

The Korea-ASEAN FTA and new legal fields for their cooperation

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Abstract: The Korea-ASEAN FTA have been providing favoured trade environment to the members. The FTA partners will find more and better legal tools for expanding the trades. There are many issues to consider in the FTA works such as the KIC issue in the Korean peninsula and the ODA relation. They will also see the direction of the economic cooperation in Northeast and East Asian region. Korea's experiences on the economic development and the reform of the politics with the laws may be useful for ASEAN members to comply with international standards. The Korean trade regulations and legal standards are considered as economic resources or infrastructures. Therefore, the Korea and ASEAN members can share the Korean experiences and improve their resources and infrastructures for the common economic growth based on the FTA relation. Future legislations and amendments of the laws in the members must be done with the direction of complying with the principles of promoting cooperation, investment or exchanges. Then, they can expand the cooperation in the legal fields. The cooperation among the partners should be done step by step to maximise the effects of the FTA relation.

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I. Introduction

East Asia has emerged as the most dynamic region in the global political economy despite a series of economic and financial crises since 1990s. The crises reinvigorated the study of the international relations of East Asia particularly in Korea and ASEAN. As a result of the crises, it has highlighted the pressing need for stronger regional cooperation in international economic relations.

The concept of the Preferential Trade Agreements (PTA such as FTAs) is accepted as one of the main legal infrastructures for international cooperation these days. Many countries in the East Asia are using PTAs for their regional cooperation. The Korean government recognised the importance of PTAs and built the plans to join the surge of the international trend. They expected that PTAs can be the vehicles for their systemic reforms in many areas including their laws.

This article seeks to highlight the Korean FTAs, focusing on the trade relation with ASEAN countries. In this study, the mainstream and policies of the PTAs in the East Asian countries are also surveyed. Then, the Korea-ASEAN FTA relationship is analysed, as it could lend some clues toward building a paradigm towards better economic or trade relations between two partners. Finally, the article proposes ideas for active cooperation among the members in the legal fields.

II. The FTAs in Korea

1. The Korean FTA

Korea turned its eyes to the PTA trend only after the Asian financial crisis in 1997. The financial crisis provided the momentum for Korea to promote the PTA policy as one of the means to propel economic reforms (Bongchul Kim, 2007).

Korean PTAs have commonly the FTA style. Although they may take different names such as the Korea-India Closer Economic Partnership Agreement (CEPA), the legal structure is the same as an FTA. So far, Korea has built the FTA relations with various partners such as Chile, Singapore, EFTA, EU, ASEAN, India, Peru, Colombia, Turkey and the US. Furthermore, negotiations are underway with many other countries.

The Korean FTA policy follows the four strategies. First, the government pursues simultaneous negotiations with interested counterparts. Second, Korea seeks a comprehensive FTA covering various fields like trade in goods, trade in services, investment, government procurement, technical barriers and intellectual property. Third, the government tries to take national consensus building and a transparent process as important factors to consider. Fourth, they drive FTAs with large or newly rising economies such as the EU, the US, ASEAN, China, MERCOSUR and India (Bongchul Kim, 2011).

2. Korea-ASEAN FTA

Before Korea-ASEAN FTA, the Korea-Singapore FTA was signed in August 2004. The Korean government expected that the Korea-Singapore FTA can strengthen the foundation for Korean industries to make inroads into the Southeast Asian or ASEAN markets. Moreover, Singapore is an international hub for business, finance and distribution and is increasingly becoming a target investment country for multinational companies.

In October 2003, at the ASEAN-Korea Summit held in Bali, Korea proposed that Korea and ASEAN should deepen relations by developing a comprehensive partnership, with the possibility of establishing an FTA. The negotiation for the Korea-ASEAN FTA commenced in 2005 1 year later than the Korea-Singapore FTA.

The whole FTA consists of four parts as the Framework Agreement, Agreement on Dispute Settlement Mechanism, Agreement on Trade in Goods and Agreement on Trade in Services. The Framework Agreement consists of 21 articles and three annexes. The FTA on the trade in goods area entered into force in 2007 and the Agreements on the services and Investment areas entered into force in 2009.

The part of Agreement on the trade in goods is ruled by the three annexes. Annex 1 is 'Modalities for Tariff Reduction and Elimination for Tariff Lines Placed in the Normal Track' and Annex 2 is 'Modalities for Tariff Reduction and Elimination for Tariff Lines Placed in the Sensitive Track.' Annex 3 of the FTA is about the rules of origin.

