's equipment. Could Huawei's legal team dissociate the company from the hacking case if it resurfaced in a US court?

From a legal perspective, Huawei's lawsuit defies common sense. With that being said, it is highly possible that Huawei is "making a feint to the east and attacking in the west" – using a distraction tactic from the Chinese classic *The Thirty-six Stratagems*, that is. Perhaps Huawei has decided to give up the North American market, and the lawsuit is nothing more than a public relations stunt designed to draw global media attention and win over markets elsewhere. But don't forget, in the West, there is a saying, "People who live in glass houses shouldn't throw stones." Huawei should stay on its toes.

Billy Huang is a media veteran who served leading media outlets in Beijing, Hong Kong, Singapore and America for more than 20 years

Xi will ensure credibility of investment law

Robert Lawrence Kuhn says the Chinese president's commitment to globalisation will make sure the proposed legislation curbs predatory practices aimed at foreign businesses

With its new foreign investment law, China is quick to stress the law's lack of specifics, should appreciate Beijing's commitment and process. China has become the champion of globalisation, propounding the overarching benefits of free trade, and by proposing to open up its own markets further, Beijing seeks to align its domestic policy with its international strategy.

Years in the making, the foreign investment law exemplifies the government's commitment to facilitate foreign companies doing business in China, which would enhance the kinds of market competition that benefit mainland consumers. Though the specifics needed for full implementation are yet to come, the law intends to give foreign businesses broader market access, protect their intellectual property, prohibit forced technology transfer, and guarantee equal treatment (a "level playing field") for foreign and domestic companies.

The development of the foreign investment law offers insight into the legislative process in China. The law entered the State Council's legislative plan in 2014, and in 2015, the Ministry of Commerce published a draft of the law for the purpose of soliciting opinions.

In December 2018, the final draft of the legislation was published for public review and oversight. The long delay is attributed, non publicly, to sharp disagreements among "relevant authorities and ministries" (as they like to say).

The draft law consists of 41 articles in six parts, stressing investment promotion, protection, management, and legal responsibility. It requires national and local governments to upgrade their foreign investment services so that they become more convenient, efficient and transparent. Local governments are directed to abide strictly by policy commitments made to foreign investors and foreign-invested enterprises in accordance with the law.

The law's prime objectives are to improve the openness, transparency

Beijing believes that the foreign investment law will become the most important legal milestone in China's continuing process of opening up to the outside world. The law's prime objectives are to improve the openness, transparency and predictability of the investment environment for foreign investors.

Yet there is concern among foreign media and business leaders about how the law will be implemented and enforced. The law in its current form is much shorter than the 170 articles in the 2015 draft; moreover, about one-third of the current 41 articles are a single sentence. Thus, there would seem ample room for the law's "flexible application" in the hands of bureaucrats, especially interest-group bureaucrats. One proviso, especially worrying to foreigners, states that complaints would be heard in Chinese courts.

Under the new law, conditions may well be only marginally better for foreign businesses.

But I am cautiously optimistic that a stronger force will ensure the new law ushers in needed improvements. That stronger force is President Xi Jinping's deep commitment to promoting globalisation, and the fact that China's credibility as a champion of globalisation will depend on the degree to which its foreign investment law is recognised and respected by the international business community. That's why, in preparation for this year's meetings of its legislature and political advisory body, the legislative process was unusually accelerated.

It had been in January 2017, at the World Economic Forum in Davos, that Xi gave perhaps the most impassioned speech in defence of globalisation, when it was under pressure, even attack, by US President Donald Trump and other forces of populism and protectionism. At the time, some foreign media criticised China for hypocrisy – "talking the talk" of globalisation but not "walking the walk".

I believe Xi is determined that Beijing must continue to champion globalisation, which is why the foreign investment law must be effective, and why, after it becomes the law of the land, foreign businesses must appreciate its change-making powers.

Robert Lawrence Kuhn is chairman of The Kuhn Foundation and host of *Closer To China with R.L. Kuhn* (CGTN). In December 2018, he received the China reform friendship medal



President Xi Jinping chats with women delegates to the National People's Congress in Beijing. Photo: Xinhua