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Comments

on Professor Lawan's paper  
titled

“Legal and Institutional Framework for  
Open Regionalism in Asia:  
A case Study of ASEAN”

by Satoru Taira

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# 1. “Open Regionalism”

## What does it mean legally?

- According to Prof. Lawan;
- it balances deeper regional integration with the global liberalization.
- The preferences extend to ASEAN also can be enjoyed by non-ASEAN.
- Margin of preference is kept as low as it can be.
- Integration will be made based on the unilateral liberalization.

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- I agree ASEAN countries heavily depend on external trade and investment.
  - But frankly speaking, I wonder whether the “Open Regionalism” is an effective strategy for regional integration. Can countries be integrated without any preferences? Or are there any preferences when these preferences are shared by all countries?
  - In such a situation, do the countries give preference (liberalize) unilaterally?

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## 2. Institutional mechanism for ASEAN integration

- According to Prof. Lawan, ASEAN countries prefer to develop a decentralized regulatory networks with regulations enforced nationally but coordinated through regional government- to- government procedures.
- Here also unilateralism seems to dominate.
- So I am doubtful the effectiveness of such a mechanism.

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Comments

on Prof. Ahn's paper  
titled

“Emerging Diversity in Trade Remedy  
Systems:

Case in East Asian FTAs”

by Satoru Taira

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# 1. The difference of approach to trade remedy measures between Japan and Korea

Prof. Ahn pointed that Korea is a frequent user while Japan is a very reluctant user of trade remedy measures.

First, I'd like to make a comment on this point;

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- Japan

- has been too much committed to the free trade principle,
- and considers that using trade remedy measures undermines this principle.
- had evaded utilization of trade remedy measures by the abusive use of managed trade measures such as VER and OMA during the time of GATT 1947.
- seems to be still inclined to use these managed trade measures although they are now illegal under the current Safeguard Agreement.
- The example is: the recent avoidance of a formal safeguard measure against agricultural products from China and this case was settled by requiring Chinese restraints of production instead of a VER.

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## Korea

- seems to take an approach that trade remedy measures should be positively utilized as a kind of safety-net.
  - And I appreciate this approach.
  
  - In this connection, the recent “Laver Case” is noteworthy, although this was not a trade remedy case. In this case, Korea complained the Japanese quota on laver before the WTO panel but just before almost winning the case, made an agreement with Japan.
- I wonder why Korea made this OMA with Japan.



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## 2. Trade remedy measures under FTAs

- As pointed by Prof. Ahn, there are three different approaches on trade remedy measures under FTAs.
  - (i) FTA parties exempt other FTA parties from the application of global remedy measures.
  - (ii) FTA parties adopt FTA-specific (WTO plus) trade remedy measures.
  - (iii) FTA parties are silent as to trade remedy measures.

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- The FTAs concluded by Japan lack any antidumping stipulations and this is a case of the above (iii).
    - What may this mean? Two possible interpretations;
      - ① FTA parties maintain all the rights and obligations under the WTO/AD Agreement. There is no differentiation in terms of a FTA membership. Or
      - ② FTA parties secure the consistency with requirement of the elimination of “other restrictive regulations of commerce” under GATT Article XXIV:8, but keeping always the possibility of using AD measures against the other FTA parties if necessary.
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### 3. Adoption of WTO plus trade remedy measures under the Japan-Korea FTA

- As pointed by Prof. Ahn, this is an important precedent for the amelioration of WTO trade remedy rules.
- However, our precedent is no more than the agreement of targeted countries. It may not carry so much conviction for using countries in the future amendment negotiation of the WTO rules.
- Between Japan and Korea, this adoption may be favorable for Japan and unfavorable for Korea because Korea will not be able to utilize trade remedy measures against Japan more frequently, considering the past record.