The FTA created a strategic coalition that can mitigate any adverse effects arising from the acute China-Japan rivalry in the Southeast Asian region.

3. An example of the issues on Korean FTAs – the special treatments of the KIC

Peace on the Korean peninsula is one of the main issues in many Korean FTA relations. One of the challenges and characteristics of Korean FTAs is whether goods made in the Kaesong Industrial complex (KIC) in the North can get the same benefit with goods made in the South. The KIC is an inter-Korean joint venture project that began in 2000. Products made at the KIC are imported into South Korea and are either consumed in South Korea or exported to other countries (Cho, Myung-Chul et al., 2005).

The Special Act on the Execution of the WTO Agreement in Korea was made to facilitate the application of Korean FTAs. Section 4 of article 3 in the act declares the principle of 'inter-Korean' transaction and imposes obligations on the Korean government of making efforts for the KIC to be

recognised in international society. Article 5 of the act also provides for the 'inter-Korean' transaction principle.

Article 13 and Appendix 4 to Annex I of the Korea-EFTA FTA also provides a standard for the treatment of the KIC-produced goods as Korea-origin goods. The KIC-produced goods are considered as Korea-origin goods if the total value of non-originating input does not exceed 40 percent of the ex-works price of the final product for which originating status is claimed, and the value of originating materials exported from Korea is not less than 60 percent of the total value of materials used in manufacturing the re-imported material or product.

Annex 3 of the Korea-ASEAN FTA on trade in goods provides a standard for the treatment of the KIC-produced goods as Korea-origin goods. The standard is similar to that of the Korea-EFTA FTA, i.e., the ratio of non-originating input and originating materials from Korea is 4 to 6. Article 3.14 of the Korea-India CEPA, Annex 3-B and the notes exchanged by both parties also provide a standard for the KIC-produced goods as Korea-origin goods. The standard is similar to those of the Korea-EFTA FTA and the Korea-ASEAN FTA.

Although the details of the provisions are different, many Korean FTAs already have the special provisions for the preferential treatment to the products from the KIC. That is, the articles provide the possibilities to recognise the product from the KIC as a product 'Made in Korea.' The negotiation for the Korea-China FTA also started under the agreement to admit the special treatment to the KIC products. Therefore, the KIC issue should be settled in when we talk about regional integration in Asia.

III. The ASEAN PTA issues with the Northeast Asia and Korea

1. The Northeast Asian FTA?

ASEAN is the main regional integration hub in the Southeast Asian region. It is a geo-political and economic organisation of ten countries located in this area. The aims of ASEAN include the acceleration of economic growth, social progress, cultural development among its members, and the promotion of regional peace. ASEAN has its own FTA, the Asian Free Trade Area (AFTA) which was signed in 1992. The AFTA is an agreement by the member nations of ASEAN concerning local manufacturing in all ASEAN countries (Tubagus Feridhanusetyawan, 2005).

The three countries in Northeast Asia reveal different characteristics in their PTAs. However, the three countries became interested in the idea of forming a Northeast Asian FTA (the CJK FTA). From a long term view, the FTA idea can be regarded as the

first step for the 'Northeast Asian Community' as the ultimate vision for Northeast Asian economic integration.

There are possible ways to the 'Northeast Asian FTA.' Firstly, they can consider the trilateral negotiations for the CJK FTA. Secondly, the three countries can take two steps for the goal. Lastly, the ASEAN+3 Idea by the concept of the PTA is proposed as the economic integration of the East Asian region. This must be taken into account when thinking about the CJK FTA because the ASEAN+3 PTA idea will include the CJK FTA norm.

2. The possibility of the ASEAN+3 Idea by the concept of the PTA

ASEAN members and the three Northeast Asian countries (ASEAN plus 3, APT) are discussing plans for an East Asian Community as a new framework for regional cooperation. This aims at strengthening and deepening East Asia cooperation and foresees the establishment of a region wide PTA.

ASEAN has forgone the regional integration movement since the 1967 while each of The 3 'rivalries'-China, Korea, and Japan-has sought later for institutions to achieve regional ties from the mid 1990s in more desperate manner than any time in history since the de-colonization from Japan, due to the inexperienced Asian economic crisis that deflated even the GDP of the wealthiest 'dragon' of Asia.

The initiation of APT process attributes for these reasons: the prevention of socio-economic degradation of Asian countries from the hardly controllable factors outside the Asia, such as their assets in foreign currencies subject to it, with more extensive regionalism overcoming distance with immense scale of trade that has been built for half a century.

