

Proposals for the threshold volume for the application of safeguard measures of an East Asia FTA

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Abstract

Preferential Trade Agreements (PTAs) proliferate recently, especially after the formation of the WTO. As regional integration has deepened with many bilateral FTAs in East Asia, a movement for an economic integration at the region-wide level arises in the region. This paper presents some proposals for the provisions regarding the threshold volume for the application of safeguard measures of a possible East Asia FTA, based on examining relevant provisions of selected PTAs concluded between countries in the region. It also considers the possibility of providing preferential treatment for developing country members of an East Asia FTA. One proposal is setting a *de minimis* volume of 1 per cent market share for a party to an East Asia FTA and 2 per cent market share for a developing country member of an East Asia FTA. This proposal may be applied to the application of both bilateral and global safeguard measures, and this volume standard may be applied also to a mid-term review and review cases for extension of a measure.

Key Words: FTA; PTA; East Asia; Korea-ASEAN economic relation; Korea-ASEAN FTA; regional integration; RCEP

71. 1. Introduction

As we have seen after the formation of the WTO, Preferential Trade Agreements (PTAs) proliferate recently. According to a WTO statistic, 488 PTAs of the 612 PTAs have been notified to the WTO after 1995 [1]. In spite of the fact that the WTO uses the term “RTAs” in its organizational body and in its documents, the term “PTAs” is more adequate than the term “RTAs” since the WTO member countries are growingly concluding trade agreements with their trading partners located at a long distance from them compared with those in the past among the neighboring countries [2]. Many PTAs have also been concluded between countries in East Asia. As regional integration has deepened with many bilateral FTAs in the region, a movement for an economic integration at the region-wide level arises. There are 5 ASEAN+1 FTAs (with Australia/New Zealand, China, India, Japan, and Korea). China, Japan, and Korea are negotiating a China-Japan-Korea trilateral FTA. The ASEAN and its “dialogue partners”, namely, Australia, China, India, Japan, Korea, and New Zealand are now negotiating the Regional Comprehensive Economic Partnership (RCEP, also known as ASEAN+6).

This paper presents some proposals for the provisions regarding the threshold volume for the application of safeguard measures of a possible East Asia FTA. It also considers the possibility of providing preferential treatment for developing country members of an East Asia FTA. For this purpose, relevant provisions of selected PTAs as shown in Table 1 concluded between countries in East Asia were examined. This paper assumes a possible East Asia FTA in which at least China, Japan, Korea and the ASEAN will participate. It is also worth noting that this paper assumes that an East Asia FTA will have both types of safeguards, in other words, bilateral safeguards and global safeguards, considering the fact that the existing 5 ASEAN+1 FTAs all have both types of safeguards.

Table 1. Selected PTAs Examined

Name	Name	Name	Name	Name
Korea-ASEAN Trade in Goods Agreement	ASEAN-China Trade in Goods Agreement	Japan-ASEAN CEPA	ASEAN-India Trade in Goods Agreement	ASEAN-Australia-New Zealand FTA
Korea-Singapore FTA	Korea-India CEPA	Korea-Australia FTA	China-New Zealand FTA	China-Singapore FTA
Japan-Singapore EPA	Japan-India CEPA	New Zealand-Malaysia FTA	New Zealand-Singapore CEPA	Singapore-Australia FTA
India-Singapore CECA	Australia-New Zealand CERTA	Australia-Thailand FTA		

4. 2. Relevant provisions of the Safeguard Agreement

According to Article 9.1 of the Safeguard Agreement, a global safeguard measure shall not be applied to a developing country whose import share of the product concerned in the importing country does not exceed 3 per cent if the share of imports of the developing countries with less than 3 per cent collectively does not account for more than 9 per cent of total imports. In addition, according to Article 9.2 of the Safeguard Agreement, a developing country can apply a safeguard measure for the maximum period of up to 10 years, which is a 2 year-extension of the period allowed to the other non-developing countries. The provision also allows an advantage to a developing country with respect to the reapplication of a global safeguard measure to the product which has been subject to a measure.

4. 3. Threshold volume for the application of a bilateral safeguard measure

Some of the PTAs examined provide that a bilateral safeguard measure cannot be applied to a *developing* country member of the PTA if import share of such a country

individually does not exceed 3 per cent of total imports of the good concerned from *the other PTA parties*, provided that those countries with less than 3 per cent import share collectively account for not more than 9 per cent of total imports of the good concerned from the other PTA parties [3]. These PTAs follow the attitude of Article 9.1 of the Safeguard Agreement except that the threshold is calculated based on the imports of the good concerned from the other PTA parties. Some PTAs provide that a bilateral safeguard measure cannot be applied against a good originating in the territory of a PTA party, so long as its share of imports of the good concerned in the importing PTA party does not exceed 3 per cent of the total imports from *the PTA parties* [4]. China-Singapore FTA provides that a bilateral safeguard measure cannot be applied against a good originating in the territory of a PTA party, so long as its share of imports of the good concerned in the importing PTA party does not exceed 3 per cent of the *total imports of the good concerned in the importing PTA party* [5]. India-Singapore CECA provides that a bilateral safeguard measure cannot be applied against a good originating in the territory of a PTA party if imports of the good concerned represent less than 2 per cent of *market share* in terms of domestic sales or less than 3 per cent of *total imports* [6]. The rest of the PTAs examined do not have provisions regarding *de minimis* volume for the exemption from a safeguard measure and preferences for a developing country member of the PTAs.