Many types of cooperation are seen as the stepping stones towards the socio-cultural integration that can give birth to the largest entity of the East Asian integration. In advance, the socio-cultural ties begun from the early 2000s were the ingredients for such a movement-the Ministerial meeting in official grounds. The unprecedented increase of the tourist exchange between the ASEAN and the Northeast Asia in unofficial grounds occurred thanks to the boom of the K-Pop culture industry. Therefore, the ASEAN+3 PTA idea has enough positive possibility.

3. The Korea-ASEAN FTA and its legal challenges in the international stage

The ASEAN-Korea FTA is enabling both economies to reform and develop their industrial sectors. The partners also believe that the FTA will be useful as the legal infrastructure to expand their trade and economic profits. Despite these benefits,

there are some challenges facing the PTA relation of Korea and ASEAN's economies.

First, Korea is trying to retain trade barriers for its major agricultural products, and ASEAN wants to retain trade barriers against some Korean exports. This mutual retainment of trade barriers might be inconsistent with WTO rules, and it would reduce the benefits of trade liberalisation, which is the purpose of the FTA (Won-Mog Choi, 2007).

Second, not all ASEAN countries are WTO Members, and Korea may find it difficult to obtain WTO approval for the FTA. As a result, Korea needs to ensure that its agreements with non-WTO countries comply with WTO rules.

Third, this FTA is expected to include special rules of origin for a South and North Korean economic cooperation project such as the KIC. In order to be compatible with WTO regulations, the FTA must ensure that the rules are used only for preferential tariff purposes.

IV. New Paradigm to the Korea-ASEAN Trade Relation Laws

1. An example of the legal issues in FTA relations – Dispute Settlement Mechanism (DSM)

As a general rule, DSM was intended to resolve all disputes between the parties concerning the interpretation or application of respective FTAs. For these purposes the parties are encouraged to resolve disputes by mutual consultations, conciliation or mediation. If these measures persistent and fail to achieve consensus on a dispute, DSMs is invoked to provide for the creation of special arbitral tribunals or panels. The agreements stipulate the process of these bodies' creation and activity, including the rights of third parties, which can have a substantial interest in a dispute.

The Korea-ASEAN Agreement on Dispute Settlement Mechanism (DSM) signed on 13 December 2005. It is a structured mechanism which covers disputes between members, was a step forward in dealing with ASEAN's lack of a supranational decision-making or law-making body to not only arbitrate negotiations, but legitimise legal structures built to facilitate implementation of agreements (Hank Giokhay Lim, Kester TAY, Yi-Xun, 2008).

Although DSMs of the Korea-ASEAN are less legalistic in nature than the WTO DSM which leaves more discretion to the political bodies of East Asian countries, this establishment is a strong evidence proof of growing legalism in the field of international economic cooperation and though working towards a promising development for a more transparent approach to dispute settlement in the region. Similarly, provisions enshrined under

international economic agreements concluded between ASEAN and other East Asian States had laid a firm commitment for a long-term cooperation with East Asia on social and economical aspects.

Having the characteristic of an international treaty, the Korea-ASEAN FTA has a legal system of rights and obligations for the Parties. The enforcement of any trade agreement entails the translation of legal provisions into effective results. However, this depends both on the implementation of the obligations and the resolution of disputes related to such implementation. The Agreement on DSM applies to all disputes on trade and economic cooperation that might arise between two Parties in connection with the FTA implementation.

2. Korean Domestic Laws regarding the FTAs and its influence on the ASEAN relations

FTAs may make the changes of domestic laws. There are several regulations that have provisions concerning FTAs in Korea. The Special Act on the Execution of the WTO Agreement above also provides certain rule on the application of FTAs. Based on the rule, the Customs law made special treatment system to the FTA partners. The Act on Special Cases of the Customs Act for the Implementation of Free Trade Agreements is good example for that. This act provides the special favoured rules for the products from FTA partners as the exemption of the normal rules in the Customs Act.

The Law on the Inspection of Unfair Trade Act and Trade Remedies are also major substantive laws which have several special articles regarding FTAs. Article 22-3 (Safeguard Measures by Free Trade Agreements with Foreign States), Article 22-4 (Safeguard Measures by Free Trade Agreements with Foreign States), Article 22-5 (Trade Damage Support Measures on Increase in Import of Special Goods following FTA) and Article 22-6 (Cooperation with Foreign State after FTA) of the Inspection of Unfair Trade Act and Trade Remedies are special provisions in relation to FTAs.