Firstly, considering a need of internal trade liberalization through PTAs and a need of providing a preference to a developing country member of an East Asia FTA as an incentive for such countries' participating in an East Asia FTA, it is desirable for an East Asia FTA to set a higher level of *de minimis* volume applicable only to developing member countries, in addition to one which will be applied to all the other PTA member states. If that is the case, a need to maintain a collective share standard will be low as long as such collective share is not high enough to constitute a (substantial) cause of serious injury.

Secondly, even if an East Asia FTA set a *de minimis* volume, a question of whether the threshold volume should be calculated based on imports from *all countries* or whether it should be based on imports from *only the parties to an East Asia FTA* must be answered. As shown above, the PTAs examined are divided in this respect. Considering the fact that a safeguard measure is needed to remedy serious injury which occurs to domestic industry, it is better to calculate the threshold volume based on imports from *all countries* than it being calculated based on imports from only the parties to an East Asia FTA. Thus, a threshold such as "2 per cent import share" for each member state of an East Asia FTA and "4 per cent import share" for each developing country member of an East Asia FTA may be set.

Although the proposal above is a possible solution for an East Asia FTA, there is one remaining question to be considered with respect to the calculation of the threshold volume. That is whether the threshold volume should be calculated based on “import share” or “market share”. An opinion argues that, regarding the calculation of negligible volume in anti-dumping or countervailing duty measures, a market share test is more sensible than an import share test [7]. Considering the common nature of anti-dumping, countervailing duty, and safeguard measures as trade remedies to deal with injury to domestic industry, this opinion can be extended to the case of safeguard measures. In fact, among the PTAs examined, India-Singapore CECA adopts a combination of a market share test and an import share test in calculating threshold volume [8]. The PTA lowers the possibility of the application of a bilateral safeguard measure by introducing a market share standard. For example, according to the PTA, a bilateral safeguard measure cannot be applied against imports from the other PTA party if market share of that party is less than 2 per cent though its import share is more than 3 per cent of total imports. This kind of combination method may be useful in a country-to-country basis PTA. However, it will not be a desirable option for an East Asia FTA which will consist of many developing countries and other countries since different standards may be used depending on the circumstances of each exporting country. Therefore, the proposal presented here is that an East Asia FTA will adopt a *de minimis* volume of 1 per cent *market* share for a party to an East Asia FTA and 2 per cent *market* share for a developing country member of an East Asia FTA. If an East Asia FTA consists of ASEAN+6 or fewer number of countries, even collective share of *de minimis* volume will not be high enough to constitute a (substantial) cause of serious injury. In addition, this volume standard may be applied also to review cases for extension of a measure.

Regarding the question of whether to provide a developing country member of an East Asia FTA with some preferences which are similar to those set out in Article 9.2 of the Safeguard Agreement for a case where it applies a global safeguard measure - that is a 2 year-extension of the period allowed to the other non-developing countries -, in my opinion, a need to provide such preferences is not high if an East Asia FTA sets a short transition period and a short duration of a bilateral safeguard measure.

24. 4. Threshold volume for the application of a global safeguard measure

No PTAs examined have special provisions regarding *de minimis* volume and special treatment for developing countries. Thus, all these PTAs follow the requirements of the Safeguard Agreement.

Considering a need of internal trade liberalization by exempting the PTA parties from safeguard measures and a need of balancing bilateral safeguards and global safeguards,

the proposal presented in the previous section can be extended to the application of a global safeguard measure to the parties to an East Asia FTA. Thus, an East Asia FTA may adopt a *de minimis* volume of 1 per cent market share for a party to an East Asia FTA and 2 per cent market share for a developing country member of an East Asia FTA. In addition, this volume standard may be applied also to a mid-term review and an extension of a measure.

Regarding the question of whether to provide a developing country member of an East Asia FTA with some preferences in case where it applies a global safeguard measure to the other parties, in my opinion, a need to provide the preferences set out in Article 9.2 of the Safeguard Agreement still remains if an East Asia FTA does not set a short duration of a global safeguard measure.

마. 5. Concluding remarks

As shown above, this paper presents a proposal of setting a *de minimis* volume of 1 per cent market share for a party to an East Asia FTA and 2 per cent market share for a developing country member of an East Asia FTA, based on examining relevant provisions of selected PTAs concluded between countries in East Asia. This proposal may be applied to the application of both bilateral and global safeguard measures, and this volume standard may be applied also to a mid-term review and review cases for extension of a measure. The authors hope that the proposals for an East Asia FTA may also give an indication to PTAs and multilateral trade negotiations in the future.

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[3] Japan-ASEAN CEPA, *supra* Table 1, art. 20.3; ASEAN-Australia-New Zealand FTA, *supra* Table 1, ch. 7, art. 6.2.

[4] Korea-ASEAN Trade in Goods Agreement, *supra* Table 1, art. 9.7; ASEAN-China Trade in Goods Agreement, *supra* Table 1, art. 9.7; ASEAN-India Trade in Goods Agreement, *supra* Table 1, art. 10.7.

[5] China-Singapore FTA, *supra* Table 1, art. 43.4.

[6] India-Singapore CECA, *supra* Table 1, art. 2.9.2(f).

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[8] India-Singapore CECA, *supra* Table 1, art. 2.9.2(f).

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