There are discussions on legislating for a general law covering processes of FTA negotiations and the execution of FTAs. For example, there are some opinions that the Korean National Assembly must have active involvement in the decision-making process regarding the trade policies. According to the opinions, many major difficulties in the decision-making process and for the implementation of FTAs can be resolved emphasizing the active role of the Assembly and the cooperation or share in responsibilities between the legislative and the administrative authorities.

Many other Korean laws are related to the issue of FTAs direct and indirect ways. For example, there are several laws regarding the re-organization of domestic industries with the FTA policy such as 'Special Act on Assistance to Farmers, Fishermen, etc. following the Conclusion of Free Trade Agreements' and 'Act on Trade Adjustment Assistance Following the Free Trade Agreements'. Furthermore, many other economy and industry related laws can be the targets of the changes under the FTA policy for the effective use of the legal infrastructure.

The Korean domestic laws on the FTA issues can be used for the case of the Korea-ASEAN FTA relations in Korea. For example, if a contract between certain companies from Korea and ASEAN member under the favoured treatment system of the FTA, then sometimes the party may have a chance to apply the special domestic law for the FTA condition. They can require for the Korean government to take certain measure in some case. The case may include trade remedy, investment protection measure, support to an industry and cooperation of governments to solve a certain issue. In some ways, ASEAN members may also consider to make similar domestic policies and laws to Korea.

3. New cooperation method among the FTA partners

The FTA relation can be developed to the field of the 'international development and cooperation' or 'aid for developing countries.' Official Development Assistance, ODA is the official assistance that advanced country provides give, loan, technical aid, and others to developing country or international organisation as a part of the above fields (ODA KOREA). In a legal sense, ODA is an official policy or action to assist developing worlds based on domestic and foreign legal systems.

It is also rely on economic trading actions of countries and enterprises which are the main subject of FTAs. There is no doubt that Korea had benefited from the ODA from the international society. Many aid-receiving countries are interested in benchmarking Korea's economic development model to apply their countries to boost their economy.

Some ASEAN members are important to Korea as the major targets of Korean ODA. Many Korean ODA projects to the Southeast Asian countries are done mainly in the fields of the poverty reduction, the economic improvement, the education, etc. It may even be considerable to make a special provision for the ODA cooperation system in the Korea-ASEAN FTA. Then, the members can expect economic cooperation for the profits by the trades, investments and ODA works together.

The harmonisation of the ODA and the FTA policies and laws can increase the benefits building and maintaining the cooperation system with flexibility by economic, legal and other experts. Korea can anticipate the synergy by collaboration between their FTA policy and the Korea-ASEAN economic cooperation with the support of the ODA.

Proper reformation of the laws which is suitable to the ODA-FTA policy with ASEAN members should be done. For example, it should be concretely discussed the best way to give financial supports to the Korean-ASEAN enterprises with the ODA supports from Korea. This can be done under the mutual understandings for the synergy effects of FTA-ODA and with the strategic cooperation with ASEAN members. Consequential effort of reformation of laws is also required.

V. Concluding Remarks - Proposals on the promotion of legal cooperation for the FTA relations

The Korea-ASEAN FTA may provide more a favoured trade environment to the ASEAN members than the normal WTO or multilateral trade system. In this sense, the Korea-ASEAN FTA is the legal infrastructure for the cooperation works. Then, the FTA-ODA combined policy and norm is needed for the Korea-ASEAN relation. The harmonisation or strategic cooperation of the policies on ODA among the partners is also useful.

In the point of the domestic laws, some of Southeast Asian countries still need more legal reforms to comply with international standards. Especially speaking, Korea's experience of economic and political development from its developing stage to now will be very helpful to them in its developing stage.

It is important to note that the legal cooperation should be done step by step to maximise the chance of success. With respect to the legal system of Korea, trade regulations and standards set by PTAs are considered a kind of economic resources because a country that has various and sound trade regulations set by PTAs will benefit by the increase in trade resulted from these PTAs, meaning that this country is equipped with many legal infrastructures promoting a sound economic growth.

In general, future legislations and amendments in the members need to be done with the direction of complying with the principles of promoting cooperation, investment or exchanges

rather than fine restrictions. However, crimes such as money laundering and avoidance of properly imposed taxes should be treated well in the common legal system. This movement will be helpful to business entities and human resources of members seeking chances in the East Asian PTA era, and helpful to ensure the future growth engine by increasing trade relationship in the region.

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